

REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 5 - LEGAL AFFAIRS

**INQUIRY INTO ROAD TRANSPORT AMENDMENT (MOBILE
PHONE DETECTION) BILL 2019**

CORRECTED

At Jubilee Room, Parliament House, Sydney, on Wednesday 30 October 2019

The Committee met at 9:30

PRESENT

Mr David Shoebridge (Deputy Chair)

The Hon. Scott Farlow
The Hon. John Graham
The Hon. Rose Jackson
The Hon. Trevor Khan
The Hon. Taylor Martin
The Hon. Shaoquett Moselmane

The DEPUTY CHAIR: Welcome to the Portfolio Committee No. 5 - Legal Affairs inquiry into the provisions of the Road Transport Amendment (Mobile Phone Detection) Bill 2019. In the absence of the Hon. Robert Borsak, the Committee Chair, I will be chairing at least the first morning session of this hearing. As Deputy Chair I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the Elders past and present of the Eora nation and extend that respect to other Aboriginals present. This land always was and always will be Aboriginal land. Today the Committee will hear from a number of stakeholders who have views in relation to the bill, including representatives from the New South Wales Government, NSW Privacy Commissioner, legal professionals, transport and road safety groups.

Before we commence I would like to make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live by the Parliament's website. The transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing.

I urge witnesses to be careful about any comments they may make to the media or to others after they have completed their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The *Guidelines for the Broadcast of Proceedings* are available from the secretariat. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. To aid audibility of this hearing, may I remind both Committee members and witnesses to speak into the long microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. Finally, could everyone, including Committee members, please turn their mobile phones to silent for the duration of the hearing.

RUSSELL KENNETH WHITE, Chief Executive Officer, Australian Road Safety Foundation, before the Committee via teleconference, sworn and examined

The DEPUTY CHAIR: Mr White, do you want to start with a short opening statement?

Mr WHITE: Yes. I would like to thank the Committee members for allowing us the opportunity to present at this hearing. The Australian Road Safety Foundation has long held the view that mobile phone use and distraction represent a significant risk to road users right around the nation, and it is that way simply because of the proven effects that distraction of mobile phones can have on not only drivers own situational awareness and driving capability but also the risk that it places on pedestrians and other vulnerable road users. I think the evidence that I have seen from an academic standpoint certainly represents that case.

There are a number of factors that happen once a mobile phone is being used and there are a number of distraction levels that take place in that field—that is, visual distraction and cognitive distraction, limiting the person's ability to essentially assess what is happening around them. There has also been some other research that I have seen from the United States that clearly demonstrates that there is a distraction in the way that the person uses their visual field—in fact, it can reduce a person's visual capabilities or visual scanning zone by up to two-thirds. It also takes a person from what we call being broadly and externally focused to being narrow and internally focused. Clearly that sort of approach presents a major risk if you are trying to operate a motor vehicle.

The DEPUTY CHAIR: Do you have any specific observations about the bill? Obviously one of the issues of concern is the reverse onus. Do you want to address that before we launch into questions?

Mr WHITE: No, I have had a look at the bill today. I have no comment on that at this stage.

The Hon. JOHN GRAHAM: Obviously on some road safety issues we are still struggling to reduce the number of accidents and fatalities. Can you take us through, step by step, how much of a problem you see the driver distraction set of issues as being, as we are struggling to get those incidents down, and how much do you see as a mobile phone issue within that? Just give us your snapshot of the scale of this problem.

Mr WHITE: That is a great question. From my own personal experience, I was involved in a research study when mobile phones, and I guess hands-free devices, were essentially becoming more widely used. As the safety officer for that particular piece of research, I observed firsthand how dramatically someone's situational awareness capability was reduced from the very moment that a mobile phone actually rang. I personally sat next to people and saw them clip hazards that they did not even think they were anywhere near or fail to recognise situations or go from being able to assess situations and make corrective judgements to virtually being the polar opposite. It came back to what I said before: The mobile phone conversation took them from being broadly and externally focused to being narrow and internally focused.

I think the other risk that we have got in terms of distraction is the sheer number of road users in all sectors that are actually undertaking that sort of behaviour whilst they are mobile, whilst they are moving around. So it is pretty clear that as human beings we cannot multitask, that we process things sequentially and because of that sequential assessment or process it limits our capabilities from a physical sense to be able to do two things at once. Clearly, if you are in motion with a reduced level of situational awareness or visual intake, that is going to be a significant problem and I think, unlike other issues such as drink driving or things like that where potentially a smaller section of the community is actually doing it, the biggest risk we have got with something like distraction is that virtually everybody is doing it—so that is probably about the sheer size or scale of that risk. The challenge we have from a research standpoint is trying to pin down a number as to how many incidents are physically caused by distraction, but I think there is plenty of anecdotal evidence that suggests that distraction has a significant role to play.

The Hon. JOHN GRAHAM: Yes. The Committee has in front of it some evidence about the extent to which this might be making it harder to drive or harder to navigate hazards, but I am interested in whatever you can tell us about. Do you see driver distraction issues as one of the key reasons why we cannot get the road toll down or the accident rate down? How much of an issue is that part of the agenda? Is that why we are struggling?

Mr WHITE: I think it is a large part of the agenda, quite frankly. I think some of the things that we are seeing in terms of road statistics in recent times, despite a whole stack of ongoing efforts in a range of different areas, road tolls or incident rates are on the increase. So you have to look at the reason as to why that is potentially occurring. Clearly something that has come into existence in a relatively short period of time has been the uptake of mobile phone use. In my view, and certainly the foundation's view, distraction represents one of the greatest risks and one of the greatest challenges that we have to improving road safety, again simply because it is linking

across not just the driver issue but also impacts on pedestrians, motorcyclists and pushbike riders. It is a very broad, important and wide-reaching issue that affects road safety in a number of different aspects. Clearly I see a driver in control of a vehicle operating a piece of equipment as being a major risk and, as I said, certainly in terms of a road safety approach, distraction has to be, in my opinion, high on the agenda.

The Hon. SHAOQUETT MOSELMANE: There is clearly some evidence about the causal association but an Associate Professor from the University of New South Wales has written to say that the relationship between mobile phone use while driving and crash involvement has been difficult to establish due to the limitation of police crash data and under-reporting of mobile phone use during crashes. What is your response to that?

Mr WHITE: Again, I think that reaches across an issue we have with road safety generally. Trying to get a more holistic view of what causes crashes and how we get research-based evidence to identify that in each incident is a big issue for the road safety industry. Part of our solution has to be how do we get better data? In the absence of that data, we have to look at what are some of those other key indicators. There is plenty of research suggesting that mobile phone use leads to increased reaction time and an impaired ability to maintain correct lane position—that is one of the key issues we are dealing with. But in terms of other key issues, like reaction time, longer or shorter following distances that people tend to vary, looking to an overall reduced level of driver awareness. There are plenty of research studies that list multiple effects on that particular basis. There are two points here. We do need to look at how we get better crash data to identify the exact impact a distraction had. But we also need to look at those other research papers—from across the world—that demonstrate a number of other factors that impair a driver's capability to operate a vehicle in a safe manner.

The Hon. TREVOR KHAN: Could I just take you to the paragraph that the Hon. Shaoquett Moselmane referred to. Associate Professor Soufiane Boufous went on to say:

However, there is evidence of a strong causal association between texting and crashes—

which really goes to what this bill deals with, at least in part. Are you aware of that research?

Mr WHITE: Sorry could you just repeat that question?

The Hon. TREVOR KHAN: What the professor says is that there is evidence of a strong causal association between texting and crashes. Are you aware of that research?

Mr WHITE: Absolutely. Texting takes the mobile phone usage to another stage altogether simply because it combines all of the general distraction aspects of mobile phone conversations with multiple timeframes where someone has got their eyes physically off the road. Research I have seen shows this can vary from anything from seven to 20 seconds. So even at relatively low speed—let us say 40 kilometres per hour—that is a considerable amount of distance if you have got your eyes off the road for anything like those times, let alone travelling at 100 kilometres per hour or 110 kilometres per hour. I am certainly aware that texting compounds the distraction issue significantly.

The Hon. TREVOR KHAN: Would I be right in saying that when we are talking about texting, we are talking about not only the physical act of putting in a message but also, for instance, reading a message that comes up on your mobile phone?

Mr WHITE: That is totally correct. Any engagement with that device is going to create a visual and a cognitive impact on a person's driving capability. That is not just sending or receiving messages, it is interfacing with things like Facebook, Instagram or—as we have seen tragically—people filming themselves or filming acts in cars using the camera and other things the device can provide. The phone call is one thing but texting and any sort of social media or other integration that requires direct connection with the phone is a huge issue. There is plenty of research and anecdotal evidence to support that.

The Hon. TREVOR KHAN: Would you agree with me that, in a sense, the physical act of interacting with the phone—picking it up, looking at it—brings with it a quintessential danger to the driver and other road users?

Mr WHITE: There is no doubt about that. That is exactly what it does. You are limiting your capability to assess your environment, you are limiting your ability to respond to an unexpected change and—if you look at some of the dash cam footage—people are interfacing with the phone, they do not realise the vehicle in front has stopped or that a pedestrian has walked out in front of them. They are so busy either filming themselves or texting or doing something else, that they cannot cope with the movement and activity around the vehicle. It absolutely represents a significant problem for road safety.

The Hon. TREVOR KHAN: Would you be suggesting that talking in the general sense about driver distraction is, in fact, in itself a distraction and that we should be looking at the unique activity of picking up and interacting with a mobile phone in the motor vehicle? Is that where we should be concentrating our effort today?

Mr WHITE: There are probably of aspects I would like to comment on. Absolutely, anything where someone has a direct to the phone via their hand—whether that is typing or calling or interfacing with it in any way—that is one section of the problem. But equally, we need to look at the distraction. It is not just limited to directly picking the phone up although clearly that is the biggest problem. But also there is the same amount of cognitive load. There is no difference—in terms of distraction—from someone answering or talking on a phone hands-free or handheld. The level of distraction is exactly the same. So while it is easy to target the physical side of things in terms of the person interfacing with the phone, we also need to take into account that conversation on a mobile phone has the same amount of distraction whether it is hands-free or not.

The Hon. TREVOR KHAN: I might be prepared to concede that point but could I suggest that when you talk in terms of cognitive distraction, that is fine, but picking up the mobile phone involves the physical distraction—that is the dropping of the head or the dropping of the line of sight—away from the flow of traffic and down into the footwell of the car.

Mr WHITE: Yes absolutely. That is totally true. I have anecdotal evidence where people have suggested to me they have reached over to get the phone or even just the fact that the phone has rung—or they have heard the phone ringing—has been enough for them to take their eyes off the road, pick up the phone and they have steered out of their lane and had a collision. There is definitely a connection there. If someone is picking up the phone, reaching away or taking their eyes off the road—for however long—there is going to be an increased risk of a crash.

The Hon. TREVOR KHAN: Thank you very much. You have been most helpful.

The DEPUTY CHAIR: Mr White, it is Mr David Shoebridge here. Can I just get a sense of what actual data we have? We have had a number of submissions making reference to the factsheet produced by the Centre for Accident Research and Road Safety in Queensland. It talks about driver distraction—including mobile phone use—being one of the main causes of road crashes, accounting for approximately one in four car crashes. Do you know what data set that is referencing, when we are talking about driver distraction?

Mr WHITE: I am aware of that fact sheet and I am aware of the references on it but I do not it with me at present. I could supply other research documents that talk about that on notice if you want? One of the best distraction papers is, "Mobile phone use: a growing problem of driver distraction", which I think was authored by Ian Faulks. I can take that on notice and provide it to you.

The DEPUTY CHAIR: If you could provide it during today's hearing that would be useful. We have resolved earlier that we cannot take questions on notice after today's hearing concludes because we have a short time frame in which to get an answer. If you could email the Secretariat at some time during the day, that would be appreciated.

Mr WHITE: Yes, no problem at all.

The DEPUTY CHAIR: We do have a submission from Ian Faulks. That is where I got that reference from. You were having a discussion with the Hon. Trevor Khan about driver distraction. My understanding of the data is that we cannot really differentiate between somebody being distracted by mobile phone use, somebody being distracted by something outside the vehicle, someone being distracted by children in the back of a car—there really is not data that differentiates between those different causes of distraction is there?

Mr WHITE: It is difficult to pin down an exact cause because we do not have crash data that identifies the complete end-to-end factors in every single incident. So the research around that is fragmented. Studies have been done that talk about the level of distraction or the stages of distraction. Certainly, anything that takes the driver's mind or eyes off the road or off the driving task is going to have an impact on their driving performance. The difference with something like someone being in the car with you is that there is a place there, in terms of the person sharing the space that the driver is involved with. Whilst there is a level of distraction in that, the scale might be at a relatively low point because they are sharing the space.

The challenge with mobile phones—and this goes for conversations—is that the person is not sharing the space so the scale for distraction is actually higher than if someone was sharing the space with them. A body of work has been done trying to scale that. Again, I do not have that with me today, but there are different scales measuring levels of distraction. Certainly, using a phone is significantly higher than any other potential distraction

risk, simply because it is generally an ongoing conversation, an ongoing interaction. It is not a single event; it is something that continues.

The DEPUTY CHAIR: I had a briefing from the NSW Centre for Road Safety prior to this and it suggested—and we can ask this directly, later—that there is a significant differential between the increased risk between somebody picking up a phone and operating it while being handheld, and operating a phone in a cradle—so pressing to answer a call or pressing to start an audio file when a phone is in a cradle. From memory it was suggesting that there is something like a fourfold increase in the risk if you are picking up a phone and using a phone in your hand, but about a 20 per cent increase in risk if you are operating a phone legally in a cradle. It sounds to me like you do not think that there is such a great disparity. That, in fact, the use of a mobile phone full stop is a highly distracting event.

Mr WHITE: Yes. In my experience and the research that I have seen and participated in, there is no level of change in distraction from someone using a phone hands-free to someone using a phone handheld. I say that point for conversations only. To clarify that point a little bit further, there would certainly be a connection that if someone was fumbling around inside the cabin looking for a phone or to hit a button or to pick up a phone to answer it—even if it was on speaker—that would still be a risk. If somebody has done that—I guess what I am trying to say is that there always going to be a level of risk and it is greater if it is a handheld device because it creates another level. So I understand why the office has that level of research. Again, it would make sense but if it is in a fixed cradle and it is something that someone only interacts with a single press of a button, that level is going to be less of a risk than if somebody is trying to pick up a phone out of the centre console and trying to open it and answer it. I think interfacing with a phone certainly has an increase but the actual use of the phone from a conversation standpoint, but the level of distraction is the same whether it is handheld or hands-free.

The Hon. SCOTT FARLOW: Just picking up from Mr Shoebridge's question to you and the 20 per cent distraction when it comes to interfacing with a phone legally, would that be similar, in your understanding, with interfacing with the car's air conditioning or changing the radio station or—

The DEPUTY CHAIR: Cruise control—

The Hon. SCOTT FARLOW: Well, I think cruise control might be a little bit easier, but the radio or the air conditioning where you have to reach into the consul area?

Mr WHITE: Are we talking specifically that connection with a phone in the cradle?

The Hon. SCOTT FARLOW: Yes, just the pressing of the button to say yes or no and interfacing that way. Would it be similar?

Mr WHITE: Yes, I would not see the physical act of that as being any different to changing a dial on an air-conditioning system or that brief connect away. Again, the benefit of a phone being in a fixed cradle is that button or activation point remains constant. What tends to happen if it is loose in the car or in a console or somewhere on the front seat is that it is not consistent, so I would assume there is a level of additional distraction with someone trying to find the device. I would think that would be the same.

The DEPUTY CHAIR: Mr White, as I understand your evidence, the key distraction problem from mobile phone use in those circumstances is not reaching over and pressing the green button on the cradle, it is actually engaging in a conversation with someone who is not sharing your space—being engaged in that conversation itself is the primary distraction.

Mr WHITE: Yes, correct. The actual act of connecting, as I said, would be the same for any other console in the vehicle. Once you start to converse, that is where the impact of the level of increased risk comes from. Again, it is the conversation itself. I think this is the thing we need to look at with distraction. There are multiple ways; it is not one single act now. The number of acts lead to a cumulative effect. The cause of pressing the button might not be too much of an issue in itself, but it is the follow-on act of conversation, the quality of the signal and the person's mental process in dealing with what that conversation reveals.

There are a number of ways that go to that and a level of distraction that goes to that point. Following on from that, was the person then using the device for text or to use social media or use the phone to do other things? That again compiles it even further. There are multiple ways to this distraction issue, like there is in every single road safety issue. There is never essentially one single aspect; there are multiple factors that need to be considered. Can all of those be a threat in one length of activity? It is always going to be a difficult task and a great challenge.

The Hon. ROSE JACKSON: I wanted to ask about the use of signage to alert people to the existence of detection cameras. Taken as given the evidence that you provided, and that others have reinforced, that using

a mobile phone when driving is a distraction and it increases the risk to drivers and other road users. I understand the situation is different in Queensland but in New South Wales, for other activities that people undertake in a vehicle that the regulatory environment wishes they did not do, such as speeding or running a red light, we have signs that alert people to the existence of cameras so that they can modify their behaviour.

The idea is that the behavioural modification becomes more normalised and people are less willing, generally, to engage in that adverse activity. For this particular piece of legislation there are no warning signs for the existence of mobile phone detection cameras and I wondered if you had any evidence or research on the impact of warning signs on the behavioural modification for drivers?

Mr WHITE: I do not have any research immediately at hand to substantiate that, one way or the other. I guess from a personal view and as with everything in road safety, I have always looked at having a multifaceted approach, where signing and covert activities can be complementary and helpful for that. Certainly in the instance of warning people, the science probably forms two separate aspects. One is that it creates a general awareness for the general population and it might serve to start changing people's behaviour as they approach those zones, with the view that hopefully that then changes behaviour in the long-term. I have no research evidence with me this morning I could quote but, again, I think it has to be that mixed approach. The signage would influence some people and potentially warn some people about that, but for others it may not have that same effect, especially if they are distracted driving past the sign they might not see anyway. So that is probably the other aspect of that.

The one thing I would like to say, though, in terms of what we are trying to achieve with distraction I think we have to look at how we have been successful with other things in the past. I always look to the response that happened with the drink-driving campaign. For a long time there was a different view culturally as to what drink-driving meant. It was only through a concerted level of enforcement, a concerted level of public awareness campaigning and a concerted level of ongoing advocacy that we have changed the Australian culture in terms of drink-driving, so that the chances of you being caught were very high, the consequences were high and through that sustained activity—and I know it took a decade or so to achieve that—but I think to a large degree we have seen a change in the social acceptance of an activity like drink-driving.

I think for us the challenge now is how we make distracted driving equally socially unacceptable as drink-driving. Again I think that is probably a step, hopefully, to where we are heading, which is that we have got this approach that it is done with a balance of enforcement, with education and potentially with other technological means. It was interesting at the Federal summit that I attended earlier this year to have other stakeholders from tech companies and automobile manufacturers to start raising this issue of distraction as a bigger problem than it had potentially been seen as in the past. Again I think the enforcement is one aspect of it but I would urge the Committee to be thinking about aspects as well which might be able to add into this bill.

The Hon. JOHN GRAHAM: On that technology point, how do you see the technology evolving here to manage this problem and how quickly?

Mr WHITE: It is a great question. Technology exists already that potentially can stop this sort of thing from happening, certainly with vehicle theft—I am not sure about pedestrians or other aspects. But I know of a number of technologies that are either in the mobile devices themselves or devices that can be fitted relatively easily as an after-market addition that could start to impede the level of interaction that would be allowed to the person to interface with that. Potentially that could also be another string to the bow. Whilst we have got the enforcement side, and that is critical, but then also if there are other technological means—technology got us into this problem in the first place so if technology can help us get out of it, I think we need to explore those things and equally pursue that as well. As I said, I know from things that I have seen that a number of different automotive after-market suppliers or even tech on the mobile communications side of things, there is technology there that could be potentially a key as to preventing this sort of thing as well.

The Hon. JOHN GRAHAM: What do you see as the most promising technological solution that you are aware of? What is the most likely to succeed?

Mr WHITE: That is a great question because there is a number of different angles. I have seen apps that can help reward behaviour for good driving performance—that is one area. I am also aware of technology that can make a phone screen go blank once the ignition is turned so there is no way a person can interact with that phone, which is probably one of the easier ways to do something like that. But there are also some apps that I have seen that restrict that use of the phone itself. There is also the simple choice of flicking your phone onto flight mode or onto drive mode. The challenge with that is that someone still has to make a choice to do that. My view is that if you can have something that, the moment the car is moving, simply would not allow that particular

interaction—that technology exists right now so it would not be difficult to start to integrate that for inclusion into a vehicle or to be used as an after-market addition.

The DEPUTY CHAIR: Should there be a requirement that phones come with a drive mode? We have a flight mode and a drive mode may simply dumb them down and only allow them to effectively receive calls or send calls via bluetooth.

Mr WHITE: My understanding is that phones from both Apple and Samsung have that capability in various forms but the trick is it takes the user the motivation to actually do that. Part of that comes back to the cultural thing—even if that is on there, unless it is an automatic thing the user still has to make a choice to do that. Just like we would in an aircraft, the moment we get enclosed the phones cannot be used; it should be the same thing in the car. As I said, the challenge is making a person do that of their own choice and again that only comes with a cultural change. Again as I said there is tech that could be used at the moment to disable that straight away. Directly to that question, I believe there is already a drive mode on a number of devices but it is getting people to make that choice to actually use it, or to even be aware that it uses it.

The DEPUTY CHAIR: Increasingly my phone seems to make a series of choices by itself, particularly if I get into a hire car or a car share vehicle—and I have a number of them at different times—whether it is Apple Play or whatever system you are using. Perhaps we should be looking at making that a requirement of those phone interface devices that they automatically switch your phone to a drive mode and at least limit your capacity to access social media and the like.

Mr WHITE: Yes. Again that is one of the interesting things from the summit that I attended recently—having those IT stakeholders in the same room talking about these issues. It was not just a room full of road safety people; it was actually a broader cross-section of stakeholders. That was very helpful for a broader approach. One of the problems we have with road safety is that it can often be very compartmentalised. As I said before, it is a broad issue that covers so many aspects, so having more tech people involved in the road safety discussion means they might have additional solutions that are already in place so that would not be difficult—if it made that as a requirement that it had to have a particular landing page or that there was something that came up the moment the car was activated. But then again that technology is expanding all the time, so that could certainly be part of that response.

The Hon. SHAOQUETT MOSELMANE: Going back to the question about signage and also to the University of New South Wales Associate Professor Boufous, the professor indicated that signage has reduced road speeding and has provided some evidence of that. Would you not recommend also with this legislation that there should be signage which also, as you pointed out earlier, helps with the reduction of crashes and so forth? The UNSW submission states clearly that signage has reduced road crashes. Would you not recommend the same with this legislation?

Mr WHITE: Yes, absolutely. Again, anything that talks about or promotes the awareness of the risk is a helpful piece of the puzzle. Certainly having a sign that spoke about that helps with general public awareness and then hopefully changes behaviour in the broader scheme. I have not seen that particular piece of research that you are referencing exactly but again from an internalist standpoint you would have to take that on merit and certainly concur with that—that the sign would create a halo or an area where behaviour changes around that sign and then hopefully beyond that as well.

The Hon. TREVOR KHAN: Mr White, you are not aware of any signage that occurs, say, within 100 metres of a random breath test [RBT] warning people that an RBT is coming up, are you?

Mr WHITE: No.

The Hon. TREVOR KHAN: And the behavioural change that has occurred with regards to drink-driving has occurred, has it not, both because of effective enforcement and also an attitudinal change with regards to drink-driving more generally?

Mr WHITE: Correct. If we look at drink-driving as a test case or the response to drink-driving as I mentioned before, whilst there was not necessarily signage around specifically, let's take the example of a sign warning about a speed camera zone or warning about speed enforcement, what happened with drink-driving was that there was a significant media campaign and the police were very visible. Whilst it was not signed, the fact that you saw the RBT vans, that was a visible sign. We could go to that case even now with the equipment that New South Wales police use. There are very visible signs that testing is taking place. I think that decoy is powerful as a mounted sign. Obviously that is a key deterrent when people see a high level of enforcement because for

some people it is not so much the risk or they do not consider the risk of having the crash. The thing they focus more on—

The Hon. TREVOR KHAN: Is getting caught.

Mr WHITE: —is the risk of getting caught.

The Hon. TREVOR KHAN: Indeed, this is one of the reasons why we have highway patrol vehicles that are painted like Christmas trees because there is an effect when people see the presence of, for instance, police on our roads.

The DEPUTY CHAIR: But sometimes hidden behind a bush.

The Hon. TREVOR KHAN: That is the cynic getting in there.

The Hon. SCOTT FARLOW: And sometimes not painted like a Christmas tree as well. There is a variety.

The Hon. TREVOR KHAN: One of the major ways that people are pinged for speeding is not by mobile phone cameras where they have got signs 100 and 200 metres before the camera, but by coppers with radar guns sticking out of their windows on the side of the expressways. That is right, is it not? They do not have signage.

Mr WHITE: Again, I would say that there is probably a number of different aspects. I have probably touched on this before. Enforcement has to be, in my opinion, a mix of both covert and hi-vis enforcing. Again, the cultural side of things is very, very different. Some people will respond to just seeing the police officer. There will be other people that the risk of not knowing where they are or where they potentially might get caught also plays on some people's minds. When you see an unmarked police car pulling someone over, that still has the same effect once you see the lights as you would have expected with a full-vis car.

I do not believe there is one aspect that you can say: It has got to work for just signage or covert. There is a mix of those two things. It goes back to what I said before. It is having the community know that the level of enforcement is high. If we look at how that level of enforcement traditionally has rolled out from an anecdotal standpoint, that initial campaign was led with a high level of visibility and then it has adjusted as time goes on as things progress. I would suggest that, like everything, it is a combination of different approaches. That might be the hi-vis or covert side of things. Equally, part of the campaign has to be—and that is what people were focused on initially, the risk of getting caught—to try and get people to understand the level of risk they are placing on themselves and other people.

The Hon. TREVOR KHAN: I do not think we are in disagreement here. What we have not spoken of in terms of a communicative element in changing behaviour, you would agree, is getting the bluey in the mail and the advice that you have lost five points.

Mr WHITE: Yes. We have got to ramp up that level of consequence that goes with mobile phone use. That was part of the cultural change that happened with drink-driving. People eventually started to realise that it was a socially unacceptable thing to do. That social pressure also combined with the enforcement and the work that was being done from a legislation standpoint. It needed that three-pronged approach to change that culture. Part of that change comes from when you get that fine in the mail or if you get an infringement notice because of that activity. That is part of that change. Clearly, any level of enforcement has to be a critical part or a complementary part of any of this cultural change or societal change that we go through. I keep saying that if we look at the work that was done and the methodology that was used around the drink-driving campaign, it has got to be the same type of things for the whole mobile phone and distraction thing.

The CHAIR: One of the differences with this campaign as proposed by the Government compared to the RBT campaign is that there will be no highly visual roadside aspect to it. The cameras will be unmarked. You will not know where they are. At best we are going to have generic signs stating: Mobile phone detection cameras operate in New South Wales. That is a difference between the rollout of this program and the RBT program is it not?

Mr WHITE: I could not comment on that from a historical standpoint. I would say that my view has always been that the road rules are there and if you are not doing anything wrong, you have got nothing to worry about. If it came to pass that changing this behaviour meant that the cameras could be anywhere at any time, I am a big believer in that. I think it is part of that process. If people know where a camera is that that might change their behaviour for that area. But if we look in the holistic sense the view has to be, "I was not sure where that was and I got caught." I have got no research to back that up.

The CHAIR: A general deterrent.

Mr WHITE: It forms part of that approach. If we are really serious about dealing with this issue—and I have said this in the media—if someone had a crash and was injured or killed somebody as a result of the drink-driving incident, does the community have that same level of view if that same thing happened and a person was on a mobile phone? I would suggest the level of outrage would be essentially the same. As you speak to people, they view the drink-driving aspect in a different light potentially to how they would view a distracted driver. Again, because I think a lot of people are involved in that activity it has tended to normalise it. The approach that we need to take needs to be fairly hard line and fairly swift in terms of its level of response because the risk is the same. It is how the public view it and how it is viewed generally that there is a difference between driving behaviour and distracted driving behaviour. We need to change that.

The CHAIR: We have run out of time but I was hoping to ask you one final question. Some of the material talks about three different kinds of distraction—physical distraction, visual distraction and cognitive distraction—as three different areas that should be looked at. Do you accept that is a useful breakdown? This bill is really addressing the first two, physical and visual, rather than cognitive.

Mr WHITE: I would agree that those three things are the key distraction factors. Certainly, the combination of those three things takes place definitely when somebody is interfacing with a phone that is in their hand and they are typing away on Facebook or filming themselves doing whatever. It is pretty clear that those three levels of distraction are at play in that moment. The challenge that we have is to prove it. How do we look at the cognitive load for each individual? That is the hard thing to measure. I dare say, with current technology, it would be an almost impossible thing to measure on a case-by-case basis. There is just not the bandwidth from a research standpoint. We have got to look at things we can manage. Looking at the evidence that goes around both the visual and physical distraction, those two things are obvious and clear. How someone is dealing with the mental thought process cognitively, that is a little bit more difficult to try to measure with each individual. If we can start attacking those levels, if we can remove those first two, it potentially removes the third one by default anyway.

The CHAIR: I think you would have resistance to having the Government track our brain levels and our cognitive attention.

Mr WHITE: Correct.

The Hon. SHAOQUETT MOSELMANE: We have spoken about having mobile phones in the hand and mobile phones in the cradle but some of the commentary that we have received in submissions talk about smart watches. Where does that come in and what is your view in regards to smart watches?

Mr WHITE: That is another very good point. That is another piece of technology that has suddenly just arrived. I would say it is something that has arrived in a relatively short period of time. The smartwatch is a whole other different aspect to discuss because you do get notifications on those. They will buzz in the same way that a phone would. They will display part of a message or maybe ask the person to interact with that. That is the challenge we have. Technology will come on board quicker than we can respond or quicker than we can research those things. If you look at it on the points we have spoken about today that interaction looking at the watch takes the person's eyes off the road. If they have to tap that face that is another physical distraction and also a visual one. That could now also be another issue that we have to try and look at. I am not aware of much research that has been done specifically on the smartwatch side of things. That would be another piece of work unfortunately.

The DEPUTY CHAIR: Mr White, I think we could probably spend another half an hour dealing with smartwatches and Fitbit but we will not. We have run out of time. Thank you for your evidence today and assistance. You did promise to try and send the reference to that academic piece some time throughout the course of today.

Mr WHITE: Yes, I will certainly do that. I will make sure that happens today.

(The witness withdrew.)

MICHAL MANJAT, Criminal Law Committee member, Law Society of New South Wales, affirmed and examined

The DEPUTY CHAIR: Would you like to give a short opening address?

Mr MANTAJ: I would. The Law Society of New South Wales acknowledges that mobile phone use by drivers is implicated in a significant number of serious collisions and supports efforts to discourage this behaviour, including the deployment of mobile phone detection cameras. Our concern is not with the technology but rather about the presumption in the proposed new section 139B of the Road Transport Act because if enacted this provision will reverse the onus of proof and mean that a driver who is shown in a photograph, taken by one of those new cameras, to be holding any object whatsoever—which may not be able to be identified—can be fined and accrue demerit points for mobile phone use unless the driver is able to prove their innocence through an expensive and protracted court process.

We are of the view that this provision is unnecessary, unfair, will erode public confidence in the use of cameras as an enforcement tool and sets a dangerous precedent. It is unnecessary because, as the Minister for Roads remarked in his second reading speech, the intention is to only issue fines where there is no doubt that the device held by the driver is indeed a mobile phone. If that is the case the existing law perfectly reflects that intention and there is no need to create a fictional presumption of guilt contemplated in section 139B. It is unfair because it abandons the long established fundamental principles of the presumption of innocence and the requirement for the prosecution to prove its case.

While presumptions of this kind already exist in the law, the presumption that any object held by a driver is a mobile phone is particularly egregious because commonly drivers may hold many different items without committing an offence. In that sense this presumption is particularly divorced from reality. It is likely to erode public confidence in the use of cameras as a means of enforcement of traffic law because it will feed into the already existing cynicism in some parts of the community that cameras, for example speed cameras, are more about revenue raising than public safety. Lastly, it represents a dangerous precedent for future laws because it promotes an acceptance of the proposition that it is appropriate to create fundamentally unfair and fictional presumptions in order to make it easier to prosecute an offence.

The Hon. JOHN GRAHAM: Just turning to your first point, a driver might be holding many items. Take us through some examples of that. They might be holding a coffee cup.

Mr MANTAJ: There is an infinite variety of things that drivers may hold while driving. Commonly it might be a coffee cup. It might be a chocolate bar, it might be a wallet, it might be a parking ticket. There are all sorts of things that anyone who has any experience in driving will know from time to time comes into a driver's hand whilst driving. Some of those items may be things which you might think they should not be holding, others are okay, but they are not mobile phones.

The Hon. JOHN GRAHAM: Under this law as it is drafted if you receive a notice it is up to you to turn up in court, defend that and prove it is not a mobile phone?

Mr MANTAJ: Correct.

The Hon. JOHN GRAHAM: The burden is on you, the onus is on you?

Mr MANTAJ: Correct. You have to have the time to do it and you have to have the financial resources to do it and I can tell you lawyers are not cheap. And because the presumption is against you as the defendant, you have to hope that you remember what you were doing three, four, five weeks ago on a normal trip at that particular moment in time when the photo was taken so you can rebut the presumption.

The Hon. JOHN GRAHAM: It is different to the existing situation where you might be pulled over by a police officer and the question is put to you, "Was that a mobile phone?" You are clearly aware. This might be weeks later, you then have to recall what you were holding at the time?

Mr MANTAJ: Precisely.

The Hon. TREVOR KHAN: That is not quite the case is it, in this sense: It is not only a question you have to remember because one of the fundamental pieces of evidence that will be available to the court, if one has taken it to court, is the photo or photos?

Mr MANTAJ: Yes.

The Hon. TREVOR KHAN: It is not going to be an exercise of having to turn one's mind at large to what one was doing at a particular time on a particular day. You are going to be explaining to the court why that should not be deemed to be a mobile phone on the balance of probabilities?

Mr MANTAJ: That is right, but in a practical sense it is not very different to having to remember what one was doing at the particular time. At least one would hope that where there is no doubt at all that the object is not a mobile phone there will not be a fine. The area where this is likely to be a problem is where there is an object being held and there is some doubt as to whether that object is or is not a mobile phone. In the position that the driver would have to come to court and argue why this object that could be a mobile phone is not a mobile phone? The only practical way to do it is for the driver to give evidence and say, "Yes, I remember the day, I remember the time. This is what I was doing and this is what the object is."

The Hon. TREVOR KHAN: You are not going to have to remember the time, that is going to be pretty clear.

The Hon. SHAOQUETT MOSELMANE: It may not be so clear.

The Hon. SCOTT FARLOW: There is a time stamp on it.

The DEPUTY CHAIR: We will put these propositions one by one.

The Hon. TREVOR KHAN: With respect, we are going to have an offence which nominates the time, date and the place. That is the nature of it.

Mr MANTAJ: That is true. I am not trying to say that the driver will have to remember the date, time and place of the offence. The driver will have to remember what they were doing at that time.

The Hon. TREVOR KHAN: Indeed, and they will be presented with a photo. Let me show you this style of photo. What you are going to be presented with is a photo of that nature. We can dispel the concept of a coffee cup, can't we? It is not going to be that. You are going to be presented with a photo that shows you holding what appears to be a squarish metallic object because of the quality of these photos.

Mr MANTAJ: I respectfully disagree with that. Certainly the photo you have just shown me is of that nature but under this legislation there is no reason why a photo has to be that clear. And, may I say, on the basis of this photo, one does not need a legislative presumption.

The Hon. TREVOR KHAN: I understand that argument, but on the basis that it works the other way as well: That is, you will have a real problem proving on the balance of probabilities that it is otherwise.

Mr MANTAJ: In a photo like this, yes, but I have seen photographs published in the media when these cameras were first announced where the only thing one can see is the top of some bit of plastic protruding from someone's hand. That was released to the media as an example of the kind of photo that shows a driver holding a mobile phone. That is the sort of thing that concerns the Law Society.

The DEPUTY CHAIR: Is it not your point that extending this concept of a reverse onus, by which you are guilty until you prove yourself innocent, you start from the point that that is an unprincipled approach for the criminal law?

Mr MANTAJ: Yes. That is certainly one of the points.

The DEPUTY CHAIR: The second point that you make is that if there are images like have been presented to you by the Hon. Trevor Khan and have been referred to by the Minister in the second reading speech, there are high-definition clear images that identifies somebody holding a mobile phone, if that is the nature of the images we are talking about, why do we need a deeming provision and a reverse onus? Is that not the second element of your argument?

Mr MANTAJ: Absolutely, absolutely. That is exactly right, Chair.

The DEPUTY CHAIR: If we take the Minister at his word—and I do—that the images are high resolution and clear, would tendering that image, if there is a challenge brought to the offence, ordinarily mean that the offence is proven beyond reasonable doubt?

Mr MANTAJ: Yes. I think that is right. If it is an image of the sort that I have just been provided with and if, for example, I were giving a client advice as their representative, I would be giving them advice that there is virtually no prospect of defending a case like this.

The Hon. TREVOR KHAN: You might even put it in broader terms than that.

Mr MANTAJ: I may well put it in more colourful terms, but I will stick to the terms I have just articulated for present purposes.

The DEPUTY CHAIR: At the end of the day these matters are coming before magistrates and magistrates are pretty practical and reasonable people. It will take a lot for them to be persuaded that those kinds of images are not images of people holding mobile phones, are they not?

Mr MANTAJ: Absolutely. That is certainly my experience with the magistracy.

The DEPUTY CHAIR: Given that, from a public policy point of view or otherwise, can you see an argument for having the reverse onus and retaining the deeming provision?

Mr MANTAJ: I do not personally think that there is an argument for it for the reasons I have just indicated. The fact that where the photo clearly shows a mobile phone it is almost certain that, firstly, no-one will defend it, except perhaps a few and un-represented people who do not understand the law, no-one will succeed and we just do not seem to be at a point—while I accept that mobile phone use is a problem—that it is such an epidemic that we should throw away fundamental principles of fairness and justice for the sake of prosecuting people who might be doing innocent things.

The Hon. SHAOQUETT MOSELMANE: Mr Mantaj, why do you think the Government now wants to reverse the onus onto the driver?

Mr MANTAJ: Throughout the course of my career I have often tried to fathom the mind of the Government, not usually successfully, so I do not know.

The DEPUTY CHAIR: I do not think he can answer that.

The Hon. SHAOQUETT MOSELMANE: The reason I ask is because all the submissions we have received talk about the clarity of the technology, the clarity of the effectiveness—

The Hon. TREVOR KHAN: You will have the Government here this afternoon. You can make a speech then.

The Hon. SHAOQUETT MOSELMANE: Can I just ask the question then?

The DEPUTY CHAIR: Why don't we let him ask the question then?

The Hon. SHAOQUETT MOSELMANE: Reference has been made to the clarity of the cameras, the effectiveness of the cameras and that there is a process they go through. They pick the photos. They can see it. Then it is sent to Roads and Maritime Services [RMS] for further verification and there is another independent verification. There is a process that clearly identifies that that is a mobile phone. Why then put the drivers to a reverse onus of proof, bringing those drivers into legal processes to prove that they were innocent and not guilty of an offence?

The Hon. TREVOR KHAN: It does not bring them in. They have to elect.

The DEPUTY CHAIR: The question has been asked and Mr Mantaj clearly is able to answer it. Yes, Mr Mantaj?

Mr MANTAJ: The short answer is that I just do not know.

The DEPUTY CHAIR: Could I address another aspect of this that which is not in the legislation but it is clearly connected to the way in which this program will work. The Government's evidence is that in the trial program, there were about eight million images and those eight million images were then put through an artificial intelligence program, which winnowed down about 10 per cent of them as a potential mobile phone.

The Hon. TREVOR KHAN: It winnowed down about 90 per cent.

The DEPUTY CHAIR: Sorry, it winnowed out 90 per cent and got down to 10 per cent that appeared to contain the image of a mobile phone, according to the artificial intelligence. They were then assessed by a human being with some training and identified about 100,000 offences. The numbers are about right. You have about 800,000 identified by the artificial intelligence and then about 100,000 were eventually proven.

The Hon. SHAOQUETT MOSELMANE: One point two per cent.

The DEPUTY CHAIR: Is this the first time we have seen artificial intelligence being used to specifically identify individuals as engaging in criminal behaviour? Can you think of other instances where we have seen this?

Mr MANTAJ: No, I cannot. I think this is the first example of artificial intelligence being used as, if you like, the first filter to identify potential criminal behaviour, which is what this does.

The Hon. TREVOR KHAN: Actually it is not. There is a whole series of American programs that have been the subject of very considerable argument.

The DEPUTY CHAIR: I am asking from an Australian perspective.

The Hon. TREVOR KHAN: Yes.

The DEPUTY CHAIR: I am not asking about what they do in Moscow or New York. But from an Australian perspective, this is the first time that you are aware of that artificial intelligence has been used to create the first element of a criminal offence.

Mr MANTAJ: It is. Correct.

The DEPUTY CHAIR: Are there any specific issues from a legal perspective we should be looking at when we are allowing artificial intelligence to identify individuals as criminals?

Mr MANTAJ: Not under this proposed system because it is only a first level of identification. There is then a human being who looks at it and confirms whether or not the person has in fact committed a criminal offence. As you have indicated the figures would suggest that many of those photographs that initially were identified by the artificial intelligence were then eliminated by a human being. Personally I do not think that poses a challenge from a legal perspective to the principles of justice so long as we do not get to a position where artificial intelligence makes the final decision.

The Hon. TREVOR KHAN: Can I ask a question on that?

The DEPUTY CHAIR: Yes.

The Hon. TREVOR KHAN: Mr Mantaj, this is not an exercise, is it, where the machine is making a decision of guilt. It is actually in a sense making a decision of innocence. The winnowing process is to eliminate, not to include the photographic technique.

Mr MANTAJ: I agree with that.

The Hon. SHAOQUETT MOSELMANE: We do not know that.

The DEPUTY CHAIR: That is two sides of the same coin.

The Hon. SHAOQUETT MOSELMANE: And we do not know that that is the case.

The DEPUTY CHAIR: There were 90 per cent innocent and 10 per cent potentially guilty.

The Hon. JOHN GRAHAM: Chair, we might let the witness answer the question.

The DEPUTY CHAIR: Yes. You heard the question?

Mr MANTAJ: I thought it was a statement.

The Hon. SHAOQUETT MOSELMANE: It was. It came from the Government side, that's why.

Mr MANTAJ: But, you know, I agree with it.

The Hon. TREVOR KHAN: Actually, it is an interesting point.

The DEPUTY CHAIR: The Government has said that this will be artificial intelligence so it will be a learning algorithm as it operates and gathers more images and there is feedback from the error rate that is identified by the human element. This will be a learning algorithm and it will get smarter and better. Do you see any concerns with that as that becomes more entrenched?

Mr MANTAJ: I think it depends on how it unfolds. As I say, if we get to a position later on where this experience is used as a basis for some other process whereby artificial intelligence makes the last decision before charging, I think that is a real problem. Also, if a culture develops within the reviewers that the artificial intelligence has got it right and they do not need to be particularly concerned about it and just wave photographs through, that would be a problem. But so long as those two things do not happen, I do not personally have a difficulty with artificial intelligence being used to assist in the detection of crime.

The DEPUTY CHAIR: But, you see, there are no legislative checks and balances that would give us that kind of assurance, are there? There is simply an offence and then we are told there are administrative arrangements of a particular nature.

Mr MANTAJ: That is right and that is a concern and, because of this presumption, this whole system relies on the good sense and the goodwill of those people issuing the fines effectively so as not to enforce the law to its full extent.

The DEPUTY CHAIR: It also relies upon the good programming of an artificial intelligence program at the beginning. Should there be an obligation of clarity from the Government about what the coding is, or what the presumptions are, or what the nature of that artificial intelligence program is? Should we be requiring transparency about that?

Mr MANTAJ: I think it would certainly be useful for that algorithm to be publicly available so that it can be reviewed and potentially criticised by those who have expertise in that area. I think that would be a very valuable thing.

The Hon. JOHN GRAHAM: We have talked about the number of offences that were detected in the trial, and it was quite high. I think that is one of the issues that might have implications for the Government for fines processing. I am interested in your view, though, of what it might mean for the courts system, particularly given the reverse onus of proof. This was a limited trial with a limited number of cameras detecting a large number of offences. What are the implications for court resourcing as this rolls through?

Mr MANTAJ: My concern is that it will increase the already huge, frankly, workload of the local court because whilst there will be many people who will unfortunately not be able to challenge these fines for financial reasons, equally there will be many people for whom there is a financial incentive to challenge them because, for example, if one's living depends on having a licence, five points is a lot of points off that licence and many people would be prepared to spend the several thousand dollars that it would take to get a good lawyer to take the matter through court.

The Hon. TREVOR KHAN: Rates have gone up since I was doing it.

Mr MANTAJ: It is, for a junior lawyer, at least \$3,000 to run a hearing, and anywhere up to \$10,000 if one wants a barrister, but many people will be prepared to spend that money because there will be tens of thousands or hundreds of thousands of dollars of their income at stake, and it will almost certainly have an adverse impact on the workload of the local court.

The Hon. JOHN GRAHAM: Can you give us a practical sense, to the best of your knowledge, as to what that might mean?

Mr MANTAJ: It is very difficult to predict, but I would not be surprised if there were several thousand additional hearings throughout the State if this bill becomes law.

The DEPUTY CHAIR: Are you talking of the bill in its current state with the reverse onus?

Mr MANTAJ: Correct.

The DEPUTY CHAIR: What about if the reverse onus was removed, which effectively would defeat the first half of the bill? What if the program was rolled out but there was not a reverse onus?

Mr MANTAJ: I think that would have the effect that fewer fines would be issued and the ones that are issued would be of the kind where there is a photo of this sort of nature that is inarguable and, therefore, the number of matters that filter through to court, under that system, would be far fewer.

The Hon. TREVOR KHAN: That is speculative, though, is it not?

Mr MANTAJ: Of course it is.

The Hon. TREVOR KHAN: It is entirely speculative.

Mr MANTAJ: Of course it is.

The Hon. SHAOQUETT MOSELMANE: I note in your submission that you do not make reference to matters of privacy. A couple of the seven submissions that we have had raise issues about privacy. What are your views, as a representative of the law society, on concerns about privacy issues?

Mr MANTAJ: I think there is a concern in as much as there is no legislative or legally binding obligation to permanently delete the photographs which do not give rise to the issue of a fine. I understand that that is the

policy, but policies can change, and if a policy is not followed there is no real legal recourse. It would certainly be far better if there was a legislative requirement. Whether that is in the Act or in the regulations probably is not all that important, but there should be a legal requirement that those photographs be deleted if they do not give rise to a fine.

The Hon. SHAOQUETT MOSELMANE: Would you prefer it to be in the Act rather than in the regulations—or is there a difference?

Mr MANTAJ: I think our preference would be in the Act because an Act is more difficult to change than regulations, but I think the law society would be reasonably comfortable if it was in the regulations so long as there was a legal obligation, not just policy.

The Hon. JOHN GRAHAM: My colleague jumped in before I was able to turn to questions on the photos—just to reassure him that I was interested in the photos. You have talked to us about the photos which have been publicised in relation to this trial, and given us some evidence on that. I wonder if you have any other views based on defending other sorts of camera offences, or other feedback based on existing camera offences, about the quality of photos or how that interacts with the court system at the moment?

Mr MANTAJ: I do, and I acknowledge firstly that these cameras may very well be very different from the other cameras—

The Hon. JOHN GRAHAM: Yes, understood, and we will put questions to the Government about these cameras.

Mr MANTAJ: My experience with photographs in general is that, no matter what the camera is, they vary in quality from place to place and from time to time. There is a difference between a daytime photo and a night-time photo, if there is fog, if there is someone in the way or different angles, so the concern is that it is all well and good to pick out one photo such as I have been given and say, "What is your complaint?"—

The Hon. TREVOR KHAN: It is one of the few photos I have been given.

Mr MANTAJ: I am not criticising, I am certainly not here to criticise anyone, but the problem is that the likelihood is that there will be a whole range of photographs of a whole range of quality and this presumption encourages those reviewing them to err on the side of issuing a fine where there is a doubt rather than not.

The Hon. JOHN GRAHAM: The important thing about the evidence you have just given is that those variations are not as a result of the camera but as a result of the conditions in which the camera is operating, in the range of examples you have just given.

Mr MANTAJ: Correct, and the sort of car that you are driving and where you are holding this object and all sorts of things.

The Hon. JOHN GRAHAM: Yes, and whether your windscreen has been cleaned.

Mr MANTAJ: Exactly.

The Hon. TREVOR KHAN: You should probably get done if your windscreen is that bad.

The Hon. SHAOQUETT MOSELMANE: The other contentious issue in this bill is that there is no provision at this point for road signage warning of impending cameras and so forth, as we usually have along highways and so on warning of speed cameras. What is your response to that?

Mr MANTAJ: I have listened to some of the evidence and some of the exchanges between members of the Committee and the previous witness about that issue. I am not an expert in behaviour change, so I cannot comment on the extent to which signage might be—

The Hon. SHAOQUETT MOSELMANE: From a legal perspective, if we have extra warning.

Mr MANTAJ: I think whether or not signage is desirable depends on the particular aim that the camera is trying to achieve. If the aim is to detect and punish, and therefore deter the use of mobile phones, then it seems to me—and always has, despite the fact that I am a criminal defence lawyer—that it is an unusual concept that anyone would ever warn a person who might be committing a criminal offence that they might be detected. We do not ring drug dealers to tell them we are about to raid their premises. From a strictly principles perspective, why should it be any different for less serious offences? The only exception to that, it seems to me, is where the primary purpose may be not to detect the use of mobile phones but to encourage people to put them away. For example, if you had a particular black spot where there was a particular problem, you might prioritise that and

therefore have warning signs. Otherwise, it seems to me that warning a person that they might be detected is not a principled approach from a legal perspective.

The Hon. JOHN GRAHAM: In your experience of the law, how often is the onus reversed in bills like this?

Mr MANTAJ: It is rare. There are other examples—some of them work well and some of them not so well—but it is a rare provision to have to reverse an onus.

The Hon. JOHN GRAHAM: It really is the exception rather than the norm?

Mr MANTAJ: Absolutely.

The DEPUTY CHAIR: What are the principles we should be looking at when the Parliament is thinking about placing a reverse onus in criminal legislation? Some people have suggested that we might look at criteria like what is the public safety outcome, or what are the public safety issues that we are seeking to address or public policy issues, whether or not the information is inherently in the mind of the defendant and whether or not there are sufficient measures to challenge it or to contest it. They are the kind of issues that people have suggested might be relevant to a reverse onus.

Mr MANTAJ: I agree with those considerations. I think there are others. Another important consideration is the effect which the reverse onus might have on the public's perception of the legitimacy of the law, and I think in this particular instance that could be a particular problem. As I said, some people in the media are out there saying that these cameras are more about revenue raising. This is only going to increase that. The other consideration I think is the connection between the presumption and the reality of the situation. This is particularly problematic.

If I were to hold up this glass and say this is a mobile phone, you would think I was crazy. Yet, if I am holding this glass while driving and my picture is taken, the law says—by force of law—this is a mobile phone unless I can prove otherwise. So that is just detached from reality. It is not like other presumptions. For example, there is a presumption in drink-driving offences that the reading obtained by police—if done within two hours of driving—is the reading at the time of driving. That is a reasonable assumption to make. This has very little resemblance to reality.

The DEPUTY CHAIR: Would there be other ways of drafting the legislation that might address that? For example, a shifting onus in certain circumstances once the prosecution establishes a prima facie case? Are there other ways of dealing with it than just a blank reverse onus?

Mr MANTAJ: I have considered that. There may be potentially one other way although I am not suggesting it as a good way. If one simply created a balance of probabilities onus so the offence is committed if the object, on the balance of probability, is a phone. That might be a compromise position. I still do not think it is an appropriate compromise position. If you are going to have serious consequences—and the loss of five points can be very serious for someone if they lose their licence, their job, their house et cetera—the law should insist on proof beyond reasonable doubt.

The DEPUTY CHAIR: But in any event, by reference to the photograph shown to you in these hearings, your legal opinion is if that was tendered in court, the beyond reasonable doubt test would be met unless there was some extraordinary proposition put by the defence?

Mr MANTAJ: Absolutely. The practical effect of tendering a photograph like this—and this is not a legal principle—would be a reversal of the onus in the sense that this could satisfy 99.9 per cent of magistrates beyond reasonable doubt unless the defendant was able—

The Hon. TREVOR KHAN: And it should, should it not?

Mr MANTAJ: It should, absolutely. Unless the defendant was able to provide a very compelling explanation as to what this is.

The DEPUTY CHAIR: Show whatever device that is not a mobile phone that they were using at the time?

Mr MANTAJ: And coherently explain why it makes sense they were doing this sort of action with that device.

The Hon. TREVOR KHAN: For instance, if they were able to produce an iPod—if people still used them—and brought along their partner who was said to be in the car at the time, and the partner said, "I handed him"—or her—"the iPod", that would satisfy a reverse onus would it not?

Mr MANTAJ: If I were sitting on the bench I do not know whether that would satisfy me, in and of itself, in the face of this photo. I probably would also want to know what they were doing. Why did you need an iPod? What were you doing with it while driving?

The DEPUTY CHAIR: While you talking to your iPod?

The Hon. TREVOR KHAN: If you appear to be talking into it you have serious difficulties. But there are some circumstances where a similar style of device could be produced that may satisfy a magistrate.

Mr MANTAJ: Indeed.

The DEPUTY CHAIR: But we come back to the point about why the reverse onus? From a practical and a principle point of view you are saying the same thing, why the reverse onus?

Mr MANTAJ: That is right.

The Hon. SHAOQUETT MOSELMANE: The Transport for New South Wales submission—including that of the New South Wales Centre for Road Safety in its summary—states that in terms of the proposed deeming provision in the bill, the risk in terms of loss of procedural fairness is low.

Mr MANTAJ: I disagree with that. I cannot see how that can possibly be the case. It is a clear loss of procedural fairness to the defendant.

The DEPUTY CHAIR: Thank you. We have really appreciated your assistance today.

(The witness withdrew.)

HUGH McMASTER, Secretary/ Treasurer, Australian Road Transport Industrial Organisation, NSW Branch, sworn and examined

SIMON O'HARA, CEO, Road Freight NSW, sworn and examined

The DEPUTY CHAIR: I welcome our next two witnesses. Would either of you like to give a brief opening statement?

Mr McMASTER: Yes. There are about 60,000 drivers of trucks, courier vans, postal vehicles and so on in New South Wales. They spend a lot more time on the road than other drivers so they are more exposed to what happens on our roads and they experience higher levels of trauma. They see more fatal and serious accidents than other road users because of the time they spend on the road. It is a place where they work. It is a place where they earn a living. So more than others who use the road, the measures which improve the safety of the road environment are especially important to them and to those that hire or employ them, depending on the nature of the relationship. This is an industry where levels of trauma, mental illness and suicide are very high—based on anecdotal evidence—compared to the community at large and certainly in terms of workplace health and safety statistics, deaths and injuries et cetera.

Mobile phones are widely used by society these days. The Government's own statistics that the Minister referred to in *Hansard* show we have a significant cultural problem. In principle, we strongly support these reforms and believe they should be passed, provided there is a sound, well-resourced education campaign. The association has no real issues with privacy on the basis that, as far as the industry is concerned, drivers wear practical clothing that is suitable to the task. However we appreciate broader community concerns about privacy and believe they should be addressed through appropriate transparency and accountability measures. Thank you.

Mr O'HARA: I might give you a bit of background about Road Freight NSW. We have been around since about 1893. We are the peak body in New South Wales, covering employers in this space. Our members range from the line haul guys, who go up and down from Melbourne to Sydney and Brisbane, through to dangerous goods, all the way through to containers, which are the guys at the ports who pick up the boxes. We represent them around their issues. We also represent them on a range of points with policy and we ensure their voice is heard. I have found, particularly within this industry, our members sometimes are forgotten amongst the hurly-burly of policy-making. That is a problem from my perspective and also that of our association.

It is terrific to be invited today to give our view. I appreciate it and so do our members. In relation to the mobile phone detection bill, our view is one of support for the bill. Our members take a pretty stringent belts-and-braces approach to safety these days. Technology is out there, such as seeing-eye machines, which ensure that our members' drivers can keep focused on the road and not be distracted by mobile phones or other things. From our perspective, the community expectation is that this gets on the books—on with the legislation—by Christmas, further to what Minister Constance has said. I note the statistics around the three cameras that recorded 8.3 or 8.5 million cars, light vehicles—I am not sure how many heavy vehicles that included, there was not any sense of that—and out of that there was about 100,000 people caught using their cameras.

From our perspective the bill is a good one. We take safety very seriously, we are in line with community expectations and it is on us to ensure that heavy vehicles are safe. Our members take it very seriously and invest tremendous amount of money in not only training but also technology that works for them to ensure that those heavy vehicles are as safe as possible. Our members make serious investments from their own companies to make the roads as safe as possible, and they hire on that basis, as well. I also note from some of the speeches in *Hansard* the amount of lives that could be saved by virtue of this legislation and we support that. I think our members would take the view that signage is all well and good for speeding but, in relation to mobile phone usage within a motor vehicle that is either being held in your lap or up here—I think you have seen footage of people using two mobile phones while driving, which is pretty interesting. We think that signage is not needed.

We would like to send a clear message, not only to heavy vehicle users but also to light vehicle users—and sometimes we find that the interaction between the two of them leads to consequences that are fatal. From our perspective, we would like to ensure that the view that somebody who pulls out of the driveway, immediately starts thinking about the use of the mobile phone—our members employ a lot of people and drivers know who is on the road through telematics and all the rest of it. Using a mobile phone while driving a heavy vehicle is considerably dangerous. I have seen the footage, from the likes of Chief Inspector Phil Brooks, of truck drivers driving a truck and the sometimes fatal consequences that that has resulted in. Those images are stark and sometimes, in fact, all the time, it is the police and emergency services who have to deal with this. Sometimes our

drivers also have to deal with this, which is a terrible situation and I concur with my colleague Mr McMaster about the mental health issues within the industry.

Three weeks into this role I received a call from a member calling to say that one of his employees had hung himself at work that morning. Mental health is a real problem within our industry. We agree with a zero-tolerance approach. However, I would raise questions around the reverse onus of proof. To give you some sort of idea about where we sit, we are 95 per cent to 99 per cent in support of the bill, but we raise questions around the reverse onus of proof. I note that speeding currently has the same regime, but we would question whether it is required or needed. We simply ask the question as to why it is in place. I note the safeguards in place, particularly with regard to the use of these cameras, where a photo will be taken and it will then go to a human who will look at the artificial intelligence [AI] photos that have been picked up through that software, but I would ask why we need to reverse those in relation to this particular bill.

In saying that, I would ask that you all note that we are absolutely supportive of the bill and 95 per cent to 99 per cent on board with it. The other day I gave a straw poll to some of our members and they are supportive and they run big fleets—some of them run 400 trucks, not including the subcontractors—so they have real skin in the game about this. We also have skin in the game in relation to the perception of the heavy vehicle industry. The perception of our members is sometimes less than worthwhile and not always correct. We certainly want to be seen to be supporting anything that prevents tragedies on the road. I note that this morning there was another problem that involved a heavy vehicle. The more we can do to reduce that, the better. My only question would relate to the reverse onus of proof. Thank you.

The DEPUTY CHAIR: Thank you, both, for your written submissions and your opening submissions. I might ask an initial question. There are two aspects of play here. One is the rollout of the program, which is unmarked cameras, photographs being taken, the initial testing by artificial intelligence, checked by individuals and then offences being issued where they can identify a phone. I think there is broad support for that kind of program because we can all recognise the problem with mobile phones. Mr McMaster, can I ask you to distinguish between that broad support for the program and then the specific provisions in the bill about the reverse onus?

Mr McMASTER: Certainly. We have no problem with the reverse onus of proof. It is not often that we would take that position. We say that because the technology has obviously proven itself to be effective in detecting what somebody is doing in a motor vehicle. It might not always be and, I guess if there is doubt about the quality of the photograph, it is reasonable to say, "Has an offence been committed in the first place?" But if it is clear that a mobile phone is on somebody's lap or on the seat where they are driving and they are using it—their eyes are not focused on the road ahead—that to me is clear cut. Proposed section 139B provides an opportunity to say, "It might look like a mobile phone, but it was actually a wallet or a purse or something else of a similar shape and similar characteristics and I just happened to be handling it at the time." To us, there is an adequate safeguard and our association does not believe that there is a need to amend those provisions at all.

The DEPUTY CHAIR: Mr McMaster, if the image identifies you holding a phone—and that can be proven through the image—what is the utility of the reverse onus? If the police have a high definition image, they can see it is a phone and they tender the evidence in court if it is challenged, what does your organisation see as the utility of the reverse onus in those circumstances?

Mr McMASTER: In those circumstances, I suspect there is not much at all, to be honest. If you are caught red handed—game, set and match. It is only if there is some doubt or a driver can establish that the image did not portray accurately what the driver was doing. That may be because of the angle or the quality of the light. The angle of the camera looking into the vehicle, the light quality or any other factor throws some doubt on the clarity of the image. We all see things differently. A human who is looking at an image may say, "Yes, that person has committed an offence," but there is the opportunity for that person to say, "Well, actually, this is what was going on."

The DEPUTY CHAIR: You see the reverse onus as being effective where there is a degree of doubt from the image itself.

Mr McMASTER: Yes.

The DEPUTY CHAIR: Mr O'Hara?

Mr O'HARA: There are two parts to your question. The first is the overall purpose of the bill, which is to prevent road deaths by use of mobile phone. I am using percentages today. We are 110 per cent behind that. From our perspective we need to get this on and we need to get it on the books as soon as possible. I would like to see this in place before Christmas to ensure that—if we can prevent one road death by getting it on a month or

two earlier than we should be doing that because this is endemic on the roads. And we all see it—we all see people using their mobile phones. From our perspective, people need to learn the lesson and they need to learn it quickly. We need to see a decrease in road fatalities as a result of the use of mobile phones.

In relation to your second part, which is the operation of the reverse onus, from our perspective we would not put ourselves as being against, necessarily, the legislative purpose or the reversal of the onus of proof but what we would say is, "Is there another way of doing it rather than impinging upon what has been reasonably longstanding common law legal precedent?" Perhaps there is another way of doing that. If there is not then we should proceed, but if there is another way of pushing that through then perhaps we should do it in all speed. If it was, for instance, to see us take longer to implement this then we would have a view that would be one in which this perhaps should have been countenanced earlier.

We want to see this on and we want to see it on as quickly as possible. All I am doing is asking the question—I am not putting us in the position of being as firmly against it as perhaps the Law Society; I think they are quite succinct with their submission—but what I would say is if there is another way we could do it rather than impinging upon the established legal precedent of being innocent and then being proven guilty then I would suggest that would be something that would give comfort to our members and also the community at large. But I suspect in line with community expectations that if they saw that taking longer to implement then they would take a dim view, as we would as well.

The Hon. JOHN GRAHAM: Mr McMaster, your point about education campaigns is particularly important. We really have to change community attitudes here. You have talked about a well-resourced education campaign. Can you give us some sense of what resourcing you think might be required or if there is another campaign of a scale that you would point to that really needs to be the model for the sort of education campaign you are now talking about?

Mr McMASTER: The only thing I can recall is random breath testing. We are still involved in the education and communication campaign on RBT. This is, I suspect, because of the cultural significance of it, similar to drinking and driving, will take a long, long time to resolve. Transport agencies, police and others with responsibility should throw all the resources that are necessary to drive cultural change. We do not believe we should necessarily say that the way education and communication is carried out should be constrained in any way. For example, as we said in our submission, we have no problems with signs should the signs bring about beneficial change. The reason we say that is each of us as individuals responds to different experiences. I will give you a personal example. I was driving up the motorway to Newcastle and I was on my phone—driving hands free several years ago. I did not realise it but I missed the exit I was supposed to take, just near West Wallsend, and ended up going through to Black Hill.

The Hon. JOHN GRAHAM: I have missed that exit before.

Mr McMASTER: And going down the old New England Highway through Hexham. Since that day I have had my mobile phone in my back pocket when I am driving. It can ring; it can go off like crackers on New Year's Eve—I will not touch the darned thing. But that is me. We need to understand what works and we will not understand what works unless we try a variety of strategies, messages and media.

The Hon. JOHN GRAHAM: My second question to both of you is what you think drivers understand the law is at the moment. I am really interested in what professional drivers understand. Because I think one thing would be of surprise to your common or garden driver moving around New South Wales and that is that while you can do some things while your phone is in a cradle, texting is not one of those things—understood. That includes receiving text messages, even if it is an automatic notification, as I understand the road rules. I think that would be of some surprise to most drivers that just automatically having an email or a text message come up on your phone, if you can read that, that is a use of the phone. I am not asking you to comment on general drivers but for professional drivers do you have a view about whether that is widely understood or not widely understood? Do you have any views about the understanding of the current law, before we start dramatically enforcing it?

Mr McMASTER: It is interesting. We ran a function this morning and we were hoping to have this issue on the agenda. The reason is I think there are probably transport operators and drivers who may say, "This is definitely within the law," and, "This is definitely illegal," but there are shades of grey in terms of understanding. It is important for transport operators to clearly understand what the law says, for them to undertake toolbox sessions, training—call it whatever you like—so their drivers understand. Where they engage owner-drivers in a principal contractor or subcontractor relationship, the same. That does not mean you need to get to train them every time before they do some work for you but I think they do need to know the shades of grey, the areas of doubt.

The Hon. JOHN GRAHAM: Mr O'Hara, did you have a comment on that?

Mr O'HARA: I do. From our position we take a pretty straightforward approach to knowledge of the road rules and that is that truck drivers or indeed professional drivers should be aware of what the road rules are and how they interact with them driving a heavy vehicle, and we are pretty consistent on that. In terms of understanding the road rules I would suggest that it is not a case of one size fits all. There is a range that you have got. Some will know a lot more than others.

You will find, particularly from some of our members who spend a lot of money on driver education, that they will be more conversant with the legislation. In terms of that specific one, I could not comment because I do not have any figures in front of me. What I would say is this: In the association's view, we think that there might be some utility in having something like continuing legal education or what is in place for lawyers, which is that you each year have to bone up on your legal skills to understand what is going on within the industry.

Maybe there is some capacity to have some sort of training that goes in there that would ensure your understanding as a driver of the heavy vehicle that your knowledge base is at the level where it should be as opposed to where it might be. From our perspective we think that there might be some utility in that. There is training but maybe there is something there that might make it more of a requirement. From my perspective as well—and this is not directly related to your question but I will say it anyway—the real interaction between light vehicles and heavy vehicles is a problem. What we find through statistics and through anecdotal experiences is that light vehicles do not know how to interact with trucks. For instance, what we find is that light vehicles cut in to heavy vehicles. The stopping distance for heavy vehicles is significantly more than a light vehicle.

What you see, particularly if you go out to Wetherill Park or you check out some of the freeways there but also the roads, you will find this interaction. It is a problem of youth, arrogance and this sense of being bullet-proof, but also the interaction of using mobile phones at the same time as driving on the road with a lot of heavy vehicles and cutting in and cutting out. From our perspective there could be more done on the messaging of what the road rules are for heavy vehicle drivers, but also perhaps what we need is a component within the testing of light vehicle users. For instance, what is the stopping distance of a truck with a container on it that is fully loaded? It is not zero metres, 10 metres or 20 metres. So that we get a better understanding as to some of the dynamics, the inertia, the momentum and that that sort of thing in people's minds because what we do find is that the cutting in with trucks is a real problem.

The Hon. JOHN GRAHAM: I will hand my colleagues now. I will just observe in passing that it makes the education campaign you have argued for even more important.

The DEPUTY CHAIR: Could I ask you about road rule 300? It states that the driver of a vehicle must not use a mobile phone while the vehicle is moving or is stationary but not parked unless the phone is being used to make or receive an audio phone call or to perform an audio playing function and the body of the phone is secured in a mounting affixed to the vehicle while being so used, or not secured but there is a kind of bluetooth connection. That is the second element of it. In a number of cars I have been in recently, if a message is received on your phone and it is connected to, say, Apple CarPlay, it will actually read the message out to you and then ask you if you want to dictate a message back without touching the phone. On the face of it, that would be a breach of road rule 300 because you would be using a phone to do something other than receive an audio phone call or perform an audio playing function—because you would be dealing with messages. Are you aware of those kinds of issues or education with your membership about those kinds of grey areas?

Mr McMASTER: To be honest, speaking personally, I am not. It reinforces the point that the industry needs to understand the circumstances in which a mobile phone can be used by one of their employees or they communicate to a driver that is carrying a load on their behalf. That is all I want to say on that.

The DEPUTY CHAIR: Mr O'Hara?

Mr O'HARA: The answer would be most likely not. There would not be a wide understanding of that. There is a spectrum but I would suggest more than 50 per cent would not be aware of that interaction.

The DEPUTY CHAIR: Particularly when the proprietorial software in your car is basically giving you the option there and then while you are driving. That is obviously a problem, is it not?

Mr O'HARA: Of course it is a problem. These aids within motor vehicles, heavy vehicles—there is an assumption made by a lot of people about the interaction with technology within them and that if it works then it is somehow—

The DEPUTY CHAIR: Lawful.

Mr O'HARA: Yes.

Mr McMASTER: If I can add to what Mr O'Hara has said. The other thing that we have with Australian design rules, for example, and other provisions that relate to vehicle standards, they are often well behind the design standards employed by vehicle manufacturers. We cannot rely on Australian design rules or other ratings systems for vehicles standards to address this sort of problem. We really need legislation that makes it clear that it is legal to use a mobile phone in this situation, it is not legal in this other situation.

The DEPUTY CHAIR: And that should feed into vehicle design as well, including the design of the interface with mobile phones?

Mr O'HARA: Yes

Mr McMASTER: I think the conclusion that you can draw from that is exactly that. Those features, those enhancements of a motor vehicle, whether it is a heavy vehicle or a light vehicle, should not be part of that vehicle or should not function if they have been built into the vehicle so as to encourage a breach of the law and from that an unnecessary elevated risk to road users, including the driver himself.

The DEPUTY CHAIR: One obvious fix would be that as soon as you move out of park, effectively that technology is dumbed down and only has limited functionality. That would be one obvious fix.

The Hon. SCOTT FARLOW: Turning back to the bill before us and noting your comments with respect to educational campaigns. I have a dad who is a truckie and works in transport logistics. I know from him and his perspective it has been increasing as a problem of the last couple of years. Effectively we have this legislation before us because those educational campaigns have not worked to this date. There has been no cultural change. While we can have more educational campaigns, your perspective, to take it in summary, is effectively that we need the force of legislation and initiatives like this to really drive a culture change when it comes to mobile phone use in vehicles.

Mr McMASTER: Yes, that is correct. It does not mean that we dispense with education and communication. We use that to complement the legislative provisions that are proposed because each of us as individuals responds differently depending on our own behaviours and our own experiences.

Mr O'HARA: I would make a couple of points here. The first would be that you have speeding on one hand, which is problematic to say the least, but you have also got the interaction of mobile phones in motor vehicles and elsewhere. The use of mobile phones is a different category. People look at mobile phones and there is a whole different experience to speeding. A mobile phone, for a lot of people, particularly younger people, is like crack. They cannot stop looking at it. They cannot stop looking at their Facebook updates, their Instagram pictures. The market has been captured. Mobile phones and all of these sorts of devices are designed to get and keep your attention.

In terms of education, I agree with the point that the legislation needs to be straight down the middle. It needs to ensure compliance because from my perspective and the perspective of a lot of our members and also the drivers, the use of mobile phones is just endemic. People use it and they forget where they are, what they are doing. It is a different experience. I agree personally and also the association agrees with where you are going with the no signs because we need to drive cultural change. There is a point to use the carrot and there is a point to use the stick. In relation to mobile phones we need to see cultural change happen as quickly as possible and that is why we need a bit of a stick with this one.

The DEPUTY CHAIR: That is why you support perhaps generic signs rather than site specific signs?

Mr O'HARA: Yes.

The DEPUTY CHAIR: Generic signs that mobile cameras are operating in New South Wales but not that they are operating here?

Mr O'HARA: That is correct. I think we need to ensure that people are wary wherever they are. If three cameras, and only three cameras, picked up—

The Hon. TREVOR KHAN: One hundred and four thousand.

Mr O'HARA: —then what will six cameras pick up? What will eight cameras pick up? What will 10 cameras pick up?

The DEPUTY CHAIR: It might reduce the traffic.

Mr O'HARA: There are smarter people in this room than me, Deputy Chair.

The Hon. SCOTT FARLOW: You made the point about RBT and the education campaign around RBT. That was implementing a legislative program that looked at how we actually enforced those laws. You would recommend that in tandem with this legislation that we have an education campaign to support the introduction of these laws and mobile phone use?

Mr McMASTER: Yes, I do. I am probably the oldest person in this room. I certainly look like the oldest person. It is 50 years next March since I got my driver licence—well before RBT. Growing up in a working-class area we used to drink and drive quite a lot. I tell you what, as we grew up and legislation changed I soon changed my behaviour.

The Hon. TREVOR KHAN: Can I break in. The thing that changed people's behaviour with regards to drink-driving was RBT and the risk of getting caught.

Mr McMASTER: Correct.

The Hon. TREVOR KHAN: And the punitive outcome of those penalties.

The DEPUTY CHAIR: And the cultural change. It was seen as genuinely criminal antisocial behaviour.

The Hon. TREVOR KHAN: What I am putting to Mr McMaster is that in fact change in behaviour was reflective of the penalties that were applied, not the warm fuzzy stuff.

The Hon. SHAOQUETT MOSELMANE: The stick was painful.

Mr McMASTER: I do not know what changed me, for example. What changed I cannot say. I do believe we are all individuals and we all respond to different experiences and different messages. I would not rule anything in or out as far as how to drive out the crack culture that exists around mobile phones.

The DEPUTY CHAIR: Mr O'Hara, want to chip in here?

Mr O'HARA: I think you have to have education to run with this. I think it is incumbent upon you to do that. I do not think you have any choice. I think you need to ensure that people are aware of how the legislation operates so that you give people the opportunity to have a preventative approach to the way in which they drive their motor vehicles or heavy vehicles. I think you have to do that just by way of communicating what the laws will do.

I think word of mouth will be the most effective way of communicating to people the experiences. Not everybody is going to be picked up. If you have 30 cameras, you may be. In terms of education we need to ensure that people are aware of it and that those penalties, whether it be \$344, are payable and that they are everywhere. I think that will act as a deterrent. The no signage will act as an absolute deterrent and see behavioural change reasonably quickly. For those who are recidivists, I think you will see those guys and girls come out of the woodwork.

The Hon. SHAOQUETT MOSELMANE: Your views are loud and clear in support of the reform. I take you to the section on privacy issues. You do concur with legitimate claims that privacy ought to be addressed? How do you suggest that be addressed?

Mr McMASTER: I think we said in our submission that the type of clothing that a truck driver wears is functional and practical because of the physical tasks that they perform in carrying out their job. But not every driver that dresses in the same manner is a truck driver. That leads to privacy issues that I think are very serious. That again is not necessarily a reason to prevent this legislation proceeding. I think what we do need is to have a very rigorous and transparent set of procedures regarding the capturing and the retention of images especially where it is clear no offence has occurred.

Where an offence has occurred there needs to be appropriate measures taken to address what could be seen as being a breach of somebody's privacy or personal space. That image may be referred to a court of law but that image should be able to be presented in a manner that does not address somebody's genuine privacy concerns. There may be areas where it is challenging. I think we need some sort of accountability mechanisms or a range of accountability mechanisms for those responsible for taking the images and dealing with them to report on how they do deal with them. Privacy concerns are legitimate.

The DEPUTY CHAIR: Unfortunately we have run out of time. Thank you for your evidence today.

(The witnesses withdrew.)

(Short adjournment)

SAMANTHA GAVEL, NSW Privacy Commissioner, sworn and examined

The DEPUTY CHAIR: Welcome back to the inquiry into the Road Transport Amendment (Mobile Phone Detection) Bill 2019. Our witness is the NSW Privacy Commissioner, Commissioner Samantha Gavel. Commissioner, do you wish to make a brief opening statement?

Ms GAVEL: I have a brief opening statement, thank you. I am pleased to have this opportunity to appear before the Committee in respect of its inquiry into the Road Transport Amendment (Mobile Phone Detection) Bill 2019. I note it is already an offence in New South Wales to use a mobile phone while driving and the policy context of this bill is to support camera-based enforcement of these offences with the aim of reducing the number of accidents resulting in death or injury due to the distractions caused by mobile phone use while driving.

I support in principle this objective, subject to appropriate privacy and security controls. The technology makes it easier for Transport for NSW and Roads and Maritime Services to identify drivers who are illegally using mobile phones in the act of driving and will further deter drivers from continuing to use mobile phones. However, any use of a camera system to collect and use personal information must be done in a way that is reasonable, relevant and not excessive in relation to the purposes for which it has been created. It is critical to create a strong privacy protection framework for any project involving the use of cameras, especially for one integrated with artificial intelligence technology.

The Information and Privacy Commission is actively engaged in promotion of rights and protection of privacy and has consulted with Transport for NSW in respect of the mobile phone detection camera program including its pilot. However, I note that it is not the role of the Privacy Commissioner to endorse or certify an agency's compliance with New South Wales privacy legislation because this could be at odds with future regulatory action that may be required. Rather, my role under section 36 (1) (d) of the Privacy and Personal Information Protection Act 1998 [PPIP] is "to provide assistance to ... agencies in adopting and complying with" the legislation. Overall I consider that the bill can operate within the framework of the State's privacy regime. The Information Commissioner and I have requested to be consulted further in respect of the design of the broader program as it moves into the enforcement stage.

The DEPUTY CHAIR: Thank you, Ms Gavel. Commissioner, do I understand your evidence is coming from the perspective that it is your job to assist agencies to adopt and comply with Government policy rather than to provide an independent critique of the policy?

Ms GAVEL: It is also to provide an independent critique as well and to provide a privacy perspective to agencies and ensure that they have considered the privacy implications of the work they are doing and that they are putting appropriate risk mitigations in place to deal with those issues.

The DEPUTY CHAIR: I remember your evidence in a previous committee where you supported, I think, Government policy and legislation with the capability for facial recognition in circumstances in which the Commonwealth law had not been settled. Now that Commonwealth law is looking like it will be fundamentally changing them. I am just wondering what your role is? Is it to endorse, back in and ensure it is complied with?

Ms GAVEL: Well, that is right: My role is not to endorse or approve these programs and that is not something I do. I do not agree that I was endorsing the Federal Government capability.

The DEPUTY CHAIR: No. You were endorsing the State legislation before the Commonwealth legislation had ever been settled. That is my memory of it.

Ms GAVEL: Yes, but that was the specific State legislation within the context of my remit under the PPIP Act and knowing that there was still work to be done in the Commonwealth. The State legislation was for a very specific purpose, which was to provide facial images from RMS to the Federal capability once it was in place, but it was a very narrow part of that program.

The Hon. SHAOQUETT MOSELMANE: We have not received a submission from you. We have just heard some of the comments. You have made comments that you are supportive of the bill subject to some privacy controls.

Ms GAVEL: Well, subject to strong and robust privacy controls.

The Hon. SHAOQUETT MOSELMANE: Can you elaborate on what those controls are?

Ms GAVEL: Yes. In terms of balancing what that program is aimed to do, which is to improve road safety, obviously, it is a very important issue—

The Hon. SHAOQUETT MOSELMANE: Any suggestions you could make would be helpful.

Ms GAVEL: —in the public interest, and so is privacy. It is a matter of assisting the agency to balance those issues so that it can have a program that is workable and achieves what the aims of the program are, but that also takes into account the potential privacy harms of the program. Obviously we have a use here of new technology—new and innovative technology. The camera will take a photograph of every motorist that passes a particular point. At that point the artificial intelligence will assess the images and determine whether somebody is holding or using a mobile phone. Clearly it has significant privacy impacts. Like much new technology, it also has the potential for benefits.

The Hon. SHAOQUETT MOSELMANE: Where are the privacy issues in that? The camera has picked up that I am on the phone. Where is the privacy breach there?

The DEPUTY CHAIR: Rather, what are the specific privacy issues that you see from millions of high-definition photographs of people being taken inside their vehicles?

The Hon. TREVOR KHAN: If that is not leading, I do not know what is.

The Hon. SCOTT FARLOW: There has been a fair bit of leading, actually.

The Hon. SHAOQUETT MOSELMANE: We are trying to understand what those privacy issues are.

The DEPUTY CHAIR: I am being quite frank. What are the specific privacy issues? Rather than a generic statement about "There are privacy issues", what are the specific privacy issues that you see that raising?

Ms GAVEL: In terms of the consultation that I have had with Transport over a number of months since January this year, I have basically gone through the information privacy principles to ensure compliance with those principles, bearing in mind of course that there are some exemptions within the privacy Act that will apply to this program. First of all, the foundational principle—information privacy principle No. 1—is around the collection of information. It must be for a lawful purpose and it must be reasonably necessary for that purpose. That is what I started with, with Transport, in terms of consulting with them—just ensuring that they have in their minds that they have a lawful purpose for the collection of this information and that they are collecting what is reasonably necessary for the purpose.

The Hon. SCOTT FARLOW: Have you made an assessment that that is the case—that that is what Transport for NSW is doing?

Ms GAVEL: In the sense of—

The Hon. SCOTT FARLOW: Is this for a lawful purpose?

Ms GAVEL: That is right because they have road safety requirements in their legislation. But that is always the first thing that we would check with an agency because it is foundational. All the other information and privacy principles flow from that principle. That is the first one that we considered. We have also considered the retention of the information and how long the information is held; that it is stored securely; that it is accessed only by people who are trained and who are secure people to access it; and that where it is stored in a server that that information is encrypted as well to ensure that the information is secure as well. We have considered a significant amount of the project really at every stage.

We have gone through the information flows and how to make sure that where information is collected it is retained only for a very short period of time in most cases. Ninety per cent of the images are deleted within an hour and up to 98 per cent within 48 hours so the information is not held for a long time. Where the information is held—and for the time that any of the information is held it needs to be secure—it needs to be accessible only to secure personnel. These are the sorts of issues that we have considered with Transport.

The Hon. SHAOQUETT MOSELMANE: Does the bill have mechanisms to address those issues that you have just in numerated as No. 1?

Ms GAVEL: I am not sure if they are actually in the bill that is before you at the moment.

The DEPUTY CHAIR: They are not.

The Hon. SHAOQUETT MOSELMANE: They are not.

The Hon. SCOTT FARLOW: But that is the practice that is undertaken by Transport for NSW.

Ms GAVEL: Yes, and they do have rules and regulations that are already in place for some of their other camera programs as well.

The Hon. SHAOQUETT MOSELMANE: But specifically for the bill that we are now dealing with, you have enumerated a number of procedures. Are there mechanisms in the legislation that ensure what you want as the Commissioner for privacy?

Ms GAVEL: There are. Of course, Transport is required to comply with the PPIP Act, so that is the overarching framework of the legislation that I am working with them on, and they also have their own legislation as well, so they would be able to give you the details of their legislation.

The DEPUTY CHAIR: From a privacy perspective, you have told us about all of these elements that you are, I think, in the process of satisfying yourself about. From a privacy perspective, how is that put in concrete in some way? Are you going to issue a directive; is there going to be an agreement; is there going to be a set of principles that you sign off on and are publicly available? Apart from your hopeful statements here, how can we be sure that there will be some legal teeth to this?

Ms GAVEL: There are legal teeth in the Privacy Act, which requires Transport to comply with the Act, but the framework that they have put in place for this program is in line with the Five Safes, which is used worldwide to keep data secure, so they have thought about it from a holistic viewpoint, and they do have requirements in their own legislation as well about how they manage and use information. For example, if I can turn to the information sharing requirements that will occur once the enforcement phase of the program begins, under the Fines Act they have provision for sharing of offence-related information between RMS and Revenue, so that is something that will be similar for this program.

The DEPUTY CHAIR: You talk about a framework. Where do we find the framework other than in statements you have given now and statements that the Minister has given? Is it set out in a publicly available policy; is it identified in a binding arrangement that they have with your office; or do we just rely upon the public statements?

Ms GAVEL: At the moment we have been consulting with Transport. As you know, we have been consulting around the pilot stage of the program, which has already occurred, and we are still consulting with them around the enforcement stage, which will occur in December. When we consult with agencies we do not usually have binding agreements with them, but we do satisfy ourselves that they are meeting the requirements of the PPIP Act.

The DEPUTY CHAIR: You say they are meeting the requirements of the privacy legislation, but I thought you also made reference to some exemptions that are required.

Ms GAVEL: There are exemptions.

The DEPUTY CHAIR: What are they? Can you enumerate them specifically?

Ms GAVEL: I have not brought the Act with me, but there are a number of exemptions for agencies within the PPIP Act. One that will apply to some of this program is under section 23, which is the law enforcement exemption.

The DEPUTY CHAIR: What privacy principles will be exempted, will be not applicable or will not be applying because of those exemptions? You are the Privacy Commissioner. Tell us what privacy principles will be exempted.

Ms GAVEL: Even though there are exemptions within the Act, I have consulted with Transport to ensure that they are actually complying with the principles in any case, even though arguably they have the right to rely on exemptions under the PPIP Act as well.

The DEPUTY CHAIR: I go back to asking you what the exemptions are. What privacy principles are exempted?

Ms GAVEL: I have not brought my copy of the Act in, but I do have some information from Transport where they have listed the information privacy principles and how they will comply with them, and what risks and mitigation strategies they have put in place. I cannot imagine you would want me to read through them all, but I can give you some examples.

The DEPUTY CHAIR: I was really just hoping for a list of the privacy principles that are exempted and do not apply as a matter of law, that is all—just a list.

Ms GAVEL: I am sorry, that is not something I am able to give you.

The Hon. SHAOQUETT MOSELMANE: You have clearly indicated that you are supportive of the bill. Am I right?

Ms GAVEL: What I have indicated is that I am supportive of the bill with appropriate and robust privacy protections in place, bearing in mind that—

The Hon. SHAOQUETT MOSELMANE: But you—sorry, go ahead.

Ms GAVEL: The bill is there to achieve a road safety purpose, which is obviously an important purpose which is in the public interest, so there is a need to balance that against the potential privacy harms and ensure that there are rigorous privacy protections in place at every stage of the project.

The Hon. SHAOQUETT MOSELMANE: I will read to you, as the Privacy Commissioner, a comment made by the New South Wales Council for Civil Liberties:

However, the scope of the bill is too wide and privacy protections are not detailed in section 139B.

If privacy protections are not in the bill, as the Commissioner, how are you supporting that bill?

Ms GAVEL: Because I have been consulting with Transport and I understand the processes and procedures that they are putting in place.

The Hon. SHAOQUETT MOSELMANE: But would you not suggest that this bill should be narrower to ensure that the elements of privacy or elements of the structure that Mr David Shoebridge was talking about are somewhere in the bill or legislation?

Ms GAVEL: That is not an issue that I have consulted with Transport about.

The Hon. SHAOQUETT MOSELMANE: No, but as Commissioner, would you recommend that? We are a Committee that would be suggesting making recommendations at the end of this report.

The Hon. TREVOR KHAN: Well, you assume so.

The DEPUTY CHAIR: Considering, based upon the useful evidence.

The Hon. SHAOQUETT MOSELMANE: Yes, so I am interested in hearing your views as the Commissioner for privacy.

Ms GAVEL: That is probably not a question that I would want to respond to without giving it some thought.

The Hon. SCOTT FARLOW: Commissioner, was it not your evidence previously that there are other requirements when it comes to privacy, both for Transport for NSW and under the PPIP Act, which I think you mentioned as well, that are incumbent on Transport for NSW in implementing this?

Ms GAVEL: That is right. Transport is required to comply with the PPIP Act, which is the overarching privacy legislation for New South Wales, and so in consulting with them I have assisted them to consider how they comply with the requirements of the PPIP Act.

The DEPUTY CHAIR: They are not required to comply with a whole raft of exemptions, but you are not able to articulate what those exemptions are.

Ms GAVEL: There are a number of exemptions in the PPIP Act. For example, section 23 provides an exemption for law enforcement purposes, but at the same time Transport has been very responsive when I have been consulting with them on this, they have taken on board the feedback and the recommendations that I have made, and they have ensured that even in areas where they may be arguably able to apply an exemption they are putting in place the mitigations in any case.

The Hon. JOHN GRAHAM: You have said you consulted with Transport for NSW. Have you consulted with Revenue NSW in relation to the fines administration?

Ms GAVEL: No, I have not consulted—actually I might take that on notice and check because I have had some meetings where we have had a considerable—

The Hon. JOHN GRAHAM: Due to the nature of this inquiry, you will not be able to take that on notice, so if you could answer that to the best of your recollection?

Ms GAVEL: Certainly when I have been consulting with Transport up to this point, it was more about the pilot program and there was not a need to consult with Revenue because Revenue was not involved in the pilot program because—

The Hon. JOHN GRAHAM: But we are dealing with this bill shortly in the Parliament, or we have started dealing with it already, and this is now about the enforcement phase.

Ms GAVEL: Yes.

The Hon. JOHN GRAHAM: We are interested in your view on the privacy implications, not just on the transport side but on the revenue and fines administration side.

Ms GAVEL: Yes.

The Hon. JOHN GRAHAM: Can you give us any guidance?

Ms GAVEL: I have certainly explored what would happen in the enforcement stage in terms of the information that is sent to Revenue and I think I did touch on the fact that there is information sharing framework in place between Transport and Revenue currently for other camera programs—the red light camera and speed camera—and a similar agreement will be in place for the purposes of this project, and of course Revenue already has processes in place for keeping camera images secure from those other programs.

The Hon. JOHN GRAHAM: Are you confident, on the basis of what you have done so far, that the privacy protections are in place on the fines administration side of this program?

Ms GAVEL: Certainly, in terms of the information I have explored so far. But I am continuing to consult with Transport for New South Wales as the programme rolls out.

The Hon. JOHN GRAHAM: I am not asking about Transport for New South Wales, to be clear. I am asking about the fines administration side?

The Hon. TREVOR KHAN: Did we not just pass some legislation last week that addressed this issue, including an amendment moved by the Hon. Daniel Mookhey?

The Hon. JOHN GRAHAM: I am going to come to that.

The DEPUTY CHAIR: That was about privacy breaches. This is different.

The Hon. JOHN GRAHAM: When will you consult with Revenue NSW about the enforcement?

Ms GAVEL: That is what we will be doing in the coming weeks—

The Hon. JOHN GRAHAM: After this bill has passed.

Ms GAVEL: We did look with Transport for New South Wales at what the arrangements would be for information sharing with Revenue NSW. We were more focused on the pilot stage of the programme so I am still consulting with Transport for New South Wales as the program rolls out.

The Hon. JOHN GRAHAM: In terms of the task we are doing here, which is reviewing the bill that is before the Parliament, that is not particularly helpful. I thank my colleague for reminding me about one aspect of this which is one of the reasons the Opposition does have concerns about the fines administration processes of Revenue NSW. A significant breach of the privacy of 193 motorists occurred and their data was shared with the press—at least some of those motorists had it shared extensively with the press. What protections are in place? What assurances can you give us that this will not happen again under this bill?

Ms GAVEL: Revenue NSW already has mitigation processes in place to prevent the release of information.

The Hon. JOHN GRAHAM: Which clearly did not work in this instance.

Ms GAVEL: Data breaches are an issue of concern to all of us—certainly to me as NSW Privacy Commissioner. We do have human error data breaches and we also have cyber breaches. We want to try and bring them down—

The Hon. JOHN GRAHAM: But was not the advice from your office to the agency, that it should notify people of their rights to make a complaint in accordance with the Privacy Act?

Ms GAVEL: That is right. But—

The Hon. JOHN GRAHAM: Has that happened?

Ms GAVEL: Currently in New South Wales—

The Hon. JOHN GRAHAM: Has that happened?

The Hon. TREVOR KHAN: Point of order: This is well and truly getting beyond the terms of reference. There was a specific piece of legislation that went through with amendments. That is done and dusted.

The DEPUTY CHAIR: I have heard the point of order. I will let the question go through for a little while because some of this witness' evidence is that there are sufficient checks and balances in place within the department. It is fair to explore this for a little while to see if those checks and balances have worked.

The Hon. JOHN GRAHAM: It may go to amendments to this bill.

The Hon. TREVOR KHAN: It might.

The DEPUTY CHAIR: I will allow it to go for a little while but not to dominate the hearing.

Ms GAVEL: I need to be cautious in speaking about this particular issue because there is an issue with the tribunal in relation to that issue. I would prefer not to be giving evidence on that particular issue.

The Hon. JOHN GRAHAM: I am asking for reassurance here that if there is an issue, that it will be dealt with by Revenue NSW and it has not been in this recent public example. What confidence should we have that you are in a position to enforce this? You are not talking to—and this is a very public breach—why this will be any different under this bill? Why should we not be concerned?

Ms GAVEL: We do currently have a voluntary data breach scheme in New South Wales. It is not legislated but I encourage agencies to advise the Information and Privacy Commission [IPC] when they have a data breach. Revenue NSW did advise the IPC of that data breach in November last year. I am confident that Revenue NSW would advise us of breaches in the future and I understand there has been further legislation—

The Hon. JOHN GRAHAM: I am asking about the separate issue of your request that they notify the 143 people—

The Hon. TREVOR KHAN: Point of order: Again, this is not going to this bill in any shape or form.

The DEPUTY CHAIR: I hear your point of order. I think the Commissioner has already indicated she does not wish to give specific answers about it. We are in a position to press for that because of the nature of parliamentary inquiries but given the Commissioner has already given an answer, is it useful exploring this?

The Hon. JOHN GRAHAM: I am happy to leave that matter to make my colleague more comfortable.

The Hon. TREVOR KHAN: I am entirely comfortable. I just want something that is relevant.

The Hon. JOHN GRAHAM: It may be relevant to an Opposition amendment to this bill given the evidence we have heard today.

The DEPUTY CHAIR: Just to draw us back to the purpose of this, which is to ask the witnesses questions.

The Hon. SHAOQUETT MOSELMANE: Regarding privacy issues—and correct me if I am wrong—you have indicated that those privacy controls or issues have to be reasonable, relevant and not excessive. Can you elaborate? What is reasonable in your mind? What is not excessive? What are those issues you mentioned earlier?

Ms GAVEL: Firstly, the program needs to be able to meet its objective, which is a road safety objective. It also needs to minimise the harm to citizens. So some of the measures in place are that 90 per cent of the images are deleted within an hour of being captured and they are not viewed by a human operator. Of the remaining 10 per cent, around 98 per cent are deleted within 48 hours of capture. They will have been viewed by a trained person because the artificial intelligence will have identified the person has been holding or using a mobile phone. When those images are viewed by a trained person, they are cropped and the passenger image is pixelated or masked and the location information is not included.

These are some of the protections in place to make sure that the bulk of the information collected is not held for very long, and that what is held is treated in a privacy respectful way. The remaining photos are held for enforcement, once the enforcement phase starts, in the same way that photographs for other camera offences are held. I think that means there is a requirement to hold the information for two years and, of course, people need to have access to that information so they can satisfy themselves they have been driving the car and been on the phone as well.

The Hon. SHAOQUETT MOSELMANE: So holding that information for two years, is that reasonable?

Ms GAVEL: That is a requirement that already applies to images as I understand it. You will have Transport for New South Wales here as well so you will be able to check that. My understanding is that already applies to offence images for speeding and red light camera offences.

The DEPUTY CHAIR: Could I ask you about a unique feature of this program? For the first time ever it will be capturing high-definition images of people inside a space often treated as having a degree of privacy, which is their motor vehicle. For the first time ever we are going to have high-definition images that, for most of the time, will be taken from a fairly high angle which will be considered by some people as intrusive, given the angle and given that it is capturing people in an area that has a quasi-private element to it. Have you turned your mind to those issues? That is, the fact that it is a high-definition, high-resolution image, the fact that it is coming from an angle which may expose people—mainly women—who are wearing particular types of clothing. Have you considered those kinds of issues?

Ms GAVEL: Yes. Yes, I have.

The DEPUTY CHAIR: Tell me how?

Ms GAVEL: I think that is part of ensuring that most of those images are deleted before they are viewed and that only images where it appears an offence may have occurred are viewed by somebody. The passenger is masked or pixelated. So those protections are in place to mitigate some of those consequences of high resolution cameras. This is where the balancing between the road safety outcomes that Transport is looking for and the privacy issues comes in, recognising that they are high-quality images, that only a small number will be viewed and they will be kept securely, that the passenger will be masked or pixelated out, and location data will not be there. The other thing that Transport has advised me, which I want to explore further with it as well as we move towards enforcement, is that the artificial intelligence will learn as it goes along, which means that there should be less images which need to be verified and approved before they are discarded.

The DEPUTY CHAIR: Did you have any privacy concerns about the Government's use of images in the media that were captured in the trial program? Did they run that proposal past your office? Did you raise any concerns? Do you have any concerns about the Government's use of images from the trial in the media?

Ms GAVEL: Again, I think it is a matter of balancing the safety outcomes that Transport and the Government want to see from the program.

The Hon. SHAOQUETT MOSELMANE: But you are the Privacy Commissioner. Your main concern is the privacy issues and that is where I am interested in hearing your response—not the Government's balance—your privacy issues and your privacy concerns.

Ms GAVEL: Yes, I understand, but I cannot really give advice without the context of the program. The use of those images from Transport's point of view—and I know those witnesses will be here soon—is as a public education exercise.

The DEPUTY CHAIR: We are not really asking about Transport's point of view. We are asking about your point of view as the Privacy Commissioner. I asked you whether or not the Government had run the proposal to put those images in the media past you. Did they?

Ms GAVEL: I do not recall that that proposal was run past the Information and Privacy Commission.

The DEPUTY CHAIR: I separately asked you, as the Privacy Commissioner, whether you had any issues with the use of those images in the media from the trial program?

Ms GAVEL: The images were cropped images so I would hope that people would not be identified from those images, obviously understanding that identification is a very fraught area.

The DEPUTY CHAIR: You would hope?

Ms GAVEL: Yes, that is right.

The Hon. SCOTT FARLOW: Commissioner, it has been said that, for balance, your role should primarily be about privacy, which, of course, is a very important role for a check and balance. Your role is also to help the Government navigate these things with privacy concerns in place, but still to be able to, as I think you outlined earlier, seek a lawful purpose when it comes to implementing a system like this, which is necessary for public safety, particularly road safety, is it not?

Ms GAVEL: I think that is right. I need to act within my remit, under the PPIP Act, in balancing those issues. The PPIP Act recognises that privacy rights are not necessarily absolute and that modifications can be made and that the public interest needs to be taken into account. While my focus is on the privacy issues and minimising privacy harm, and that is what I talk to and advise agencies about. It is also important that I have regard to the purpose of the project because, for example, I could say to Transport, "You need to pixelate all the images that you receive," but that would mean that it does not achieve the purpose of the road safety benefits that it is trying to achieve. It is a matter of balancing those issues.

The DEPUTY CHAIR: One thing you could do is pixelate the images of all the faces until such time as it was identified that an offence had occurred and only then produce a high-resolution image. Is that the case? Once the 90 per cent are winnowed out, do the 10 per cent, when they go to the reviewing officer, have the face pixelated to that point?

Ms GAVEL: That is my understanding, but Transport will be able to confirm that for you.

The DEPUTY CHAIR: That is the first time I have heard it suggested that the driver's face will be pixelated at that point.

Ms GAVEL: I think it also depends on the make of the car because for some cars the windscreen is at a different angle as well.

The DEPUTY CHAIR: How would that affect the pixelation of the face?

Ms GAVEL: No, but it might affect whether the driver's face is actually in the photo crop.

The DEPUTY CHAIR: Clearly, you would not pixelate a face if it was not there. I am asking about the bulk of occasions where that first 10 per cent are reviewed by a reviewing officer. Is it your evidence that the faces will be pixelated at that point?

Ms GAVEL: The information that I have is that the supplier of the technology will be required to use a form of masking or auto-pixelation technology to obscure the face of drivers and passengers in the captured images.

The DEPUTY CHAIR: At which point?

Ms GAVEL: Until the enforcement stage.

The DEPUTY CHAIR: Are you adding "until the enforcement stage" from the document in front of you?

Ms GAVEL: No, I will not add that. I will take that away. But that is my understanding when the pre-verification checks occur.

The DEPUTY CHAIR: You do not have a firm knowledge of that, one way or another, here?

Ms GAVEL: I just want to make sure that I am giving you accurate information—

The DEPUTY CHAIR: That is always best.

Ms GAVEL: —but Transport will be able to confirm that.

The Hon. JOHN GRAHAM: Chair, can I just indicate to the commissioner that I would have hoped for more helpful evidence to assist us to navigate the bill. The Government and industry have asked us to deal with this rapidly. I hoped to have some more helpful evidence from you in relation to the privacy issues, in particular around that issue of consultation with Revenue NSW. It will not be possible to do that through the committee process because this committee process will wrap up. I indicate to you that I would certainly invite you to update members of Parliament if you have significant information about your consultations, in particular with Revenue NSW, that you feel would be helpful to us in the debate on the bill or in drafting amendments on the bill. I invite you to put that to us directly as MPs so that in the course of that debate we do not reflect on those issues in a way you would be uncomfortable with.

The DEPUTY CHAIR: And, of course, if you have consulted with any significant road user organisations, as opposed to only government agencies, to get the opposite perspective—if that has happened at all.

Ms GAVEL: The consultations that I have had have been with Transport and with Transport agencies.

The Hon. JOHN GRAHAM: If there is any change to that, I invite you to update us. If there is not, we will act on that basis.

The DEPUTY CHAIR: Unfortunately, we have run out of time. I thank the commissioner for attending today.

(The witness withdrew.)

STEPHEN BLANKS, Treasurer, NSW Council for Civil Liberties, affirmed and examined

The DEPUTY CHAIR: Mr Blanks, we have had the benefit of your submission, which was pithy. Would you like to give a short opening address?

Mr BLANKS: If I may. I would like to supplement it with some additional ideas that I unfortunately did not have the chance to put into the submission. It seems to me that this legislation engages not only human rights and privacy concerns, but also particular issues to do with artificial intelligence. Artificial intelligence as a subject matter is beginning to engage governments, and governments around the world are starting to think about ethical frameworks for the implementation of artificial intelligence schemes. If I can just refer to a couple of things about that, for example, in 2018 the Australian Government announced funding for the development of a national AI ethics framework. In the course of that program, earlier this year a public consultation discussion paper was released. Public submissions have been made in relation to that and I expect that the outcome will be a national statement of artificial intelligence ethical framework guidelines.

Some of those are likely to include things which are highly relevant to the kind of artificial intelligence that is being proposed in this program. One of the principles is a principle of fairness. There should be a requirement with particular attention to ensure training data is free from bias or characteristics which may cause the algorithm to behave unfairly. We know almost nothing about the algorithm that is going to be used in this case and people will know nothing about it. Another principle is transparency and explainability. People must be informed when an algorithm is being used that impacts them and they should be provided with information about what information the algorithm uses to make decisions.

In combination with the reversal of onus of proof in this proposal, one of the issues that somebody may wish to deal with in a court challenge to a charge is whether the algorithm has behaved appropriately and fairly in coming to the conclusion that it has. Because of private companies being engaged here and the algorithm is going to be completely secret it seems that there is going to be no real opportunity to understand the way in which the algorithm works. To simply say you have got the output, which is the photograph, is not going to be a compliant answer with the frameworks that are being developed by government for AI systems. That is one aspect.

It is remarkable that none of the material in support of this bill has even considered that there should be ethical frameworks for deployment of AI and that the drafting of the legislation should take into account the sorts of concepts that are being developed, including regular reviews of the operation of these systems and reporting in the way that lots of legislation provides for regular reports to Parliament on how systems are working so that there is accountability. That has not been built into this legislation. It is not just the Commonwealth Government that is working on AI frameworks. Customers New South Wales has just last month started having public consultations about deployment of AI provision in New South Wales government services. So there is something going on in New South Wales about AI as well and I would suggest that there should be some engagement with that process and this bill to see what would be appropriate.

The other area that this bill engages because of the reversal of onus of proof is human rights or, as some people around the table might prefer, fundamental freedoms. There was an Australian Human Rights Commission report on fundamental freedoms done not that long ago—December 2015. There are lots of fascinating things in that. I am sure some of you would be interested to know that the Institute of Public Affairs, an organisation with which I do not always agree but sometimes we have common ground, made a submission to that inquiry on the issue of reversal of onus of proof. The Institute of Public Affairs submitted that difficulties associated with proof are not a sufficient justification for a reversal of the burden of proof, stating that the common law legal system is ideal not for the ease with which it allows for prosecutions but for the protections it offers against an overarching State.

The principles which the Australian Law Reform Commission summarise in their report have not been fairly grappled with. They have been referred to in the supporting material for this bill but I think they have been, to use a current expression, spun. It is difficult to discern from a fair application of the principles which the Australian Law Reform Commission sets out in its report that this legislation is an appropriate candidate for reversal of onus of proof. The question to ask is: If the onus of proof were not reversed, would it be impossible to get convictions in appropriate cases? And one just has to have a look at the photographs attached to the department of transport submission—you will be talking to the department of transport this afternoon, I imagine. The photographs which they attached to their submission would be, I would have thought, perfectly sufficient to persuade a magistrate that the offence has been committed. If the quality of those photographs is typical then there is absolutely no need for the reversal of onus of proof.

If one were to take a cautious approach to this, and we have had a pilot program with this AI software, I think a normal cautious approach would be to see how it operated in practice in the normal way—that is, without reversal of the onus of proof—and, if it emerged that there were too many acquittals in circumstances where acquittals were not appropriate in court or that it was not capturing a sufficient proportion of the offences that were occurring, then Parliament can come back and address the onus of proof issue separately. But you would want to see some real operation of the system in practice for a period of time before you came to a view that reversal of onus of proof was necessary in order to make this work. I think that is what I wanted to say in opening. I hope that helps.

The DEPUTY CHAIR: It does.

The Hon. TREVOR KHAN: Can I just deal with the AI issue first? You would agree with me that the use of algorithms in this circumstance is entirely different from the use of predictive algorithms used, for instance, in the PRISM program by the National Security Agency [NSA]?

Mr BLANKS: Yes, but there are still principles about data handling and privacy and stuff which come into play.

The Hon. TREVOR KHAN: I accept that. But one of the principal differences in the use of predictive analytics used, for instance, by the NSA is that what it seeks to do is identify through prediction a group of people and then target those people—that is what predictive analytics does, doesn't it?

Mr BLANKS: Yes.

The Hon. TREVOR KHAN: What you have here is a photograph that is taken and the algorithm winnows down from that group of photographs to a smaller group of people—the people who can, it would seem, be identified as holding a device in their hands. Isn't that right?

Mr BLANKS: That is what it is supposed to do, yes.

The Hon. TREVOR KHAN: That is what it does, doesn't it? Come on. That is what it does.

Mr BLANKS: We do not know whether it does that in the absolutely neutral way. We do not know whether it does that in a way that discriminates against certain groups of people or whether it does it objectively across the population as a whole.

The Hon. TREVOR KHAN: You end up with a group of people who are identified in photos as holding a device, is that not right?

Mr BLANKS: To take an extreme example, if the way the algorithm worked was to only identify people with brown skin holding mobile phones and to not recognise people with white skin holding mobile phones, then that would be a problematic algorithm. We do not know whether it does that or not.

The DEPUTY CHAIR: Can I give you another example? If the algorithm had a differential outcome in terms of identifying whether there was a device in a hand dependent upon the skin colour of the hand, if there were differential outcomes one way or another, that would be problematic. That is something we should be able to explore.

Mr BLANKS: That would be problematic. That is why any implementation of AI requires consideration of ethical frameworks, reviews and consideration of the way the algorithms actually work.

The Hon. TREVOR KHAN: If that is the quality of it then that is fine. I will leave it at that.

The Hon. ROSE JACKSON: I have two issues that I want to raise with you. One is the access to justice issue. Putting aside the issues in relation to how the AI algorithm works, assuming that an individual believes that they have been issued an offence notice when they should not have been, they have asked for a review and that has not got them anywhere. How does the way that this legislation is structured and the fact that individuals are required at the endpoint to take matters to the Local Court and come up against that reverse onus of proof, how does that access to justice issue affect people particularly who may have lower education, lower income and be much less confident engaging in the criminal justice system even at the Local Court level when they are coming up against that reverse onus of proof?

Mr BLANKS: It is a significant burden on someone to have to go to the Local Court in order to oppose that. I think there should be a concern about the review process. There is talk in the Department of Transport and Roads submission that there is a review process, anybody can object and it will get a careful review. The problem is, in the face of legislation that says any object which you are holding is deemed to be a mobile phone and

therefore the offence has been committed, it is difficult to see how a human review process at that point will result in the charge being thrown out because there is the deeming provision that the offence has been committed.

There is a serious problem with people being able to access Local Courts to challenge offences. It is seriously unfair that they be required to do so because of a deeming provision. There is also the issue—which is not quite what you asked but a separate issue—that if there are the number of prosecutions that are anticipated here, the burden placed on Local Courts will just further exacerbate the inadequate resources and the delays that are being experienced in the Local Courts. That is a serious problem at the moment.

The Hon. ROSE JACKSON: We might get to that but I am interested in response to these issues that have been raised. As you say, the Department of Transport and Roads defends the provision on the basis that it is rebuttable. I am interested in any further evidence you had about the way that accessing those rebuttable presumptions is not equal across the population as a whole. It is a lot easier for certain groups of citizens in New South Wales to access justice in order to rebut those presumptions than it is for other people. Just to say that it is rebuttable is not an answer for a whole group of people in our community.

Mr BLANKS: That is certainly the case. What has to be taken into account here is what will be needed to be done in order to rebut it. One necessary step to rebut a penalty notice is going to have to be to obtain the metadata from the device. Not only will a person have to go to the Local Court in order to defend but they will have to understand how under the existing law they are able to access the metadata from their device, obtain it from their carrier, go through the process of doing that. There is a number of steps. There will be expense involved and time involved and difficulty. That will be very difficult for people to do. I would imagine the outcome is going to be that a lot of people will cop the penalty in circumstances where they have not committed an offence. That is the real danger.

The Hon. ROSE JACKSON: Presumably, it would be the likelihood that those people who, as you say, cop the penalty are exactly the sort of people for whom \$340, or whatever the current penalty rate is, is a lot of money.

Mr BLANKS: That is right. And there will be loss of licenses as a result—five penalty points or 10 penalty points on double demerit weekends. It will quite possibly result in quite a number of people losing their licenses in circumstances where no offence has been committed.

The DEPUTY CHAIR: In terms of self-represented litigants, that is probably what we are talking about here. People who do not have the money to get a lawyer, who cannot afford the \$3,000 to \$10,000 which were the figures given to us by the Law Society—

The Hon. TREVOR KHAN: I wish I was still practising if those are the figures.

Mr BLANKS: I do not charge that.

The DEPUTY CHAIR: That was the evidence we had. Perhaps it is cheaper in rural and regional New South Wales.

The Hon. ROSE JACKSON: It is expensive to come up against the reverse onus of proof.

The DEPUTY CHAIR: For self-represented litigants, is there a difference in complexity and therefore challenge between putting the prosecution to proof on its case and actively having to prove your case in the court? Does that put additional burdens on a self-represented litigants in particular?

Mr BLANKS: Absolutely. Self-represented litigants faced with this legislation have to prove on the balance of probabilities to the satisfaction of the magistrate that the object depicted in the photo was not a mobile phone or that it is not depicting the holding of an object or the use of a mobile phone. There could be a variety of different issues raised by the photos. At this stage I am not aware that there has been a real report on the pilot that identifies the range of grey area issues where people will be able to present evidence if they have the skills to do so.

The DEPUTY CHAIR: And they will need to ensure that the evidence is in admissible form, that it meets the various tests under the Evidence Act in order to present a case to the court which is, I would have thought is a significantly bigger hurdle than simply putting the police to proof on their case.

Mr BLANKS: That is certainly the case. Yes.

The Hon. ROSE JACKSON: I wondered if you wanted to comment further on the lack of clarity in the way that the legislation reads the presumption may be rebutted by the defendant establishing on the balance of probabilities that the object was not a mobile phone. But in his second reading speech the Minister said an

infringement notice will not be issued if there is doubt that the object is a mobile phone. I know that one is in relation to the issuance of an infringement notice and the other is the presumption of the court, but I wondered if you had any comment on, in some ways, the lack of clarity around what in fact the threshold test is for committing an offence under this legislation.

Mr BLANKS: If the Minister is correct in saying if there is any doubt the penalty notice will not be issued, then there is absolutely no need for the reversal of onus. The fact that there is the reversal of onus suggests very strongly that the Minister ought not to be taken at his word in that point.

The DEPUTY CHAIR: Perhaps the concern is that there will be so many infringement notices issued that the Government is trying to do whatever it can to limit the impact on the Local Court. If that was the case would that be a legitimate public policy response?

Mr BLANKS: Absolutely not. The problems with the inadequate resourcing of the local court, particularly in outer Sydney areas and some rural and regional areas, is severe. Because there are these funding problems and resourcing problems it is not legitimate to say we will find some way of prosecuting people for offences in a way that is a strong disincentive from actually going to court and exercising their rights.

The Hon. TREVOR KHAN: Mr Blanks, the legislation is littered with presumptive certificates, for example presumptive certificates relating to speed cameras.

Mr BLANKS: Yes, absolutely.

The Hon. TREVOR KHAN: These were designed because either smart lawyers or self-litigants who thought they had a science degree decided all over the place to challenge speed cameras. It tied up the courts for ages, did it not?

Mr BLANKS: Yes, but—

The Hon. TREVOR KHAN: Yes, but? It was yes.

Mr BLANKS: Yes, but there is also community acceptance that the speed cameras are accurate and that has been developed over a period of time. There is not that community acceptance in relation to this AI system for identifying the use of mobile phones.

The Hon. TREVOR KHAN: That is a slightly different point, Mr Blanks. What I was putting to you, and I think you accept, is that presumptive certificates are used for the very purpose of making our local courts run efficiently, to provide a disincentive for people putting in pointless challenges, is that not right?

Mr BLANKS: Look, I do not know that is specifically the purpose of it. Those presumptive certificates are there to provide an efficient system for prosecuting offences where the occurrence of the offence is accepted by the community as having occurred.

The DEPUTY CHAIR: They also tend to be in more binary situations, such as were you driving at 55 kilometres over the speed limit, which is determined by a radar reading; or what was the weight of drugs; or did you pass or fail a drug test based upon a laboratory test? These are much more yes/no things than is being on a mobile phone.

Mr BLANKS: Yes, that is certainly the case. As I said earlier, we do not have the experience of the operation of this scheme yet to know whether or not the reversal of onus is necessary or justifiable or desirable.

The Hon. TREVOR KHAN: But what we do have is in a short period of time on very limited sites 104,000 instances of offences being committed, is that right?

Mr BLANKS: Yes.

The Hon. TREVOR KHAN: What we do have is pretty clear evidence that use of a mobile phone handheld, I think everyone here would say, is creating life threatening dangers to road users on our roads?

Mr BLANKS: Yes.

The DEPUTY CHAIR: I think we could all agree it is leading to road trauma and unnecessary injury and death.

The Hon. TREVOR KHAN: I think we are in agreement.

Mr BLANKS: We all agree on that.

The Hon. SHAOQUETT MOSELMANE: No-one disputes that.

The Hon. TREVOR KHAN: What we have got, is it not, is a serious public policy question to be resolved, serious road safety issue to be resolved and we need a mechanism that deals with it efficiently and, indeed, punitively, is that not right?

Mr BLANKS: You need a mechanism that satisfies the frameworks for identifying when legislation is good legislation or when legislation fails the tests and that is why—

The Hon. TREVOR KHAN: Mr Blanks, we need people to stop dying.

The DEPUTY CHAIR: Let the witness finish his answer.

The Hon. SHAOQUETT MOSELMANE: It is not a zero sum.

The DEPUTY CHAIR: Mr Blanks is halfway through his answer.

Mr BLANKS: —you have the frameworks that I talked about. You have frameworks for ethical AI systems and you have frameworks for preserving fundamental freedoms and you measure legislation against those frameworks to see whether it complies. As I indicated, in my opinion this bill does not comply with those frameworks at this stage. We all want to address the road safety issue but that does not mean the most draconian measures possible are the appropriate ones. You could solve the road safety issue by banning private vehicles on the road and have only public transport on the roads. That would solve the issue but in an unacceptable way.

The Hon. JOHN GRAHAM: You have caught the deputy chair's attention there.

The DEPUTY CHAIR: It is outside the terms of references so we will not explore that.

Mr BLANKS: You have these frameworks to determine whether or not it is appropriate to infringe the fundamental freedoms. At this stage there is not the justification for it.

The Hon. SHAOQUETT MOSELMANE: It is not a zero sum equation here where there is a clash between the principle of safety and privacy. There should be a middle line drawn. Do you wish to make any comment about the privacy commissioner's evidence. I will ask you about the submission comments in relation to fear of access to the material by potentially other people who handled these images, privacy concerns.

Mr BLANKS: I think that this scheme raises particular privacy concerns for the reasons that images, high definition images being taken of people in what ought to be regarded as private spaces, that is inside private motor vehicles, I do not think it is adequate to rely on general privacy principles in other places to say, "Oh, well, we can rely on the privacy arrangements between the department and the private operator". I think the legislature has a legitimate role in ensuring that the arrangements are privacy appropriate.

The Hon. SHAOQUETT MOSELMANE: There could be some mechanisms built into the legislation to at least address some of that.

Mr BLANKS: There could be mechanisms built in to ensure that the agreement between the department of transport and the private AI operator includes privacy standards of a particular kind.

The DEPUTY CHAIR: Unfortunately, none of those issues were raised by the privacy commissioner in her evidence. Perhaps that has not been explored?

Mr BLANKS: Yes.

The Hon. SHAOQUETT MOSELMANE: You could make a comment?

Mr BLANKS: I did find that surprising in her evidence.

The DEPUTY CHAIR: Would it be a fair summary of your evidence that you cannot see a principled basis to have guilty until proven innocent as a part of this program?

Mr BLANKS: Correct.

The DEPUTY CHAIR: If the high definition images that the Government has proffered are evidence of the quality of the images being produced by this program there seems no forensic reason to have a reverse onus.

Mr BLANKS: Correct.

The DEPUTY CHAIR: Thank you for your evidence today.

(The witness withdrew.)

(Luncheon adjournment)

LARISA MICHALKO, Director, Criminal Law Specialist, Department of Communities and Justice, sworn and examined

BRETT HEARNDEN, Partner, Litigation and Dispute Resolution including for Government agencies, Hunt and Hunt Lawyers, affirmed and examined

KATE WATTS, Deputy General Counsel, Regulatory and Employment, Transport for NSW, affirmed and examined

BERNARD CARLON, Executive Director, Centres for Road Safety and Maritime Safety, Transport for NSW, sworn and examined

ROGER WEEKS, Director of Compliance, Transport for NSW, sworn and examined

MICHAEL CORBOY, Assistant Commissioner, Traffic and Highway Patrol Command, NSW Police Force, sworn and examined

The DEPUTY CHAIR: Welcome back to the final session of the inquiry into the Road Transport Amendments (Mobile Phone Detection) Bill 2019. Our last panel of witnesses are from the New South Wales Government. Mr Hearnden, I assume we have been engaged by the New South Wales Government?

Mr HEARNDEN: I have.

The DEPUTY CHAIR: Yes. That is the capacity which you are appearing today?

Mr HEARNDEN: Certainly.

The DEPUTY CHAIR: Thank you all for your attendance today and thank you for the Government submission. I will not invite all of you to make a brief opening statement, but if you could nominate one or two of you to make a brief opening statement, that would be of assistance.

Mr CARLON: I will make an opening statement and explain the roles of individuals who are here. With questions you might like to put to them, I am happy to coordinate any of those approaches and as well refer to Brett Hearnden in terms of a kick-off in terms of the nature of the bill itself. Thank you for the opportunity to provide a brief opening statement and introduce the members representing the Government here today. The Mobile Phone Detection Camera Program is intended to save lives and reduce serious injuries from crashes involving drivers distracted by illegal use of their mobile phones. The modelling recently completed by Monash University's Accident Research Centre indicates that more than 100 serious injuries and fatalities will be prevented by the program.

We are pleased to be able to table for the Committee's consideration research conducted by Monash University during this hearing and address the facts regarding the covert versus the overt use of signage in the program. The road toll today is 309 deaths so far this year—17 more than last year. Although over the last five years there have been 151 fewer deaths than in the previous five, we are constantly working through the New South Wales Road Safety Plan to address the full range of risks on the road that lead to road trauma. Last year the Parliament passed legislation to allow cameras to be used for detection of illegal mobile phone use whilst driving as defined in the Road Rules as well as enforcement and to allow the use of the photos generated from the system as prime faciae evidence of the matters shown in the photograph, with all fines going to the Community Road Safety Fund.

More than 20 companies responded to an international market sounding to develop an effective camera detection system that was efficient, compliant with privacy and security requirements and that provided clear photographic evidence that enables the issuing of infringements. Ms Kate Watts, who is the Deputy General Counsel Regulatory and Employment in Transport for NSW, is our key liaison person with the Privacy Commissioner and will be able to address matters related to issues raised in this area. Mr Roger Weeks, who is the Director of Compliance, will be able to address the security of the system and the processes for managing the technical aspects of protecting road user privacy. Three short-listed systems were tested and the most effective system was then piloted in two fixed locations and six locations using a transportable version of the camera system.

More than 100,000 instances of illegal mobile phone use were identified by the system during the pilot. For context, in 2018 the New South Wales Police Force issued around 37,500 fines in the whole year. Assistant Commissioner Corboy will be able to speak to the experience of police officers in enforcing mobile phone offences

and the additional evidence police have needed to confirm that the item used is a phone and the necessity for the proposed bill. The program and its impacts on the justice system have been developed in consultation with Communities and Justice. Ms Larisa Michalko, who is the Director, Criminal Law Specialist in the Department of Communities and Justice, is available to respond to issues regarding those Justice impacts on the merits of the proposed bill.

The Mobile Phone Detection Camera Program is designed to ensure that those who risk their own lives and the lives of other road users are fairly, effectively and efficiently dealt with when they drive illegally using a mobile phone. During the development of the program it became clear that the effective operation of the Mobile Phone Detection Camera Program needed a change to the legislation. The change requires the driver who court-elects to prove on the balance of probabilities that the item was not a mobile phone. This change is proportionate, given the size and significance of the safety risks created by the unlawful use of mobile phones when driving. In our submission, the Committee would note that over the past five years we have had 158 casualty crashes where mobile phones were identified as a contributing factor and 12 fatalities. Mr Brett Hearnden, who is the partner in litigation and dispute resolution for Hunt and Hunt, is present to directly address the issue regarding the standard of proof required, based on his extensive experience in litigation of transport offences. If the Committee agrees, it may be appropriate for Mr Hearnden to address this issue in the first instance.

The DEPUTY CHAIR: Thanks, Mr Carlon. One of the obvious issues that has been raised in the evidence to date—

The Hon. JOHN GRAHAM: Sorry, Chair. Can I ask this: Are we going to take up the offer that has just been made?

Mr CARLON: For Mr Hearnden to address the Committee.

The DEPUTY CHAIR: By all means. I was going to direct this question to Mr Hearnden because it is the key issue.

The Hon. TREVOR KHAN: No, but it has been indicated that he has an address.

The DEPUTY CHAIR: Go ahead, Mr Hearnden.

Mr HEARNDEN: The amendments are related to prosecutions for an offence under road rule 300, which precludes the use—and "use" has a broad definition—of a mobile phone while a vehicle is moving or is stationary but not parked. As in any criminal or regulatory offence the onus of proof and what is required is proof beyond a reasonable doubt. The Road Transport Act in its current form in respect of all the different camera-detected offences provides for there to be prima facie proof of certain matters which can be shown or which can be read from a digital photograph that is created. That is tendered together with a certificate as to the testing of the device. That then gives the prosecutor the benefit at a prima facie level of what is shown or what is recorded on the image.

The photographs inevitably—because they are photographs—are static images. What has to be drawn or determined by looking at the image has to take into account that it is in fact static. There are two essential elements, or there are a number of essential elements but there are two relevant to the purposes of your inquiry. They are, firstly, whether it is a mobile phone that is in the vehicle and the second one is whether it is being held or used by the driver. In respect of the second one, "held" has a broad definition. The images have a high resolution. It is fairly easy to observe that whatever it is that is being held falls within the definition of "held" because it is on the lap, it is in the hand and it is in a position that is usually obvious. The question is whether that item is a mobile phone.

The judicial officer has to be satisfied at the conclusion of the case that the item identified by the prosecutor is beyond reasonable doubt a mobile phone. The amendment provides a benefit to the prosecutor in the sense that there is a presumption which is given in the sense that it is presumed that the item is a mobile phone. There is no definition as to what a mobile phone is within the legislation. There is an exclusionary provision which excludes citizen band radios and two-way radios. In those circumstances the prosecutor will have to establish that the item is a mobile phone and what that might mean. That means that usually the judicial officer will have regard to what is the common use, common language and determine that, probably by reference to dictionaries. A mobile phone is generally defined as something like a portable cellular telephone.

The benefit of the current amending provisions is that the Crown does not have to prove that it is a cellular telephone. I think you have seen images that are generated by the device. What one can clearly see in most of the images, or in the images that I have seen, is what appears to be a telephone, a mobile phone. ** In the absence of the presumption, though, the argument could be put against a prosecutor—I think in a majority of the cases—that

the prosecutor has not excluded a potential hypothesis that the device that is being the subject of the prosecution is not a mobile phone but, rather, it could be something else such as a Kindle, an MP3 player, what is called an iPod touch. They have the same body of a mobile phone that is commonly purchased but I do not think you could say, looking at the image, that it excludes those as possibilities. Hence, the need for a successful prosecution, in my view, in most cases is to have the presumption.

The DEPUTY CHAIR: We have heard from lawyers from the law society and the council for civil liberties, and they each referenced the two images that are publicly available—annexure B to the Government submission—and each of those lawyers made it very clear that it was their view that, if those images were tendered, they would be able to establish beyond reasonable doubt that the driver was carrying a mobile phone.

Mr HEARNDEN: I heard some of that evidence, Mr Shoebridge.

The DEPUTY CHAIR: The test is beyond reasonable doubt, it is not a perfection, and the fact that there are potential hypotheses does not seem to answer the question about beyond reasonable doubt, and your evidence contradicts the evidence that we had from those two prior witnesses.

Mr HEARNDEN: I understand.

The DEPUTY CHAIR: Can you perhaps address that?

Mr HEARNDEN: I am not particularly au fait with all sorts of mobile telephone technology, but if I was to prosecute the offences, one of the things I would need to be satisfied is that I could prove that this was in fact a mobile phone and that I could convince a judicial officer that it was a mobile phone. In circumstances of a static image where you cannot see the activity of the person who is using it, you can form a view often from some of the images as to what they are likely to be doing, but the test in a criminal court is beyond reasonable doubt and the practice that a competent defence lawyer would seek to do, or in fact a magistrate or judge would be interested in, is to consider whether or not they are satisfied that there are not other alternatives that that item could be. I think the example that was given this morning of a glass or a cup or something—if a prosecutor was to bring a case like that, they would be facing, I would have thought, a costs order against them in respect of it because it just would not be the sort of case that—

The Hon. TREVOR KHAN: It would be fanciful at that point in time.

Mr HEARNDEN: That is right.

The DEPUTY CHAIR: Equally, so would a series of highly fanciful hypotheticals being run by the defence. In the images that are attached to the submission, one has somebody clearly using their thumbs to operate what I would have thought most magistrates would accept was a mobile phone, and the other has them holding to their head something that looks like a mobile phone being used in a manner consistent with a mobile phone. A purely speculative hypothetical alternative raised by the defence—are you saying that would defeat beyond reasonable doubt?

Mr HEARNDEN: I think on some occasions it would. I would agree that the use of the phone next to the ear is more consistent with it being a mobile phone than something else, but there is one—I think it is the one that you might be referring to—where it could be a calculator in a folded wallet. There is one where it could be somebody adjusting an MP3 player. I do not know, and I have been doing this for a while—

The DEPUTY CHAIR: That is why we have you giving evidence.

Mr HEARNDEN: I would think there would be some judicial officers who would challenge me to say, assuming that the amendment does not go through, "You have not established that that is not something other than a mobile telephone", and I would—

The Hon. JOHN GRAHAM: I realise that your concern is that, based on a photo, this would be more common, but how common at the moment is that sort of defence?

Mr HEARNDEN: These are not prosecuted at the moment.

The Hon. JOHN GRAHAM: No, but presumably this is a problem with other mobile phone offences that are detected in other ways. Have you got any evidence that this is being presented as a defence or is commonly presented—

The Hon. TREVOR KHAN: I reckon Mick Corboy might be able to contribute to this.

Mr CARLON: Yes, Assistant Commissioner Corboy would be happy to.

Assistant Commissioner CORBOY: So far, we have had the primacy of the NSW Police as far as enforcement goes. Moving to officers making visual observations and giving out tickets and then it going to court on a not guilty plea, that has reduced significantly since we have had the option of video, but as far as the defence that it is not a mobile phone, we have not seen that as yet. For me, the question is distraction, whether it is an iPod that could be capable of wi-fi or an iPad or anything else. No-one in the western world would argue what a mobile phone looks like.

However, there are a number of things that do distract people in the car and our position is that they need to keep their hands off those devices, whether it be a cellular mobile phone or a device that could be capable of that, or whether it is a device that distracts them somehow, video streaming or looking at photos—the widest possible interpretation I can put on that is that a mobile phone is a mobile phone. From our perspective, the deeming provisions are required because the reverse onus will be on them to come along and say that they are not that. For a reasonable and prudent person to say, "I held a calculator to my ear", to me, that is not appropriate. However, any device that is capable of distracting the driver, at the widest possible definition, to me, is the ultimate—and as far as that goes, our pleas of not guilty in relation to mobile phone use have reduced significantly since we have had the videos on motorbikes.

The Hon. JOHN GRAHAM: Can I ask about the number of incidences because that is obviously crucial to determining which way this tips in the bill. This is a very large number of offences for a very small number of cameras. I do not want to speak for all of the Committee, but I think we all agree that this is a serious problem.

The Hon. TREVOR KHAN: I think you can speak for the entire Committee when you say that. I think we are all at one.

The Hon. JOHN GRAHAM: This needs to be addressed. It is a matter of how to tackle this, but it is a very high incidence rate with just three cameras. Can you talk us through how many cameras we are likely to move to? What modelling have you done for how many offences are likely to occur?

Mr CARLON: The proposal is that we will screen, within a four- or five-year period, the equivalent of our top stationary speed camera locations, so screen the equivalent number of vehicles, about 123¹ million checks, and that is across the general population. There has been some conversation about the notion of this being a black spot related program. It is not a black spot related program. This is a behaviour that is happening right across the whole of the network and, although we have had a very high rate of detection at two fixed locations—more than 95,000 people in 90 days—there clearly is a problem right across the whole of the network, and that increases your risk of a crash at the rate of four times at the basic level. From our point of view though, we will be running a significant public education campaign that will commence at the same time as a three-month period of warning letters to motorists. We believe this will have a significant deterrent effect in bringing down the number of people who are offending.

We are talking about the resolution to this problem is potentially a \$20 cradle. There is an easy fix here for avoiding a fine and avoiding the demerits, an easy way to be compliant and safer. We believe that with a large-scale public education campaign combined with that three-month warning letter period, we will see a significant reduction in the number of people. In the modelling we have tabled, we do not know the deterrent level it will impact at. We would hope it has a 100 per cent deterrent level and people stop using their mobile phones illegally in their vehicle. But even at the 30 per cent or 40 per cent level of reduction, we will see a significant saving of serious injuries and lives over the five-year period.

The Hon. JOHN GRAHAM: So the 123 million checks, over what period are you saying that occurs?

Mr CARLON: Annually. We will gradually build up the program to that point within the four to five year window.

The Hon. JOHN GRAHAM: So that is with a projection about how many cameras you might use but that is an operational decision so that might vary?

Mr CARLON: Yes. That will be a combination of the relocatable cameras so we get a general deterrence and are able to move them around the State. You can see in our report, we had six relocatable cameras during the pilot period. We move them about every four days on roads like Heathcote Road and Northern Road—major arterial roads. We still had—at all of those locations—significant levels of offending. We want to create a general

¹ In correspondence to the committee dated 6 November 2019, Mr Carlon requested that a correction be made to the transcript replacing 123 million with 135 million.

deterrence across the State so the fixed locations—as we have on Anzac Parade and at Clunies Ross Bridge—screen significant volume of traffic in order to create a deterrent effect at those locations.

The Hon. SHAOQUETT MOSELMANE: Just out of curiosity with the example of the calculator. Of the 100,000 images that the two cameras picked up, how many were identified as calculators?

Mr CARLON: It may be useful to tender another photograph which would receive an infringement, which goes to the point raised by Mr Hearnden around not having a specific definition of a mobile phone, assessing an image like this and issuing an infringement on the basis that the use looks like an illegal use. We did not identify—because we were screening out anything that was not a mobile phone—how many people were eating or how many people were holding a coffee cup, how many people were holding a calculator because specifically we were attempting to identify circumstances where the illegal use of mobile phones was in the image.

The Hon. SCOTT FARLOW: Picking up on that point Mr Hearnden, if you were to have an iPod touch, if you were sitting there playing—without this reverse onus provision—Candy Crush on an iPod touch would you be in breach or not?

Mr HEARNDEN: You would still be in breach of the law. It is a question of whether it will be able to be proved or not. It also depends on whether it is a mobile phone or not.

The Hon. SCOTT FARLOW: This is on a device which is not a mobile phone.

Mr HEARNDEN: If it is a game item that can just be used for games—and it is not connected to the cellular network which many of them, as I understand, are not—then you would not be committing a breach of road rule 300.

The Hon. SCOTT FARLOW: So therefore with respect to that—and Mr Carlon might like to comment on this—you would have as much distraction as you would in using a cellular device?

Mr HEARNDEN: I am not a behavioural scientist but I cannot see the difference really. It might be a breach of road rule 299 which is about the use of screens but that is not a designated offence and is not captured by the amendments.

The Hon. TREVOR KHAN: And the likelihood is that by the time the matter runs in court, six months will have gone by and you would not have an alternative opportunity—

Mr HEARNDEN: If a person said I was using a Candy Crush game instead of a mobile phone we would likely be out of time to commence proceedings.

The Hon. TREVOR KHAN: And you would not disclose that fact on the first occasion when you came to court. You would keep that up your sleeve.

Mr HEARNDEN: If you are strategic, you would.

Mr CARLON: To clarify, rule 299 relates to television receivers and visual display units in vehicles. It states that:

- (1) A driver must not drive a vehicle that has a television receiver or visual display unit in or on the vehicle operating while the vehicle is moving, or is stationary but not parked, if any part of the image on the screen:
 - (a) is visible to the driver from a normal driving position, or
 - (b) is likely to distract another driver.

That offence though, is not included in the mobile phone camera detection program. It is only the mobile phone offence which is now subject to the camera detection program.

The Hon. SCOTT FARLOW: Is there a need to look at rule 300 and broaden it to cover some of those things which are still causing driver distraction but may not be for a mobile phone?

Mr CARLON: There is a project happening nationally right now in terms of the national road rules—which the New South Wales road rules are based on—to review and update all of the road rules associated with new technologies. The mobile phone rule was established in 1999. At that point, there were Nokia's without any visual display—

The Hon. SHAOQUETT MOSELMANE: And now you have got smart watches—

Mr CARLON: Now you have got smart watches. So we are, nationally, considering that currently in terms of the Australian Road Rules Maintenance Group. Certainly that is a consideration about how do the road rules keep up with the new technologies in terms of distraction.

The Hon. SHAOQUETT MOSELMANE: So the proposition is that the phone has to be held or used?

Mr CARLON: Under the current rules?

The Hon. SHAOQUETT MOSELMANE: Yes.

Mr CARLON: Yes.

The Hon. SHAOQUETT MOSELMANE: So if it is in a cradle and you are using it?

Mr CARLON: There are permissible uses and those permissible uses—

The Hon. SHAOQUETT MOSELMANE: I am just curious because you said the cradle would resolve this issue, if you buy it. I am curious about the definition—

Mr HEARNDEN: There is a definition of use which excludes circumstances where it is in a cradle but would include, for example, where it is sitting on your lap or it is in your hand or some other part of your body but not a pocket.

The Hon. SCOTT FARLOW: Effectively under this legislation—and under the operation—if you are touching a phone in a cradle you will not be committing an offence? In the recognition under this system.

Mr CARLON: Yes, if it is in a cradle the camera detection program will delete that.

The Hon. SCOTT FARLOW: Even though it could be an offence if a police officer saw you using it.

The Hon. SHAOQUETT MOSELMANE: Sometimes the cradle sits right in front of you in the car. Some people have it on the side. The need to touch the phone means that your attention is off the road. Is there any definition of where the cradle should be to avoid those circumstances?

Mr CARLON: You must not mount the cradle in a way that it obstructs your view of the road and maintains your view of the road. So it is an offence, for example, to attach the cradle on the windscreen so it actually obscures your view of the road—that is an offence. We have guidance and material on our websites and we continually promote that information about how to safely, and where to position your mobile phone in a cradle in order for you to maintain good line of sight to the road.

The Hon. TREVOR KHAN: Can I direct my questions to Assistant Commissioner Corboy, because I want to deal with this question of why reverse onus arises or the benefit of it. Assistant Commissioner Corboy, nowadays if somebody is identified by a police officer using a mobile phone, the approach is that the police officer stops the car, is that right?

Assistant Commissioner CORBOY: That is right.

The Hon. TREVOR KHAN: They ask a series of questions of the driver of the motor vehicle, is that right?

Assistant Commissioner CORBOY: That is right.

The Hon. TREVOR KHAN: Do I take it that one of the things the driver is asked is whether they were using the mobile phone?

Assistant Commissioner CORBOY: Yes.

The Hon. TREVOR KHAN: They are asked to show their mobile phone?

Assistant Commissioner CORBOY: Yes.

The Hon. TREVOR KHAN: So they go through a series of evidential questions that assist in proving the matter in court?

Assistant Commissioner CORBOY: Yes.

The Hon. TREVOR KHAN: Is it the case now that because of body cameras, that is generally recorded?

Assistant Commissioner CORBOY: Yes, that is becoming more and more prevalent. In fact, it is very difficult to record car-to-car with a body-worn video. In our highway patrol cars we have in-car videos, but they do not generally go to the side so we have implemented a fairly strict regime of extra motorcycles with helmet cams so they can actually look in there. We can show that to the driver and say, "We saw you on the phone." They will generally say, "Yes, it is a phone." We will agree to it and give them a ticket and get the points and that is the way it is proceeded with.

The Hon. TREVOR KHAN: All of this, as it currently runs, has the benefit that—I can remember when Electronically Recorded Interview of a Suspected Person came in. As an old lawyer I can remember that we were horrified at the prospect of ERISP but it changed the nature of practice. In a way, it changed it for the better because all of our clients kept making admissions, which was a real problem. That is a benefit in terms of what occurs now in terms of a police on driver exercise.

Assistant Commissioner CORBOY: The primacy of enforcement in this State is a police officer pulling a car over giving a ticket out for an offence. There is a number of backup systems—speed cameras, red-light cameras and now the introduction of this bill. One of the things we are really concerned about is the changing nature and culture of mobile phones. We moved quickly from Nokia's on the phone to text messages and now they are going into social media. The fear is that it is going to go into, as has been seen consistently increasing, people video chatting when normally they would have made a phone call.

The Hon. TREVOR KHAN: We have seen a number of tragic accidents become deaths, involving that.

Assistant Commissioner CORBOY: That is exactly right. I was recently in the United States and it is epidemic over there. People are now going to video chats rather than ringing up. That is the nature of the culture that is going on. We gave out nearly 40,000 tickets last year and we are consistently giving that out. I am not saying we have reached the maximum, but we have a whole range of infringements that we need to do. What we need is a system to change the culture. To change the culture you need a really defined deterrent system.

I have been involved in the process of selecting this and going through right from the start when it was fairly ordinary equipment right to this state-of-the-art equipment where I am really satisfied with what it can do. The deterrence factor of that to back up the primacy of police enforcement cannot be understated. The answer to questions about Candy Crush—it is about distraction. Distraction kills people. We need a physical deterrent to change the culture. The reverse onus, which will say that if you are distracted in the car by using something that is a mobile phone or can distract you as a mobile phone does, to me is critical to the deterrence factor in relation to changing the culture of mobile phone use. This is about deterrence.

The Hon. TREVOR KHAN: So you really need to get to a state where, in order for people to control their use of a mobile phone in a car, is to stick it in their glovebox or entirely out of reach, which will make them safer and will save them being prosecuted under this offence.

Assistant Commissioner CORBOY: The only safe place is in the glovebox or in the boot and we have proved that with the P-plates. The culture is changing because of the change of legislation. We are seeing less and less people committing offences at that age group. They have to put it in the boot or in the glovebox. For us, the deterrence factor in the proposed legislation is paramount to the reason that it is required.

The Hon. TREVOR KHAN: Can I just go on, in terms of the number of offences that you anticipate occurring each year, what is the number that you anticipate identifying?

Mr CARLON: Clearly, there is a large range and the more effective the deterrent elements of the program—

The Hon. TREVOR KHAN: Absolutely, I have seen the figures.

Mr CARLON: —it will reduce. Again, we hope that it is zero but, clearly, we are saying that there is potentially a 30 per cent or 40 per cent—conservatively estimated—deterrent effect that will impact. More importantly, in relation to the bill, currently our understanding is that about 3 per cent of the matters that police issue infringements for, under this offence, are court elected. That is even considering that they have the apparent ability to record contemporaneously the information that this is a mobile phone. I think that is more to the point of the bill. We are wanting to ensure that we do not have a situation where, as described by Mr Hearnden, it is not able to be proven beyond reasonable doubt as a barrier to the efficient operation of this system, in order to make sure that people are treated fairly and the system operates efficiently and effectively.

The Hon. SHAOQUETT MOSELMANE: Mr Carlon, correct me if I am wrong, I heard you say that for the year before last, the death toll was about 310 and 17 higher this year. Is that correct?

Mr CARLON: Yes, so year to date, our road toll is currently 309 deaths, which is 17 more than the same time last year.

The Hon. SHAOQUETT MOSELMANE: What percentage of those 17 last year are attributable to mobile phone use?

Mr CARLON: Let me just get that specific information for you. Distraction and mobile phone use are very difficult things to report and detect so we would suggest—and it has been clearly reported and even today, other witnesses have said—that it is under-reported in our road trauma data. Over the five-year period, we have added 158 casualty crashes and 12 fatalities. On that basis, it is a small proportion of the total road toll.

The Hon. TREVOR KHAN: Not for the families involved.

Mr CARLON: Speeding contributes to 40 per cent of the road toll. That said, there is an underlying risk that is growing in the use of mobile phones across the network. It is a general problem and is increasing the risk of crashes across the whole of the network. People do not necessarily confess when they have a serious injury crash, "I was distracted on my mobile phone," so the information we receive from police is clearly an underestimate of the total number. When you see the detection rate we have had in this 90-day period—and it might be a bit extreme to say—there is an epidemic use of mobile phones illegally out there on our roads. It is only a small percentage when you look at the total vehicles but, clearly, 1.8 per cent of all of those vehicles on the road—95,000 of them—that is a significant level of embedded risk and we want to remove that risk from the road.

The Hon. SHAOQUETT MOSELMANE: One other question: The cameras effectively take snaps of each car that passes by, is that correct?

Mr CARLON: The system is basically screening the vehicles that pass—

The Hon. SHAOQUETT MOSELMANE: What is the distance—

Mr CARLON: —and the artificial intelligence is eliminating all of the images of people driving legally, without the use of a mobile phone in the hand or in their lap. It is eliminating—

The Hon. SHAOQUETT MOSELMANE: Is there a 10-metre distance or is it a 50-metre distance where it picks up?

Mr CARLON: There are two cameras, one at an angle which captures people on handheld up to their ear and another which captures people texting down low, which you would have seen the images of. So there are two angles, which captures that image. Some 90 per cent of the people who passed by the camera during the pilot process, within an hour, their image that was scanned was automatically deleted. Nobody ever sees those images.

The Hon. SHAOQUETT MOSELMANE: I take it one of those cameras also picks up the number plates.

Mr CARLON: Yes. It also identifies the vehicle registration and so the owner onus of issuing the infringement, as we do for all of the other camera programs, is issued to the registered owner of the vehicle. The process for them is to either identify the driver or to look at the image on the Revenue website and ask for a review if they believe that they were not using a mobile phone when they see the image. That is a free review that is conducted internally. Or they can then court elect the matter.

The Hon. JOHN GRAHAM: Thank you for tabling this information about the estimated benefits. That is very useful. I wanted to review that before I pressed the question about the number of incidences. Based on what you are saying—and I was using my phone before but I guarantee it was just for the purposes of calculating this—with 100,000 offences from eight million checks, moving up to 123 million checks is really going to take us up to something like 1.5 million or 1.6 million offences. I take your point about this dropping as people are deterred from using it but even using your figures of 30 per cent, maybe even heading up towards 40 per cent, this is still going to be more than a million offences a year. Is that your modelling for how many people will be detected each year using these cameras?

Mr CARLON: No. I would compare this to the speed camera program. When we established a site and we have a one-month warning letter period at a new site for a speed camera program, we can get upwards of 3 per cent of the vehicles that are travelling past there infringing. Within a very short period—a few months—that can get down below 1 per cent. Across the whole of our camera network currently—

The Hon. JOHN GRAHAM: But these will not be signposted in that way. But I take your point.

Mr CARLON: Regardless of that—

The Hon. JOHN GRAHAM: But you are looking at a network effect.

The Hon. SCOTT FARLOW: But you will still be providing a caution letter for the first three months, won't you?

Mr CARLON: That is correct—yes—and an ongoing community education campaign about the rules and also the risk of enforcement action. Generally with the camera programs, whether they are covert in other jurisdictions or here, you see a significant reduction. And with all of our camera programs currently, less than 1 per cent of the driving population are offending at these camera locations.

The Hon. JOHN GRAHAM: Apart from this trial.

Mr CARLON: Apart from the trial. But we were not issuing fines and we did not have a public education campaign because we were piloting it. When it was advertised on television—

The Hon. JOHN GRAHAM: What is your projection for?

Mr CARLON: We do not know the total impact that that is going to have. This is the first time in the world that this has been conducted.

The Hon. ROSE JACKSON: Do you have a projection? Have you made a projection about how many?

Mr CARLON: We have provided you with estimates on 100 per cent compliance, 30 per cent and 40 per cent compliance.

The Hon. JOHN GRAHAM: And I am using your figures of a 30 per cent or 40 per cent deterrence and I still get to about a million offences. So I am asking you: Do you have a different projection compared to the one I am looking at, using your deterrence?

Mr CARLON: We have a range.

The Hon. JOHN GRAHAM: What is your range?

Mr CARLON: We can figure those out and provide to the Committee what the range is. At 100 per cent compliance clearly it is 100 per cent.

The Hon. JOHN GRAHAM: Yes. And I accept it will not be 100 per cent.

Mr CARLON: We can show you the range across the different percentages of compliance.

The Hon. JOHN GRAHAM: But it is going to be of that order.

Mr CARLON: No. I would suggest that that is an example that has been provided. We do not know what level of compliance we will get in this instance because nowhere in the world has this program ever been conducted. So we are estimating but there is no model for a mobile phone camera detection program. There is no real evidence about the effect of it, where you have run a major public education campaign, you have issued three months' worth of warning letters and you are issuing enforcement actions across the network. There is no evaluation of any program anywhere to give you the effect of it.

The Hon. JOHN GRAHAM: So you are hoping the deterrence effect might be more than 40 per cent.

Mr CARLON: Absolutely.

The Hon. JOHN GRAHAM: But if it is not then—

Mr CARLON: We know what it would be at different levels.

The Hon. TREVOR KHAN: You cannot really take a compliance level and say you are going to achieve a compliance level of X. You look at drink-driving. When we introduced mobile breath testing we did not suddenly achieve a 20 per cent, 30 per cent or 50 per cent reduction. It took years to achieve the reduction in illegal behaviour.

The Hon. JOHN GRAHAM: I accept the editorial. For our position as we look at the bill it goes to what extent is the reverse onus—

The Hon. TREVOR KHAN: You are just trying to find an excuse not to like it.

The Hon. ROSE JACKSON: Thank you, the Hon. Trevor Khan. That is not a question.

The Hon. JOHN GRAHAM: No—it is to what extent the reverse onus tips the balance about the number of offences that are going to be tipped into the system.

The Hon. TREVOR KHAN: The question is how many people's lives it could save—that is what it is about.

The Hon. JOHN GRAHAM: Exactly. That is exactly what we are looking at.

The Hon. ROSE JACKSON: The questions are for the Hon. John Graham to ask the witnesses, the Hon. Trevor Khan.

The Hon. JOHN GRAHAM: If 3 per cent of those go to court, that is certainly more than 30,000 court cases. Do you have modelling for how many of these cases might go to court?

Ms MICHALKO: Perhaps I can assist with that question. Certainly a broad assessment was undertaken as part of the process considering the potential impact on the justice system and the associated costs. That was undertaken as part of government's consideration of this matter. But what I would like to do, if you will allow me, is just to take it a step back when we are talking about the impact on the criminal justice system to what this bill actually does, to clarify where that impact lies. I am sure you have heard evidence and you would have seen in the submission the number of steps before a matter gets to court. You are certainly right to ask about those matters but there is a real delineation between the impact on the criminal justice system that is caused by virtue of increased technology and thus increased detection of offences and the effect on the criminal justice system of this particular aspect of this bill.

The Hon. JOHN GRAHAM: I agree with that. Yes.

Ms MICHALKO: In terms of creating technology which will capture more people, which will lead to greater detection of offending, that leads to a greater number of fines—that is absolutely the case. I am sure my colleagues can jump in if I am incorrect about this because this is certainly their wheelhouse, but as I understand it the progress of a matter when we are talking about where we get to this presumption, where it applies in court, will be first the AI detection, then the review by the mobile detection camera provider personnel, then it goes to RMS, then there is a review by Revenue NSW, then the penalty notice is issued, then there is the review process through Revenue NSW as well, through which, as I understand it, a person will have access to the photograph, then all of those processes are conducted and by and large a very significant proportion of matters are taken out of the system throughout that process—either by people paying the fine or by them going through that review process. Certainly as I understand it they will have access to the photograph in order to go through the review process through Revenue NSW without going to the court, without this presumption really coming into play.

The Hon. JOHN GRAHAM: Agreed.

The Hon. SHAOQUETT MOSELMANE: So they get to see it first.

Ms MICHALKO: They will get to see the photograph, as I understand it. Please jump in if I am incorrect about that. So then we are talking about that small proportion of matters where there is an election to take the matter to court, where a person has had the opportunity to look at the photograph and think about "What was I doing on that day? What did I have there? What is that in my hand?" That is the matters that we are talking about. But of those matters we are only talking about the ones where the person is actually saying, "No, that is not a mobile phone." So there are a few different elements, ingredients, fundamental bits of a charge that the prosecution has to prove beyond reasonable doubt. My colleague Mr Hearnden already went through those. This will only apply to the proportion of matters where there is an election to go to court where the issue in the case is if it was a mobile phone. So then there is even more of a diminution in terms of the context of those matters.

The Hon. JOHN GRAHAM: I agree with all of that. My question then is: How many of these cases might go to court? What is the modelling that you have on that? What estimate have you made? Because clearly there will be resource implications. The question I am about to turn to—what is the modelling?

Ms MICHALKO: Certainly. That assessment was undertaken as part of Cabinet's consideration of this process.

The Hon. JOHN GRAHAM: Okay. There is significant public interest in it. What are you able to tell us about—the public wants to know this is going to work. I think it is a reasonable question for the Parliament to be asking how many of these cases might go to the court system.

Ms MICHALKO: I do not think that I can answer that question beyond what I have told you.

The Hon. SCOTT FARLOW: Can I proffer an alternative question? Without the reverse onus, would you imagine that more cases would go to court?

Ms MICHALKO: That is an interesting question. There was an issue that was raised by the Law Society earlier. They expressed the view that there would be greater litigation with the presumption which is interesting when you think about the process of a matter coming to court—

The Hon. TREVOR KHAN: It is at best counterintuitive.

Ms MICHALKO: —and then how that presumption would apply. I am sure Mr Hearnden can add some information to this if necessary, but I am sure in these circumstances, what we are talking about is those matters where a person will have access to the photograph. They will intrinsically have the knowledge of what the object that is in the photograph is. Having that, they choose to elect to go to court. In the case of the presumption, in making the decision to elect to go to court and challenge the matter, they will be aware of the fact that there will be a burden on them. It is not the prosecution burden. It is not the same as beyond reasonable doubt.

It is on the balance of probabilities which is a lower criminal standard which typically applies to accused persons rather than the prosecution onus. They will be aware that they will need to establish on the balance of probabilities that the object depicted in the photograph, presumably that they have seen, is not a mobile phone. In those circumstances I actually think it is reasonable to suggest that there will be less litigation with the presumption because a person will know: Here is what this shows. I am actually going to have to front up to some degree, to a lower degree than beyond reasonable doubt, but on the balance of probabilities I am going to have to front up and demonstrate that this was not a phone.

The Hon. ROSE JACKSON: Was this one of the reasons that the reverse presumption was included? The intention to deter people from being court elected in these matters?

Ms MICHALKO: Deterrence broadly is a relevant consideration to the introduction of any onus, certainly. Perhaps my colleagues can speak to that also.

The Hon. ROSE JACKSON: Do you think that it is legitimate to reverse the well-established onus of proof so that people are presumed guilty instead of innocent in order to deter people from accessing the court system?

The Hon. TREVOR KHAN: No. That is not what this presumption dollars at all.

The Hon. SHAOQUETT MOSELMANE: That is what we have heard. That is what has been said.

The Hon. TREVOR KHAN: It is one element of the offence.

The Hon. ROSE JACKSON: It is for the witness to answer the question.

Ms MICHALKO: I can break down the answer to that into a few different components. As I said before, this does not reverse the onus of proof entirely in respect to the prosecution of this offence. There are still elements, as Mr Hearnden said, that the prosecution will need to prove beyond reasonable doubt: There was a driver of a vehicle; that they use an object held by them—that is where the presumption kicks in, that that was a mobile phone—while the vehicle was moving or stationary but not parked. It does not reverse the onus such that a person is presumed guilty. It functions to reverse the onus or apply presumption in circumstances where there is a photograph that depicts an object being held by a person and in circumstances where the burden still rests on the prosecution to prove beyond reasonable doubt the other elements of the offence.

The second component of your question went to the legitimacy of a reversal of an onus in criminal law generally. Certainly, I accept the proposition that typically the criminal onus and onus in a criminal prosecution rests with the Crown. That is always the case in respect of all offences generally. However, it is not something that is completely unknown to the criminal law of the State or in this country, to in some circumstances in respect of some offences introduce a reversal of an onus or an onus on an accused person in some circumstances. I am happy to provide you with a couple of examples of those but it is certainly the case that it has been done before.

The Hon. JOHN GRAHAM: Chair, I do not want to cut across that evidence. I want to return to the resource in question though.

The Hon. TREVOR KHAN: Accepting that, this is a fairly fundamental question.

The Hon. ROSE JACKSON: I think Ms Michalko was wrapping up.

The Hon. SHAOQUETT MOSELMANE: On the balance of probability, on this question of reverse presumption, I know you are saying you are not really putting the onus onto the defendant, but we are. Now they are to prove in the balance probability that it was not a mobile phone. The burden was not on them before—now it is. One thing that comes right across all the submissions is the fact that the technology and the cameras are so effective. It goes through a significant process where it is sifted through, and it is sifted through by independent verification. You clearly see a mobile phone. You then say that it is minimised because there is only a small percentage of people that then elect to go to court, why then change a significant principle of law for such a very small percentage that you say is resulted in this.

Ms WATTS: I might attempt to answer that. The occasions in which the onus is reversed or presumptions are included in offence provisions often occurs where there is a cluster of certain types of context which there is in this case. It occurs, for example, where there is a significant risk of the conduct occurring. Where if the conduct occurs it will lead to significant harm to the individuals involved or to other individuals—other road users in this case—and that harm will involve significant cost to the community, so there is strong public interest on one side of the equation. Even in cases where onus is reversed, safeguards often remain. They remain in this case as well, as my colleague just referred to. The opportunity still remains for the citizen to put their version of events to the court and have that heard and decided independently. In this situation a reverse onus is proportionate and appropriate.

The Hon. SCOTT FARLOW: To pick up on the Hon. Shaoquett Moselmane's question and with respect to the clarity and high definition images, is there any high definition image that would be able to tell the difference between an iPod touch and an iPhone?

Mr HEARNDEN: I am probably not the right person to answer that.

The Hon. SCOTT FARLOW: Is there anyone who might be able to suggest that depending on the technology that you have available, could you tell the difference between an iPod touch and iPhone with that image? Two devices that look exactly the same.

Mr CARLON: The issue here is a legal question as to being able to prove beyond reasonable doubt.

The Hon. SCOTT FARLOW: But on this issue, effectively, what it comes down to and what this reverse onus changes is that instead of the crown having to prove beyond reasonable doubt that it was an iPhone rather than an iPod touch, it would be on the balance of probabilities that the defendant would say, "As you can see, because of X, Y, Z on the balance of probabilities it was actually an iPod touch and not a phone."

Mr HEARNDEN: That is correct. The reverse onus typically is used by Parliament in circumstances where the information that is the subject of the defence is uniquely in the possession of the person who has to give the evidence. There is a variety of pieces of legislation. It is not unusual. There is a variety of pieces of regulatory legislation and traditional criminal legislation where the onus moves back to the defence side because they have the knowledge and they are able to adduce that evidence. The Crown would never be in a position, in a case like this where there is no interaction as there would be with a police officer, to obtain admissions or to visually observe something. In those circumstances it is not a rare event.

The Hon. JOHN GRAHAM: I will turn back to that resourcing question. One of the concerns of the Parliament in passing this bill will be: Has there been appropriate resourcing provided both to the fines processing parts of Government and secondly to the Local Court system in Government. I raise that partly because that is that issue that has been raised with me. There are concerns in the Government about the fines processing capacity. I can understand why given the numbers you have put in front of us, accepting that the witnesses feel unable to present some of that material today, it is going to be of significant interest to the Parliament in discussing this bill. What assurances can you give us that there will be adequate resourcing? What additional resourcing is being provided given the very significant number of fines you are talking about and court cases you are talking about?

Mr CARLON: Yes, there has been is an assessment of the impacts on the processing and the criminal justice system. It has been made public that the cost to the program was \$88 million over the forward estimates. Those costs cover the impacts associated with the operation and the purchasing of the equipment, the contracts that we enter into, the processing of the whole of the system and the system impacts.

The Hon. JOHN GRAHAM: How much of that is going into fines processing?

Mr CARLON: I do not have the breakdown of that information.

The Hon. JOHN GRAHAM: That does include additional resources for the court system?

Mr CARLON: Yes.

Ms MICHALKO: We can take it on notice.

The Hon. ROSE JACKSON: Unfortunately we cannot take questions on notice because of the brief nature of the inquiry. If there was information that was able to be given to members of Parliament for consideration in the Legislative Council that would be useful. It will not be questions on notice through this inquiry.

The Hon. JOHN GRAHAM: You are confirming that there are additional resources to the court system, do I understand that correctly?

Mr CARLON: Yes.

The Hon. JOHN GRAHAM: Are you able to assure us it that in your view resourcing is adequate given the significant numbers you are talking about?

Mr CARLON: Yes, the assessment has been made objectively across all of the agencies that are impacted that they are provided the adequate resources to manage the new system over the forward estimates.

The Hon. JOHN GRAHAM: I do have one other issue to raise.

The Hon. ROSE JACKSON: I was going to ask about warning signs. Earlier in evidence we heard that in order to effect the kind of behavioural change on the scale that we are trying to effect here—considering the evidence that has been provided about the extent to which this illegal use of mobile phones is occurring right now, which is obviously considerable—in some ways you need a multilayered campaign that includes everything from the significant public awareness campaign you have described, to enforcement, to signage, to effect behavioural change from drivers as they are driving vehicles. That was evidence that we heard from Mr Russell White of the Australian Road Safety Foundation.

The Hon. TREVOR KHAN: We heard some contrary evidence as well, witnesses are entitled to know that. You were not here for that.

The Hon. ROSE JACKSON: Apologies. Contrary evidence was provided as well, I understand. In fact earlier when you talked about the 30- to 40 per cent deterrence that you hoped to be created, in response to questions from the Hon. John Graham, you referenced the speed camera program that currently operates in New South Wales as an example of why his suggestion of the noncompliance rate was higher than you hoped it would be. You suggested that with speed cameras initially they are higher and then they go down. We have warning signs for speed cameras in New South Wales. My question is getting to why has the decision been made not to include warning signs for mobile phone detection cameras considering that for other road offences, namely speeding and red lights, there are warning signs in New South Wales?

Mr CARLON: I am really happy to answer this question. I refer the Committee members to the Monash University modelling that has been conducted and the report I provided to you. This is about getting very clear around the use of general deterrence and mobile programs that move across the network in order to provide a general deterrence across the whole of the network. Mobile camera programs in every other jurisdiction in Australia other than New South Wales have no signage associated with them. Fixed location cameras, all of our programs here have signage associated.

We have done the modelling which estimates the benefits over the five years based on a comparison that Monash University have done using no overt signage and overt signage at the specific location. They have compared that in relation to the mobile programs that operate in other jurisdictions and you can see here that the outcome is that, yes, you do achieve a benefit with site specific signage but the benefits of having no overt signage at the specific location means that in the first year the benefits you will achieve with no signage will take five years to achieve if you have site specific signage. It is on that basis that we have recommended that there not be site specific signage but general deterrence signage across the network.

The Hon. SHAOQUETT MOSELMANE: In other words, it takes longer for people to learn?

Mr CARLON: If I can turn this into a very practical example. If I am using my mobile phone and holding it to my ear and I see a sign I put it down and I drive past the camera and I pick up my phone again. The general deterrence beyond the location where the cameras are is not going to get the sort of culture change that we need in terms of the use of mobile phones right across the whole of the network at the same rate, based on the evidence, that we will achieve if we do not have overt signage.

The Hon. TREVOR KHAN: Whack.

The Hon. ROSE JACKSON: This is a two page document with two tables?

Mr CARLON: I am happy to give you the more detailed document.

The Hon. ROSE JACKSON: It is difficult to challenge that.

The Hon. TREVOR KHAN: He is happy to give you the full document. There is nothing to hide here.

The Hon. ROSE JACKSON: If there is nothing to hide why will they not tell us how many infringements they think they will receive?

The Hon. TREVOR KHAN: If you want to make it a game, but it is a serious safety issue. It really is.

The Hon. SHAOQUETT MOSELMANE: My question relates to the other key element in the whole discussion, the issue of privacy. This was raised in a couple of submissions. One by the Australian Road Transport Industrial Organisation and the other by the NSW Council for Civil Liberties. The key question on the comment is that the scope of the bill is too wide and the privacy protections are not detailed in section 139B?

Ms WATTS: I might answer that. The privacy protections and mitigation measures that have been incorporated into the mobile phone detention program have been incorporated in response to the requirements under the New South Wales privacy legislation that apply to all agencies. Transport has taken privacy very seriously, as you would expect, in this particular program and has consulted extensively with the privacy commissioner and taken on board her views and suggestions.

The Hon. SHAOQUETT MOSELMANE: We did not hear much from her.

Ms WATTS: To include additional legislative provision regarding privacy in a separate piece of legislation on one view would be duplicative of what is already in place.

The Hon. ROSE JACKSON: What were the things she suggested?

Ms WATTS: She suggested making sure we had in place an appropriate internal policy about handling of the images that were collected, which we are preparing. I anticipate we will share that with her for her views. She suggested that we ensure that rules around the way we audit the camera system and ensure it is working appropriately are thoroughly documented and reviewed.

Mr CARLON: It may be useful for Mr Weeks to outline the actual security processes throughout the whole of the chain of the system so you have a clear view of how the information is being managed.

The Hon. JOHN GRAHAM: I think everyone is reasonably comfortable with that aspect of it. One of the positions that has been put to us is why not capture some of those privacy protections in the bill. I would be interested in a response on that point?

Ms WATTS: The answer to that is privacy protections are in place in the privacy legislation and creating additional privacy protections would be duplicate the provisions and that legislation would not be subject to review by the privacy commissioner.

The Hon. ROSE JACKSON: Do the current provisions contained in the privacy legislation deal with the scope of this proposed amendment, which is a 153 million images of drivers in New South Wales being assessed by AI, which is new and innovative technology?

Ms WATTS: The privacy legislation is a series of general principles which are consistent with principles also existing in the Commonwealth privacy legislation regarding how and when information can be collected, how it should be stored, retained, and who should be able to view it and use it. Those general principles are meant to be applicable to all collection and use scenarios.

The Hon. ROSE JACKSON: And it does contemplate AI technology by third party private providers?

Ms WATTS: It contemplates use and disclosure to third parties in scenarios where there are appropriate privacy mitigation measures in place.

The Hon. ROSE JACKSON: For example, if a third party private provider of the AI technology that was taking 123 million images in the first place, if there was a misuse by that company and a data breach occurred or something of that nature, what sanction would the privacy legislation have in relation to that?

Ms WATTS: The individuals whose privacy has been breach have the ability under the privacy legislation to commence proceedings in relation to that breach and sue for damages up to a certain dollar value for loss suffered and also emotional harm suffered as a result of that breach.

The Hon. ROSE JACKSON: And there is automatic notification of people?

Ms WATTS: There is not at the moment automatic notification of people. At the moment submissions have been filed recently within Government about the requirement to mandatorily notify the Privacy Commissioner of breaches, which will be consistent with the Commonwealth legislation.

The Hon. JOHN GRAHAM: I thank the witnesses because the evidence that they you have given has been quite helpful. Returning to the reverse onus question, one of the issues I am grappling with is evidence that was put very early on by the Law Society which captured the second reading speech saying that these are really high-quality images that should be able to be used in court and why can we not just rely on the quality of those images and the court processes that are in place? I would like to return to that issue and ask you to respond. You

have given us some quite detailed evidence on the reverse onus, but can we recap on that specific view that has been put to us?

Mr HEARNDEN: If the images show very clearly something that appears to be—and which we would all jump to the conclusion is—a mobile phone, a mobile phone is more than just the item. It is a connection to a cellular system and you cannot tell that from a photograph. You could tell that by adducing other forms of evidence, I presume—by perhaps subpoenaing records or calling experts about it—but the presumption avoids the need to do that because it is a fairly simple task, presumably, for somebody to come along and identify what it is they have. The evidence this morning focused on the quality of the image.

The Hon. JOHN GRAHAM: Yes. You are really saying that the quality of the image is not the issue that is causing this.

Mr HEARNDEN: That is right. I mean, you would be able to clearly see—well, sorry—there would be circumstances in which you would be able to clearly say that that was not anything that looked like a mobile telephone. They would be easily dealt with, one would assume, through the culling process. But there will be some where the activity or the action of the person is consistent with more than just a telephone. It could potentially be a calculator, it could be a game—

The Hon. JOHN GRAHAM: But you are unable to really give us any guidance as to what proportion of cases you are worried about. You are really speculating because it is such a new technology. That is really the evidence you have given us. Can I return also to the artificial intelligence question and to what we were also given evidence about some of the principles that might apply as the systems are being used, including used for the first time in this major way? How transparent will the algorithms be that are being used? In what sense will there be public or parliamentary oversight or some scrutiny—

The Hon. TREVOR KHAN: Has somebody become a programming expert?

The Hon. JOHN GRAHAM: —of either the algorithm or the results of the algorithm?

Mr CARLON: I think Mr Weeks can address this.

Mr WEEKS: I think it is important to know that we have and will be putting in place a very strict audit regime. That audit regime will be doing two things. If I can perhaps take a step back: When the images are captured the machine learning process of the artificial intelligence would be doing that initial identification of whether there is a likely offence. For all of those images that are not classed as a likely offence, they would be deleted.

The Hon. JOHN GRAHAM: Yes. I am clear on all that.

Mr WEEKS: We will have an audit process every 90 days where one of our authorised officer technicians—say, a Roads and Maritime or a Transport for New South Wales trained and authorised technician—will actually audit a snapshot of those images onsite because once they are deleted they are irretrievably deleted.

The Hon. JOHN GRAHAM: Yes.

Mr WEEKS: They will have access to any images captured in the last hour when they are out there doing their 90-day certification.

The Hon. JOHN GRAHAM: Yes.

Mr WEEKS: That is the audit process to make sure that the AI is doing what it should do in terms of passing the matters through to review. The images that are passed through to the vendor for review, which I think goes to the Acting Chair's question before, they are a cropped image of the driver only. What will happen in that circumstance is that the data block that says date, time, location will not be on that image; nor will the registration of the vehicle. It is an image of the driver only and that is purely for that reviewer to do the first stage of verification that the device in the person's hand or ear appears to be a mobile phone.

If they make that view, that will then come through to our system and will be adjudicated through to Revenue NSW. We will audit that process of that vendor conducting that review. The algorithm is actually designed—and I am no expert on artificial intelligence or algorithms—as a step process because the artificial neural network is designed to do pattern recognition. The first thing it is doing, if there are two hands on the steering wheel, is it deletes the image. Then it takes it through a series of steps to determine ultimately—

The Hon. JOHN GRAHAM: You are describing auditing the results. You have stepped through that in detail. What about the scrutiny of the algorithm itself? Is there any public scrutiny or audit of that?

Mr WEEKS: I think the audit that we are doing will prove the veracity of the algorithm.

The Hon. JOHN GRAHAM: Yes. Well, it may, or it may not. They are two quite separate things but you are relying on the results in order to prove the algorithm.

Mr WEEKS: Yes.

The Hon. SHAOQUETT MOSELMANE: Just out of curiosity and given that it is new technology, why do the audit every three months? Why not initially every month? I am just curious.

Mr WEEKS: It is a good question. There is a two-step audit process. The audit of the images that are deleted, that is what will happen every 90 days because it will only be the technician at the physical site by the side of the road that will have access to that small bunch of images before they are irretrievably deleted. The other audit of the vendor's review process, the screening process, will be more regular.

The Hon. SHAOQUETT MOSELMANE: How regular is that?

Mr WEEKS: We will make that determination. We have not because we have not yet gone into contract. We have not yet determined the exact parameters of that but we will look at that process as we go through the contract negotiations.

The Hon. ROSE JACKSON: We have reached three o'clock, which is the advertised finish time, but if anyone has any last burning questions, I invite them to ask the witnesses now.

The Hon. JOHN GRAHAM: All good. I thank you for the evidence. I want to say that over the course of the day we all have been alarmed by how many detections there were in the trial. I think you should take it as given that we all very much accept this is a big problem but one that is bigger than I think the Parliament or the public have probably recognised.

The Hon. ROSE JACKSON: Thank you for those comments. Thank you, witnesses, for your attendance this afternoon. It has been very useful.

(The witnesses withdrew.)

The Committee adjourned at 15:05.