

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

**INQUIRY INTO THE PROHIBITION ON THE PUBLICATION
OF NAMES OF CHILDREN INVOLVED IN CRIMINAL
PROCEEDINGS**

At Sydney on Friday 29 February 2008

The Committee met at 2.30 p.m.

PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. J. G. Ajaka

The Hon. D. J. Clarke

The Hon. G. J. Donnelly

Ms S. P. Hale

CHAIR: Welcome to the third public hearing of the Standing Committee on Law and Justice inquiry into the prohibition on the publication of names of children involved in criminal proceedings. Today the Committee will hear evidence from representatives from the New South Wales Police Force. Before we commence I would like to make some comments about aspects of the hearing.

The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing broadcast of the proceedings are available from the table by the door. In accordance with the guidelines, a member of the Committee and witnesses may be filmed or recorded. However, people in the public gallery should not be the primary focus of any filming or photographs. In reporting the proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses, members and their staff are advised that any messages should be delivered through the Attendants or Committee Clerks. I would also advise that under the standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by any member of the Committee or any other person.

Committee hearings are not intended to provide a forum for people to make adverse reflections upon others. The protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I therefore request that witnesses avoid mentioning other individuals unless it is absolutely essential to address the terms of reference. I ask everyone to please turn off their mobile phones for the duration of the hearing, including mobile phones on silent as they still interfere with Hansard's recording of the proceedings.

GARY ANTHONY CHARLESWORTH, Prosecutions Manager, Office of Prosecutor's Command, New South Wales Police Force, affirmed and examined, and

MICHAEL DAVID ANTRUM, General Counsel, New South Wales Police Force, sworn and examined:

CHAIR: Mr Charlesworth, are you conversant with the terms of reference for this inquiry?

Mr CHARLESWORTH: No.

CHAIR: I will therefore ask the Committee Clerk to provide you with a copy of the terms of reference. Mr Antrum, are you conversant with the terms of reference for this inquiry?

Mr ANTRUM: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. If you take questions on notice, the Committee would appreciate it if the response to those questions could be forwarded to the Secretariat by Monday 10 March. Do either or both of you wish to make an opening statement?

Mr ANTRUM: We will simply respond to the questions. I would indicate that the Commissioner of Police, Mr Andrew Scipione, thanks the Committee for the invitation, and I appear on his behalf this afternoon.

CHAIR: What are some of the ways in which a possible breach of section 11 of the Children (Criminal Proceedings) Act 1997 might come to the attention of police?

Mr ANTRUM: Typically, the way in which notice would come to the police would be through the young person themselves, or their guardian. It may be by an interested party, and quite often, as is the case with most children's proceedings, their involvement in the justice system is typically through their advocate, whether it be a legal advocate or other advocate. So their lawyer or other significant person might bring it to our attention, but any person with knowledge of the breach could bring it to the attention of either the police or another competent authority, such as the Director of Public Prosecutions.

The Hon. DAVID CLARKE: Mr Antrum, what steps do police take during the investigation and prosecution of a breach of section 11?

Mr ANTRUM: The steps that they would take would follow the normal steps that they would undertake in relation to any crime or breach. Typically, first they would assess whether or not there is any conflict, and if there is a conflict it may be necessary to refer the matter to elsewhere within the New South Wales Police Force. Once they have satisfied themselves as to whether or not a conflict exists, there would be an investigation, an assessment of the complaint and its bona fides, and a review of the facts.

It may be necessary to take statements. In relation to children, of course, one must be careful that the proper approach is undertaken and that the guardians are consulted. Once those statements have been taken there will be an assessment as to whether or not there has been a breach at law, and the matter can then be prosecuted. I know the Committee will be asking questions later about enforcement of section 11, and as to the proper carriage of those matters. It will be my submission this afternoon on behalf of the New South Wales Police Force that the carriage of those matters should typically be undertaken by the Director of Public Prosecutions.

The Hon. DAVID CLARKE: You would Act on any complaints brought to your attention, would you not?

Mr ANTRUM: The New South Wales Police Force does not act on all complaints, but those that have—

The Hon. DAVID CLARKE: You investigate them?

Mr ANTRUM: We certainly do, that is right.

The Hon. DAVID CLARKE: I think there were some comments by somebody from the Public Defender's Office on the last occasion. But you can only investigate what is brought to your attention, can you not?

Mr ANTRUM: That is right. I should add that on occasions it may be, for example, the officer in charge who themselves notices a breach and undertakes an action.

The Hon. DAVID CLARKE: Has the Public Defender's Office in the past 12 months, for example, lodged a complaint with you about a possible breach of section 11?

Mr ANTRUM: Not in the last 12 months, to my knowledge. I will defer to my colleague if I may.

Mr CHARLESWORTH: As the Manager of Children's Courts—and I have managed them for the past two years—I am not aware of any complaint from Children's Legal Services in relation to a breach of section 11.

The Hon. DAVID CLARKE: That is, over the past 12 months?

Mr CHARLESWORTH: Yes.

The Hon. DAVID CLARKE: What about the 12 months prior to that?

Mr CHARLESWORTH: None that I am aware of.

The Hon. DAVID CLARKE: Over the past five years?

Mr CHARLESWORTH: I was the Coordinator of the Children's Courts prior to that, and as the coordinator it has never been brought to my attention that there is a breach of section 11 or a requirement that witnesses be interviewed and so forth.

The Hon. DAVID CLARKE: We have a situation where this was raised by a representative of the Public Defender, about matters not been investigated, but as far as you are aware they have never even raised any complaints with your department, is that right?

Mr CHARLESWORTH: Not with me as the Coordinator of the Children's Courts nor as the Manager of the Children's Courts.

The Hon. DAVID CLARKE: Has any other department or body raised with you breaches of section 11—that you are aware of?

Mr CHARLESWORTH: No, not to my knowledge.

The Hon. DAVID CLARKE: Unless somebody in your department through their own observations comes across a breach, you have no information to act upon?

Mr ANTRUM: That is correct.

The Hon. JOHN AJAKA: I want to go back a few steps. Is your position that section 11 in the current legislation should remain as it is without any alterations or do you feel that certain aspects of it could be amended for the benefit of the community, young persons or anyone else?

Mr ANTRUM: I think that the commissioner along with many other stakeholders in the justice system in New South Wales would be very interested in this Committee's deliberations and its findings. It may well be that this process identifies certain aspects that may be ripe for reform.

However, I can say that it is the position of the New South Wales Police Force that we support the operation of section 11. It is consistent with international standards relating to juvenile justice and the New South Wales Police Force is fully supportive of the objects of the juvenile justice system, which is rehabilitative rather than punitive. We understand that distinction and we understand why section 11 is there. We work very hard in relation to, for example, media disclosure to try to observe its requirements.

The Hon. JOHN AJAKA: You are aware, of course, that section 11 does not come into effect until a person is charged?

Mr ANTRUM: That is right.

The Hon. JOHN AJAKA: What is the view of your department in relation to section 11 being extended to instances prior to a person being charged—initial inquiries, initial investigation, even at time of arrest of a young person prior to an actual charge being laid? Do you feel that there is scope for section 11 to be extended to cover those situations?

Mr ANTRUM: I think, philosophically, there would be some consistency in extending it to prior to the charge, however, its practical application then would be very, very difficult.

The Hon. JOHN AJAKA: That is what I would like to hear; could you expand on that?

Mr ANTRUM: I will. There would be a lack of certainty as to when section 11 then crystallises. Investigations sometimes are very lengthy processes. Sometimes there might just be initial inquiries by an officer in charge. There may not be an investigation proper at that stage, but it is part of the evidence gathering, it is part of the daily work of police officers. I think my colleague and I would fear that were it to be extended, that lack of certainty would doom it to failure. I think that would be the concern. We have the same issues in relation to sub judice-type issues. We try to protect the identity of persons whenever there is a real or concrete likelihood of proceedings being on foot. I think that most players in the juvenile justice system would try to protect the identity of a young person where a charge has not been laid but where one is likely. As a legal practitioner I would not support its extension.

The Hon. JOHN AJAKA: There was the possibility of a conflict of interest arising in situations of police undertaking investigations of a breach of section 11. For example, you have a normal situation where the officer in charge of police charges a young offender. Of course, the police officer's job is to ensure that all the appropriate facts are brought before the court and, of course, if an offence has been committed, for a conviction to be secured and so on. A young offender starts lodging a complaint against the police officer. All of a sudden the police officer becomes aware that there may be a breach of section 11 and then is given that wonderful situation where on the one hand he is helping to prosecute the young offender and on the other hand he is suddenly looking after the interests of the young offender and a breach of section 11. Do you see that there is the possibility of any conflict in that situation, as far as the investigation is carried out?

Mr ANTRUM: Yes. I think there would be a conflict there. And the conflict arises not so much that there may be an actual conflict; most police officers are very aware of their duty and requirement to uphold the law. The actuality of it may be that there is no conflict but, of course, conflict is also about perception. The community, particularly when it comes to juvenile welfare, I think may have a perception that there is a conflict there and we would be keen to avoid that. Hence our suggestion that these are matters that might more properly be referred to the Director of Public Prosecutions.

The Hon. JOHN AJAKA: But the Director of Public Prosecutions will not want to get involved in the initial investigation, the gathering of statements?

Mr ANTRUM: No.

The Hon. JOHN AJAKA: So would the answer then be that another police officer, who is not in any way associated with or connected with the initial investigation, the initial prosecution of the young offender, suddenly would have the new matter, the breach of section 11, to carry out the

investigation and to keep it at arms-length from the officer in charge of police and other officers associated with it? Would that be a form of remedy?

Mr ANTRUM: That is the approach we would take. Indeed, not just to another officer. We may in fact move it to a different command so that we can clearly identify that there has been distance between the original officer and the subsequent investigating officer—Chinese walls, if you like.

Ms SYLVIA HALE: You said that lack of certainty made things difficult for the police. Given that the main prohibitions would fall on the media—it is the media we are anxious to restrain, presumably—why would you think that lack of certainty would be a factor? Could there not be a complete blackout on naming a child in particular circumstances?

Mr ANTRUM: Yes. The lack of certainty I was referring to would be: when is the child the subject of proceedings or the subject of an investigation? It may be that initially they are a person of interest. It may be that they simply are assisting police with their inquiries. In all those situations they might be covered by section 11. My concern would be, to use one practical example, that the definition of "publishing" or "broadcasting", but particularly publishing, is quite a wide one. Taken to its extreme, it could prevent an officer from making legitimate inquiries with witnesses using that name. So, we would say that certainly there would need to be a law enforcement exception. But the lack of certainty is: when does section 11 kick in? That would be the concern.

Ms SYLVIA HALE: You talked about law enforcement exception or a narrowing of the definition of publication?

Mr ANTRUM: Yes.

Ms SYLVIA HALE: When it is dealing with a young offender?

Mr ANTRUM: Yes.

Ms SYLVIA HALE: When is it beneficial to publish the name of a child prior to laying charges? In this instance I am using "publish" in its most general sense.

Mr ANTRUM: My colleague and I had a good discussion about this some days ago in preparation for this Committee meeting. We were trying to think about instances in which it would be beneficial—using beneficial in the sense of beneficial either for the child or in the public interest sense. For example, it might be beneficial if the child had absconded and was in the company of known persons who were perhaps known sexual offenders or known violent offenders. They might have been in company and we hold grave fears for their safety. So, they have gone missing, they are perhaps with other persons. We are very aware of some aspects of the media that tend to demonise children and juvenile offenders, but putting that to one side, there would be those rare exceptions where the young people are quite capable of inflicting grievous bodily harm on others and it might be in the public interest for them to be aware of that danger and that threat. I legal all of the media going out of New South Wales Police and I have never made that exception. We always protect the identity of young persons.

Ms SYLVIA HALE: You gave the instance of a child absconding. Presumably, in that instance members of the public would be more assisted by a very detailed physical description of the child than actually knowing the child's name?

Mr ANTRUM: Yes.

Ms SYLVIA HALE: Similarly, if the child was likely to be violent?

Mr ANTRUM: That is right, although with a number of services you need to give your name. So they may come to notice by going to a Centrelink office or by going to a bank or whatever. The name is part of the identification.

Ms SYLVIA HALE: But the incidences where this would be necessary would be quite infrequent?

Mr ANTRUM: I absolutely agree.

Ms SYLVIA HALE: If one was to balance the benefits against the non-benefits, and presumably the long and short-term impacts on the child, do you think those benefits are sufficiently great to prevent one extending the period in which the prohibition exists?

Mr ANTRUM: I think that given the rarity and the unlikelihood of those circumstances, the current position of the New South Wales Police Force is that section 11 does not need to be widened or extended. There may be circumstances. The section already allows a court, for example, to permit identification but that is usually while the proceedings are on foot and before the court. We support section 11 in its current form.

The Hon. GREG DONNELLY: We heard evidence from the Director of Public Prosecutions at an earlier hearing. He explained that part of his process from time to time had been corresponding with media proprietors to raise his concerns about possible breaches of section 11. As a matter of course is the New South Wales Police force informed about those actions taken by the DPP from time to time?

Mr CHARLESWORTH: In relation to an informal approach to a media outlet?

The Hon. GREG DONNELLY: Yes.

Mr CHARLESWORTH: Or some formal—

The Hon. GREG DONNELLY: Well, it is formal in the sense that the letter goes off raising the issue and then it is up to them to respond as they see fit. Do you come to hear about this correspondence and the initiatives of the DPP?

Mr CHARLESWORTH: I am not aware.

CHAIR: It is about when there has been a breach?

The Hon. GREG DONNELLY: Yes.

CHAIR: The DPP's process?

Mr CHARLESWORTH: I am aware of instances where the Director has sought an investigation into a breach but as for your question as to whether we are aware of a letter that would be sent prior to any investigation, I am not aware of those circumstances.

The Hon. GREG DONNELLY: Is there any formal communication between the DPP and the New South Wales Police Force specifically about these issues so that you are aware when a matter is being pursued?

Mr CHARLESWORTH: The information I have from the prosecutions that have been undertaken is that these prosecutions are initiated on the impetus of the DPP. They seek an investigation by the New South Wales Police in relation to a particular breach.

The Hon. GREG DONNELLY: Turning to the issue of the questioning of young people in regard to matters that are dealt with on a day-to-day basis by the police. In the discussions that take place with the young people in terms of questioning, are the young people informed about this issue of section 11 and its implications? Does that form part of the normal dialogue with young persons as part of the process of the investigation?

Mr ANTRUM: To my knowledge, no, it would not be. Of course the practice of individual officers in the field is varied. There are many aspects of legislation that touch upon a young person's involvement in the justice system and I think to go through each of the possibilities and potential legislative hooks would take a number of days. It is usually a busy day and I think there are a number of very strident requirements on police officers when dealing with young people that they must

follow, of course, in relation to questioning—I think top of mind would be their compliance with those aspects. Breaches of section 11, as this Committee would know, is not something that is brought to the attention of the Bench very frequently and therefore if it is to become a matter of greater import—and that is not to suggest that it is not important now—then some further standard operating procedures should be communicated to our officers.

I would like to raise an issue that is related to that. It is quite a different kettle of fish for an officer dealing with a section 11 breach than it is, say, on your standard assault, break and enter, and for a matter of violence. It often involves the prosecution of a corporation and that is not something that a constable usually deals with, in terms of having to mount a prosecution against a corporation. It requires careful consideration as to who the directors are, as to what the corporate entity is and whether you proceed against an individual, a corporate entity or both. These are issues that are a little bit more complex than just determining that it was this particular young person that broke into a dwelling. That might be part of the reticence to proceed down that line. That, as I say, sits more properly with the DPP who have more experience in dealing with corporate entities as defendants.

The Hon. DAVID CLARKE: Returning to a couple of matters I raised earlier. With regard to breaches of section 11, I guess you would be saying that it is not the job of the police department to be going out there and finding instances of a breach of section 11? That is not really your job, is it, unless you are confronted face on with an apparent breach and then you will act? I mean the same as a bank robbery, you will rely upon information being brought to you unless the police happened to be there at the time the bank was being robbed and then, of course, you do not need a complaint to act upon?

Mr ANTRUM: No, that is right. You are absolutely correct that it needs to come to our attention in some form. However, we do have a law enforcement obligation and if it were that the officer in charge, himself or herself, became aware of that breach—and always allowing for the trials of the day and what else is happening—that might be a matter that they institute of their own accord.

The Hon. DAVID CLARKE: That would happen from time to time?

Mr ANTRUM: It happens every day when something comes to the attention of a police officer and they commence the prosecution of their own accord. I would go back to my earlier comment that there may be a lesser familiarity with a breach of section 11 than there would be with an offence of violence.

The Hon. DAVID CLARKE: It is really not your job to have officers of your department listening to radio commentators, watching the television news, reading all the newspapers and scouring around for possible breaches?

Mr ANTRUM: That would certainly be my advice. It does not assist us greatly to spend our days worrying about a media-driven agenda. We have our own requirements and community expectations, and the requirements of this Parliament and the legislation. However, we do not exist in a vacuum and, like all sophisticated agencies, we will take notice of that. We do find, and I think the New South Wales Police Force have demonstrated in the past, that we will take action where anybody—no matter what their station in life—seeks to flagrantly breach the law and we will address those issues as quickly as we can.

The Hon. DAVID CLARKE: If you have a police officer handling a case and he is confronted with such a situation, he will draw it to your attention. Other bodies who you would assume would come across these breaches, such as the Public Defender's Office and Legal Aid—who would particularly be in a position to come across possible breaches when they are acting for young persons—you tell us that you have not been receiving any complaints from them. You have not been receiving any complaints from the Public Defender's Office or from Legal Aid about possible breaches?

Mr ANTRUM: Not to our knowledge in the recent history. We are aware of some prosecutions, and those complaints may have gone elsewhere.

The Hon. DAVID CLARKE: If there were cases, from your memory, they would be very infrequent complaints.

Mr ANTRUM: They are very infrequent.

The Hon. JOHN AJAKA: Could I summarise it in this way, if I may: my understanding is that possibly you would like to see the situation, if there has ever been a breach, that it should be immediately brought to the attention of the Director of Public Prosecutions first, and the Director of Public Prosecutions could then determine to proceed with the matter and, if necessary, contact your department to carry out the investigation. Once the investigation is carried out it would then go back to the Director of Public Prosecutions who would then act on the matter of the prosecutorial sense.

Mr ANTRUM: That, to me, would seem to be an efficient approach and a realistic approach to dealing with breaches of section 11.

The Hon. JOHN AJAKA: If that were to occur, we would need to get the message out, if I may use that expression, to all the relevant police officers, the Public Defenders Office and Legal Aid and the public generally, that if they are aware of a breach, it should be immediately reported to the Director of Public Prosecutions.

Mr ANTRUM: The New South Wales Police Force would strongly support that collective approach and it goes back to the honourable member's suggestions a few minutes ago. This Committee has had many eminent child advocates, for example, address it. They are in a very good position to notice these breaches and to bring them to attention.

The Hon. JOHN AJAKA: The first port of contact, so to speak?

Mr ANTRUM: That is right. I should add that the New South Wales Police Force, if it became aware, notwithstanding that there were some protocol that it should go to the Director of Public Prosecutions, would certainly still accept the complaint.

The Hon. JOHN AJAKA: The reality is that if police officers as a whole are aware of this and all of the various Public Defenders and Legal Aid, et cetera, are aware of this, it should be a rare occurrence that one would slip through the net. Someone would be immediately aware that their publication is reported to the Director of Public Prosecutions, and the Director of Public Prosecutions would then take the next step.

Mr ANTRUM: One would hope so.

The Hon. JOHN AJAKA: Looking at it from the police investigation point of view and listening to what you have said, yes, clearly an investigation into a breach of section 11 would require a different set of skills than your police officer carrying out an investigation on an assault matter, one would assume. Would it be prudent for the police department to have a specialised squad that would deal with areas such as a breach of section 11 where the Director of Public Prosecutions could correspond directly to them without having to go through too many channels? Of course, that takes it away from the officer in charge of case having to examine it.

Mr ANTRUM: Sir, I have not had the opportunity to confer with the commissioner on a particular point, but I can say that in my own musings on what area might undertake that kind of inquiry within the New South Wales Police Force, I suggest that it would be within my own area, which is the Office of General Counsel. We could assist. Because it is so much like a civil case, we could assist in the compiling of that information.

The Hon. JOHN AJAKA: That was to be my next question. Should your department be the appropriate starting point?

Mr ANTRUM: How far are we off budget estimates at the moment?

The Hon. JOHN AJAKA: This is colleague to colleague.

Mr ANTRUM: I think it would be a natural home for those kind of investigations. We do have the expertise, and also the external expertise, if we need to get them in, to ensure that a prosecution, and that investigation, is conducted professionally.

The Hon. JOHN AJAKA: We have had a submission that section 11 should be moved or watered down to no longer apply to 16 to 18 year olds where the prohibition should be removed as far as 16 to 18 year olds are concerned. That seems to be broken down into two components. Some are arguing that we should only remove it in relation to what you understand to be serious and indictable matters whereas some are arguing that, no, the prohibition should be removed completely on all matters. Does the department have a view on that?

Mr ANTRUM: In relation to whether the age should be reduced from 18 to 16?

The Hon. JOHN AJAKA: And whether it should be reduced only for indictable matters or for all matters.

Mr ANTRUM: There is already a distinction, of course, with respect to serious indictable matters allowing a court to make an order, but the general position of the New South Wales Police Force is that we should remain consistent with international standards. The Convention on the Rights of the Child describes a child as being any person under the age of 18 years. We think that that is probably the best basis and the best position from which to start.

CHAIR: I have just two questions in relation to person of interest. One is about how somebody becomes a person of interest. The second question is: of what use to policing is notifying publicly the name of a person of interest?

Mr CHARLESWORTH: A person of interest is merely a person who rises as a name out of an investigation, perhaps in an investigation of a robbery—Jimmy Jones was seen outside. He is a juvenile. That person becomes a person of interest to the investigation. Some further investigation will be made of Jimmy Jones as to whether he was there by happenstance, whether he was lookout for the robbery crew, and things of that nature. They become a person of interest. They may well develop into a suspect or perhaps they may develop into a witness. That is the police terminology for a person of interest.

CHAIR: And what about the usefulness or otherwise of the naming of a person of interest to policing itself? Is that too convoluted? Is it useful to be able to know that you can name a person of interest who is a juvenile? Is it useful to policing? How is it useful?

Mr CHARLESWORTH: To police, for policing purposes?

CHAIR: Yes. How?

Mr CHARLESWORTH: Internally, as an example, frequently we have Nemesis messages that go out statewide, "Keep a lookout for". It may well be that Jimmy Jones had absconded and you have to publish it, "Make known to another, keep a lookout for Jimmy Jones, has relations in Coonamble, Moree"—anything like that, just for those sorts of purposes, to advise police statewide that they are looking for him and he is a person of interest in relation to the aforementioned robbery incident.

The Hon. JOHN AJAKA: How does prohibiting publication of Jimmy Jones's name in newspapers or media prevent police officers internally, with other police departments, from saying, "Keep a lookout for Jimmy Jones"? That is where I have a difficulty in understanding. If there is a complete prohibition on the media from in any way publishing, et cetera, it still does not stop a police officer from saying to a colleague or to another department—

CHAIR: Or from it being sent through the system.

The Hon. JOHN AJAKA: "Keep a lookout for Jimmy Jones"—or through the system. I do not see how that is a publication, unless I am misreading the Act.

CHAIR: We are not getting at you. This is a part of what we have to know.

Mr ANTRUM: Yes.

Mr CHARLESWORTH: Yes.

The Hon. JOHN AJAKA: I am getting confused, to be honest.

Mr ANTRUM: It does come down to the definition of "publication". I think we have strived to try to find—and perhaps Mr Haesler SC when he was before this Committee might have addressed this issue—but I think we do need to be careful about defining "publication" only in terms of a media publication. "Publication", of course, in defamation law can simply be me saying to you that Jimmy Jones, using that fictitious name I hasten to add, is a violent person. That is what we are grappling with and why we are concerned about any extension of it prior to a charge. To be quite frank, the fact is that, of course, policing would come to a stop if that extreme interpretation of section 11 was applied even today or in the future. We simply could not operate if we could not get on the VKG and say, "Jimmy Jones is now heading down the M4". So, practically speaking, I think the intent of the legislation would not be that police were not able to use it internally for legitimate law enforcement purposes.

The Hon. JOHN AJAKA: You are saying that there is a possibility or a concern that police on the radio mentioning names could be deemed to be a breach of section 11 if it was brought forward?

Mr ANTRUM: That could be the case, without clear drafting.

The Hon. JOHN AJAKA: As to what the publication means?

Mr ANTRUM: As to what it means.

CHAIR: The definition.

The Hon. DAVID CLARKE: It would virtually make your job impossible?

Mr ANTRUM: It would.

The Hon. JOHN AJAKA: Without a proper definition to exclude those situations, that clearly cannot be applicable from a practical sense?

Mr ANTRUM: That is right, and I think the timing issues would be a definite drafting challenge.

CHAIR: The reason this issue has come to the Committee's attention for feedback relates to the fairly recent occurrence of publication in the extreme of the identity of a young person in Victoria until charges were laid and the strange effect that had on the young person. That is one reason why this issue has been brought to our attention and why we are looking at it as it relates to our terms of reference.

Mr ANTRUM: I can understand that in the context of blogs and the nature of young people who are very adept and savvy with the new technology to publish their own names, this then gets into issues of implied consent. But at the end of the day I still think there is a function of the law to protect the identity of young persons. It is one thing to have the audience of an individual blog or perhaps a youth audience. It is another thing to have the readership of the *Sydney Morning Herald* or the listeners of the ABC. We should be seen to be doing the right thing by young people in attempting to protect their identity.

Ms SYLVIA HALE: It was suggested to the inquiry that young people may shelter behind the protections offered by section 11. Do you have any view on that suggestion?

Mr ANTRUM: That is their right, just as people have a right to be innocent until proven guilty.

Ms SYLVIA HALE: "Sheltering" in the sense that they took advantage of it.

CHAIR: So that no-one would know.

Ms SYLVIA HALE: So that they would never be held up to public infamy and, therefore, were able to continue their nefarious ways.

Mr ANTRUM: I think that misapprehends the basis of the juvenile justice system. Again, it is a system designed to rehabilitate rather than to punish. The deterrence function of punishment as it exists in the adult system is not applied in the same way as it is in the juvenile justice system. There is a start point, of course, once they turn 18 where it all becomes very different. I think that the Children's Courts are very aware of the need to perform that function. I think hiding from public infamy and those sorts of things are really not relevant in this context.

Ms SYLVIA HALE: I had the opportunity to talk at some length with a former police officer who had a great deal to do with people involved in child sexual assault, whether they were perpetrators or victims. He was very strongly of the view that the ability to assure children that their confidence would be maintained often assisted investigations. He was also of the view that the prohibition on publication should be extended to the period prior to charges being laid. Do you have any comments on the importance of confidentiality during that period?

Mr ANTRUM: I see my colleague, Inspector Charlesworth, nodding to that, and I know it is the case that confidentiality in any relationship like that is vital. It may assist the young person to participate more fully in providing information and to perhaps even enter an early plea of guilty, if in fact they are guilty, because they have the protection. So it encourages participation within the system. We have youth justice conferencing as well, those different facilities. I would agree with the view that it might encourage a more candid response to the officer. What was the second aspect of your question?

Ms SYLVIA HALE: The benefits of extending it.

Mr ANTRUM: Again, I can see that there is some consistency with this philosophical position in extending it. But I do have concerns about when does the investigation start. For law to be effective it must be certain. We have a point now under section 11 where we know when the proceedings have been commenced when there is a charge that is when it starts. We are able to say with certainty that there has been a breach or not in accordance with section 11 being invoked. I would be concerned that taking it any further without very careful drafting could create problems in operational policing terms of the sort that we have just discussed and it may fail for lack of certainty.

CHAIR: We see frequently in our newspapers press statements such as, "Police are currently talking to the fictitious Jimmy Jones who is a person of interest." I am moving away from your example of a person of interest to the police where police need to talk to each other to assist in catching or protecting that person and refer to the example of statements we see in newspapers, such as "The police are talking to fictitious Jimmy Jones who is a person of interest." I recognise the issue about definition, to which the Hon. John Ajaka referred. That is issue we are trying to address out of the evidence and submissions we have received so far.

Mr ANTRUM: I can say with 98 per cent confidence that I see most of the media releases released by our own media unit. Wherever it involves a juvenile we de-identify it. We do not refer to a name. Even when there are no proceedings afoot and even when it is at a very early stage of the investigation we de-identify it. There might be the odd one or two that gets out late at night that I do not see. But generally that would be our position. Of course, we do not write the content, thank heavens, for the *Sydney Morning Herald* or the *Daily Telegraph*. As to their approach, they might take a different view on how far section 11 extends.

CHAIR: In fact, it does not extend.

Mr ANTRUM: It does not extend to that point, but we extend it.

CHAIR: You are being honourable in your department.

Mr ANTRUM: Yes.

The Hon. JOHN AJAKA: I am concerned that there is nothing to prevent a newspaper from publishing the name of Jimmy Jones—the fictitious name we are using—and his photograph and saying that police are seeking him, he is being interviewed by the police or he is a person of interest. That could continue for a day or two or three, and absolutely no charges have been laid in any form. Jimmy Jones may even be arrested and the newspapers can report the fact that he was formally arrested. Then all of a sudden a charge is laid and the newspapers cease to publish those matters. But it is a situation of the horse bolting and the gate suddenly being closed. I have seen a number of those situations. Are you aware of many such situations where the police have acted honourably, they have tried to ensure that that type of publication does not occur in all their press releases, but they have no control over what the media publishes?

Mr ANTRUM: It is a common refrain that I hear, "Come on, it is already out there. People already have the name. You can give us some more." There is a lot of pressure on our public affairs area, on our officers at the local area command level and on the legal officers. They say, "The horse has bolted, you have got nothing to lose now. You might as well give us a little bit more information or confirm the identity." We never do. It might seem a bit silly in the circumstances, but we do not want to be a party to that.

The Hon. JOHN AJAKA: The point I am trying to make is that the young person is charged, there is no more publication, then the young person is found not guilty. Unfortunately, the damage has been done to the young person. How do we rectify the situation and prevent that initial damage, particularly taking into account that a person is innocent until proven guilty?

Mr ANTRUM: I might go back to my first comment, which was that the Commissioner is very interested in the deliberations of this Committee and its findings, as am I. If it were considered that it could be extended or that there was some mechanism by which it might be extended which did not impact upon operational policing and which did provide some certainty—and that is what I am grappling with—but if that were possible, then certainly I think the New South Wales Police Force would be happy to be involved in any discussions around drafting that legislation and amendments to section 11. It is not something that we would oppose per se, and I understand this Committee's concerns about the disjuncture between pre and post charge. I am just wondering how it might be drafted, that is all.

Ms SYLVIA HALE: Would it be possible to go down the avenue of reversing the onus of proof, putting the onus upon the media? Clearly, it would, I would think in that context, be easy for the police to always—what do you do with an onus of proof? You discharge it, do you?

Mr ANTRUM: Discharge the onus of proof.

Ms SYLVIA HALE: But then that would put, it would seem to me, greater weight and greater pressure upon the media to refrain from publishing even prior to the charge being laid. Is that a feasible approach?

Mr CHARLESWORTH: Philosophically, putting a reverse onus on a "defendant" or "accused" is foreign to law in this State.

Ms SYLVIA HALE: Not all laws, I can assure you.

Mr CHARLESWORTH: In the criminal justice sphere. And what we are talking about is a breach of—

Ms SYLVIA HALE: But this would be a civil matter, would it not?

Mr CHARLESWORTH: No. It is a crime.

CHAIR: It is a crime. That is why there is debate between the DPP and the police about who will do it.

Mr CHARLESWORTH: And that is just foreign to the idea of law.

Ms SYLVIA HALE: Yes, I can see those problems.

CHAIR: It has been good to have you here today. I will do something somewhat odd for a Committee behaviour, but if there are further ideas and consideration that you or your department would like the Committee to consider, we would be very grateful to receive those by 10 March. I recognise a lot of the questions we have put to you need to go back to your organisation for discussion for an answer. We would be grateful for your input. I am sure the Committee agrees that that is a good resolution.

The Hon. JOHN AJAKA: Any views or if I can call them recommendations in relation to if section 11 is to be extended, the practical scope in relation to police investigations. One could automatically say, "Extend section 11 to only apply to newspapers, radio and television. That would not in any way hinder the police." Anything of that nature would be of enormous help.

Mr ANTRUM: That discussion has been helpful and we will respond with respect to that particular issue on extending the period.

CHAIR: As well as that, some discussion on sharing between other service organisations. I guess the topical one of the moment relates to the fire services—the question of section 11 and names being shared amongst the police and the fire services. It would be good to have consideration from your organisation on that issue.

Mr ANTRUM: Presumably in relation to arson.

CHAIR: Arson, yes.

(The witnesses withdrew)

(The Committee adjourned at 3.23 p.m.)
