

**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**CHILD EXPLOITATION MATERIAL AND CLASSIFICATION  
LEGISLATION AMENDMENT BILL 2009**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 9 SEPTEMBER 2009**

**SESSION TWO**

**Members**

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

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**Hearing commenced at 1.31 pm**

**SEIVWRIGHT, DETECTIVE INSPECTOR DARREN**  
**WA Police Sex Crime Division,**  
**WA Police,**  
**sworn and examined:**

**The CHAIRMAN:** On behalf of the committee I welcome you to the meeting. Before you begin we need to ask you to take either the oath or the affirmation.

[Witness took the oath.]

**The CHAIRMAN:** Please state the capacity in which you appear before the committee.

**Det.Insp. Seivwright:** I am here as detective inspector of the WA Police sex crime division, which undertakes inquiries into the subject matter of this hearing.

**The CHAIRMAN:** You have signed a document entitled “Information for Witnesses”. Have you read and understood the document?

**Det.Insp. Seivwright:** Yes, I have.

**The CHAIRMAN:** Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones; speak into them and avoid covering them with any paper, tapping them or making too much noise next to them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. I emphasise that even if no-one else is here, you still need to do that if you want the hearing to be in closed session. Please note that, until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is no longer subject to parliamentary privilege.

Is there any opening statement you would like to make to the committee?

**Det.Insp. Seivwright:** No, we can proceed.

**The CHAIRMAN:** Thank you. You heard most of the hearing with the witnesses from the Department of the Attorney General, for the record. As I have explained to you, we will not go through exactly the same series of questions, but those for which you can provide some evidence to the committee. We did have a discussion in relation to the definition of child exploitation material. We have noticed there has been a change in terminology from “child pornography material” to “child exploitation material”. Can you provide any comment to the committee about that and whether you are confident that the child exploitation material definition is broader and encompasses child pornography as well?

**Det.Insp. Seivwright:** Sure. The term “child exploitation material” has been adopted nationally. Child protection Australia-wide is dealt with in a policing sense by having representatives from each jurisdiction and New Zealand as part of ANZPAA, the Australian New Zealand Police Advisory Agency Child Protection Committee. They meet at least twice yearly, and there they come to particular resolutions about how to deal with child protection in each of their particular jurisdictions. The term “child exploitation material”—I am fairly sure Frank may have quoted me in

his explanation for why we want to use that term and move away from the term “pornography”. Pornography, in the sense that most people understand the word, involves sexual activity generally between consenting adults, and with those adults understanding that they are being recorded either in still images or in film and that those images or that film may in turn end up becoming public. On the other hand, every piece of child exploitation material, every image and every video is a contact sex offence being committed against the child. Therefore, we are wanting to move away, and the ANZPAA CPC has resolved to move away, from the term “pornography” and use the term “child exploitation material”. That, in a nutshell, is how we arrived at that terminology. We are satisfied that it encompasses the necessities for a policing purpose.

**Hon LIZ BEHJAT:** This is asking for an opinion, and I know it is policy: would it sit uncomfortably if, for instance, the title of the legislation were to be amended to include “pornography” in the title of the bill as well as “exploitation”?

**Det.Insp. Seivwright:** Yes, it would sit uncomfortably with me.

**Hon LIZ BEHJAT:** For those reasons just outlined?

**Det.Insp. Seivwright:** Yes.

**Hon LIZ BEHJAT:** You accept that, from a public point of view, people do understand the term “pornography” but do you understand that it may require quite a comprehensive educative process to let the general public know that “child exploitation” is broader terminology than “pornography” and does not diminish the seriousness of the offence; in fact it emphasises it?

**Det.Insp. Seivwright:** I agree with that. I think the educative process has started. I was the instigator of this amendment bill back in the first half of 2008. The reason I undertook that body of work was to start that educative process. I think the first thing we need to do in that educative process is to remove the term “pornography”. Once the bill, if it goes through in its current form, becomes the Child Exploitation Material and Classification Legislation Amendment Act, on every occasion we prosecute an offender for committing offences against the act, we can say we have charged them with possession of child exploitation material; whereas at the moment the terminology is “possession of child pornography”. For me, this is the start of the educative process for the public.

**The CHAIRMAN:** You heard earlier the committee raise some concerns about a number of terms used in the bill and the lack of prescription or definition for those terms. Could you provide the committee with any comment you have about whether we need greater prescription in the bill about a range of terms that are used?

**Det.Insp. Seivwright:** Does that refer to question 4?

**The CHAIRMAN:** Questions 4 and 7.

**Det.Insp. Seivwright:** With respect to question 4, I do not believe the terms require more definition. With respect to what is “reasonable”, the court often makes decisions on what is determined to be reasonable or not. For instance, possession of a weapon and unlawful possession of property are both situations in which, if an accused person comes up with a reasonable excuse they may be acquitted. In policing sense, we generally apply the dictionary meanings to them as well as look at the circumstance under which we are alleging the offences may have been committed. With respect to child exploitation material, if there is a line-ball image to what may be reasonable and may not be reasonable, almost exclusively, there are other images there that are definitively child exploitation material, so it does not become an issue. It would become an issue if there was perhaps a line-ball image and it was a single image or a group of line-ball images. In that case, we would either go to the DPP for an opinion or make our own decision not to prosecute.

**The CHAIRMAN:** As a police officer, in determining whether to prosecute a matter, obviously you would be required to weigh up whether it is in the public good to do so. I am interested to know

how you go about balancing artistic merit with public good, particularly in relation to Bill Henson photographs that were taken of a naked child.

**Det.Insp. Seivwright:** To be frank, we do not have a lot of experience in the area with artistic merit. We do not generally investigate those types of cases, so it is difficult. The Bill Henson one, of course, got some publicity. It was in my view child exploitation material, but that is the policeman in me talking.

**Hon LIZ BEHJAT:** When you say you do not get the chance to —

**Det.Insp. Seivwright:** No, we are not presented with investigative situations such as that

**Hon LIZ BEHJAT:** Is that because people are not referring it to you?

**Det.Insp. Seivwright:** Exactly. Having said that, very soon after the Bill Henson incident we got a call from someone who wanted to report something that was in the city art gallery. We went down and had a look at it and determined that it was not. We have had very limited exposure to those types of investigations.

**Hon LIZ BEHJAT:** If you have limited exposure, what expertise did you use to determine that?

**Det.Insp. Seivwright:** We did not use any expertise because we do not possess any. We do not do that type of business enough to provide ourselves with any expertise.

**The CHAIRMAN:** You just exercised the standard police discretion you would in deciding to prosecute on any matter?

**Det.Insp. Seivwright:** Even before we would go to the DPP, we ourselves balance the public interest, likelihood of conviction, potential defences and things like that prior to even starting a prosecution.

**Hon LIZ BEHJAT:** It is very hard from an artistic point of view because what one person considers to be art, someone else might consider complete rubbish.

**Det.Insp. Seivwright:** I am unaware of any situation where it has been tested in the courts, so we do not have any case law decisions, which is usually our guide, particularly with new legislation. Although this is new legislation, it is really taking from one act and putting it into another; namely, the Criminal Code where it belongs.

**The CHAIRMAN:** If you do not want to answer this question tell me, but do you think it is appropriate that artistic material is actually a defence?

**Det.Insp. Seivwright:** No, I do not. I think nude photographs of children are not for public view. That is my personal opinion. I have photographs of my children nude. I would not put them in an art gallery. I would not put them on public display. I would not post them on a social networking site. I would not do anything like that. Maybe for a twenty-first birthday I would put them on a board so all the family can laugh at them, but that would be the extent of exposure I would give nude photos of my children or anyone else's children.

[1.45 pm]

**The CHAIRMAN:** Has WA Police formed a view on that, and did it provide that advice to government at the time this bill was being drafted?

**Det.Insp. Seivwright:** No, we have not formed a view, because we have not considered it. I guess that in the scope of what the amendment bill was trying to achieve, it was such a minute detail that it was not considered. However, I understand that in forming this legislation, some other eastern states legislation was considered. That is my understanding of it.

**The CHAIRMAN:** Are you aware whether that "artistic material" defence is being applied consistently across all the jurisdictions?

**Det.Insp. Seivwright:** I think the other jurisdictions are in a very similar situation to us. A case in point is Bill Henson, where the AFP, I think it was, went in and seized the pictures, and it then held them for a few days while it formed its opinion. So I do not think there are enough situations going on in our jurisdictions that we can use to form a solid opinion on this.

**Hon LIZ BEHJAT:** There was certainly a huge and diverse range of public comment as to whether it was or it was not.

**Det.Insp. Seivwright:** There absolutely was, including from the child and the child's parents, who were on the opposite side of my opinion, but then, being a child protection policeman, I would wonder whether those parents are doing the right thing by their child.

**The CHAIRMAN:** The committee has looked at the provisions in the bill before us, and clearly there is an exception in relation to prosecution of law enforcement agencies that might have in their possession material that could be considered to be child exploitation material for the purposes of lawfully going about their business. It seems to me that the term "law enforcement agencies" is very broad. Recently we have had situations reported in the media where police officers have been charged with being in possession of child pornography material. I am concerned that this provision may provide protection to police officers who have child exploitation material in their possession when that is not as a consequence of those officers lawfully going about their business.

**Det.Insp. Seivwright:** Based on the way the legislation is drawn, I tend to agree, because, as it is written now, if you are a police officer, that is all you need to be to have that defence; if you work for the DPP, that is the only defence that you need. At the time of drawing it up, I guess we did not fully consider the possibility of this, because in the normal course of business, if we have a police officer who has child exploitation material on his computer or has hard copy CEM, we would simply charge that person. However, the way this legislation is drawn up, I think perhaps there is room for a rider such as "in the execution of their duties", because we would not want to create a loophole. This also goes for child protection workers, which I guess you are going to ask me about shortly. We do not want to create loopholes that will let people who are committing offences get away.

**The CHAIRMAN:** So it was clearly the intention of the government, at the time of introducing the bill, that only people employed by law enforcement agencies and going about the lawful execution of their duties should be protected from prosecution under the bill—not anyone employed by a law enforcement agency who might be in possession of child exploitation material for their own personal gratification?

**Det.Insp. Seivwright:** That is right. Similarly, if one of my detectives who works in our online child exploitation squad was found with some child exploitation material on his home computer, he would be charged with that offence, as it stands now under the classification act.

**The CHAIRMAN:** Are you confident that, with the way this current bill is drafted, you would still be able to prosecute in those circumstances?

**Det.Insp. Seivwright:** No, but that is our own doing. That is my doing, because I did not look into it far enough, and I did not liaise strongly enough with our legal services people. So I would suggest now, looking at it, because this is the first time today that I have looked at that proposition, that perhaps there should be a rider to put the words "in the execution of their duties" at the end of each of those particular classes of worker—the police and the DPP, and the other one, CCC officers.

**The CHAIRMAN:** Okay. Would you be prepared to give an undertaking to the committee that you will go back and talk with your legal officers in the Police Service to get some legal advice on how this bill could be amended to ensure that we are not providing a blanket protection to all law enforcement agencies that might have child exploitation material, regardless of whether it is in their lawful possession or not, and come back to the committee with some written recommendations on that issue?

**Det.Insp. Seivwright:** Absolutely; I will do that. By Tuesday lunchtime?

**The CHAIRMAN:** Yes!

**Det.Insp. Seivwright:** No problem!

**The CHAIRMAN:** The other issue that the committee has a fair bit of concern about is the fact that this protection that is being afforded to law enforcement agencies has not been extended to child protection officers, and also medical officers, for that matter.

**Det.Insp. Seivwright:** Medical officers? That is one of the defences.

**The CHAIRMAN:** Yes. You are right. It is not an exception. It is a defence. So I withdraw that. We will just refer to child protection officers. The committee is concerned that a child protection officer may in the lawful performance of his duties find himself in possession of child exploitation material, either for education purposes, for training, or for whatever reason. It would seem to me that there is no protection provided to them in this legislation in the nature of the protection that is provided to law enforcement agencies. Can you provide some comment as to why that same protection has not been extended to child protection officers?

**Det.Insp. Seivwright:** Sure. An exception for child protection workers was considered. However, I must say that in the two years of this specific crime type that I have been involved in, plus 22 years of other policing, I have not experienced a child protection worker being in possession of child exploitation material. You need to understand that the likelihood of that happening is so small that it would not warrant, in my view, special mention in the legislation. Again, we were just discussing blanket protection for police and DPP and the like. I would not be a proponent of providing a blanket protection for child protection workers, because that may have the unintended negative consequence of providing employees of perhaps the DCP who are charged with possession of CEM or distributing CEM with a loophole that we would then need to navigate through the judicial process. To my knowledge, there is no other state that provides that protection. The practical application of it is very similar to the situation of a child protection worker who went to a particular home and discovered a bag of cannabis, for instance. The child protection worker would then be faced with two options—either collect the cannabis to prevent harm to the people in the home, or leave the cannabis there and potentially, as a child protection worker, neglect his or her duty. The worker would, of course, pick up the cannabis and drop it off at a police station. Under no circumstances would it be the case for that child protection worker—if it was done in a reasonable amount of time, and it was handed to the police—that a charge would be preferred. We see that as being the same with child exploitation material.

**Hon LIZ BEHJAT:** Would you agree that now that “child exploitation material” is much broader in its interpretation than just “child pornography”, the circumstance could arise quite legitimately in the future where a child protection officer was in possession of material that you might not consider to be pornographic—for instance, material written about a child that might in some way demean or demoralise that child—but that might now be child exploitation material? It is not material of a sexual nature, but it is exploitation, and a child protection officer might, quite rightly, come into possession of that material. Would that officer then be committing an offence under the act?

**Det.Insp. Seivwright:** Yes, he would be, but would he be charged, no, he would not be.

**Hon LIZ BEHJAT:** But that is subjective, and we are relying, then, on not everyone being as experienced as you.

**Det.Insp. Seivwright:** Sure. I hear what you saying, but the practicality of it is that in the normal course of business, these situations would not occur, because we would —

**Hon LIZ BEHJAT:** They have not occurred, because the definition has been very narrow. We have to look to the future, and bearing in mind also the way that the technology is rapidly expanding —

**Det.Insp. Seivwright:** I hear what you saying, but I still see more negatives in providing child protection workers with that blanket protection than I see positives. I hear exactly what you are saying, and you are correct. However, if you provide a blanket protection, there is a greater chance that that will be exploited by people committing offences than there is that people will be exposed by the potential flaw in the law that exposes them to committing offences.

**The CHAIRMAN:** Are any guidelines currently in place to guide police officers in exercising their discretion on whether to charge in relation to child exploitation material?

**Det.Insp. Seivwright:** Not in relation to child exploitation material specifically, but in general terms, yes.

**The CHAIRMAN:** Would it be reasonable for the police commissioner—or whatever the process is within the Police Service—to prepare guidelines that would encapsulate some understanding of the nature of the duties of a child protection worker and the fact that there may be circumstances in which that person might lawfully be in possession of child exploitation material? That would ensure that all the circumstances of the case are actually considered prior to a charge being laid, rather than simply saying to the person, “You are in clear possession, strict liability applies, you will be charged, and you can deal with it in court”?

**Det.Insp. Seivwright:** Sure. I can see scope for the commissioner to make a general order to his people—us—detailing something along those lines, yes, as a general policy decision by the police; or, to tighten it even further, perhaps any situations like that could get referred to the detective superintendent in charge of the sex crime division.

**The CHAIRMAN:** Is your sex crime division the only division of the Police Service that would handle any child porn offences and lay charges on child porn offences?

**Det.Insp. Seivwright:** No. We do the bulk of it, but there are some chance discoveries that happen. For instance, we may have fraud squad detectives undertaking an internet fraud scam, and the computer forensics people may extract CEM from that particular computer; or there may be a chance discovery where we may be executing a search warrant for drugs and we come across some hard-copy CEM magazines or something like that. So, no, we are not the only ones who charge, but we are the subject matter experts and are the reference points for the Police Service for anyone who has any inquiries on how to investigate these matters.

**The CHAIRMAN:** So if an officer at a suburban police station came across a child protection worker who had some child exploitation material in his possession, would the normal process be that that officer would contact your unit and get advice from your unit before preferring a charge?

**Det.Insp. Seivwright:** I would think so, yes, particularly if that officer is provided with the fact that the person in possession of that material is a child protection worker. Provided those details are disclosed by the child protection worker, then, yes, I would fully expect that to occur.

**The CHAIRMAN:** I am sure you can understand that a circumstance may arise where there are no guidelines in place, and a police officer who wants to put everything beyond question may lay a charge against a person, because he does not want to potentially face disciplinary action himself down the track for exercising the discretion incorrectly in the view of someone else. However, that may have ramifications for the person who is charged. The person who has been charged may lawfully be in possession of that material, but that is for him to prove in the courts, and in the meantime he is charged, and that has implications for his employment.

[2.00 pm]

**Det.Insp. Seivwright:** Exactly. I understand that. I would expect that they would contact the subject matter experts on it, remembering also that anyone who gets convicted of this offence goes on the ANCOR register. There are long-term implications.

**The CHAIRMAN:** Can you explain that for the benefit of the record?

**Det.Insp. Seivwright:** People who are convicted of offences now under the classification act or, hopefully, in the future, under the Criminal Code, for child exploitation possession and distribution go on the Australian National Child Offender Register, which is ANCOR. There are three periods that a person can have his name on the ANCOR register—a minimum of seven years, 15 years, or life for a repeat offender. There are significant consequences for people who are convicted of child sex offences.

**Hon LIZ BEHJAT:** I am not sure if I am asking this out of turn, but the thought cropped up and I want to ask Darren's opinion on it. I am looking at question 6 in particular and the definition of child exploitation material subsection (c) which reads in part —

being subjected to abuse, cruelty or torture

**The CHAIRMAN:** That is under the current definition under the enforcement act. Is that what you are reading from?

**Hon LIZ BEHJAT:** Yes. If children in a school playground are beating another child, it is recorded on someone's mobile phone and it is uploaded to YouTube. Is that child exploitation material and has an offence been committed under the act?

**Det.Insp. Seivwright:** No; it is an assault, similar to the one you referred to with the previous witnesses about someone filming children urinating. That is probably an indecent dealing more than child exploitation material. They are indecently dealing with that child.

**The CHAIRMAN:** If it has been videoed —

**Det.Insp. Seivwright:** If the child knows it is being videoed, it is deemed to be dealt with. It is similarly to a person who masturbates in front of a child and no physical contact occurs—indecent dealing.

**The CHAIRMAN:** Okay, but if a child is urinating and an image is taken of it and the child does not know that the image is taken and the image is distributed, is that then child exploitation?

**Det.Insp. Seivwright:** No. It could be classed as being, but it would not be if it was being dealt with by our division, which deals with most of it.

**The CHAIRMAN:** So, technically, it would fall under both categories, but the police would prefer to charge under indecent dealings. Would it still be an offence under child exploitation.

**Det.Insp. Seivwright:** It would be an offence—absolutely.

**The CHAIRMAN:** But you would prefer a charge under indecent dealings in those circumstances?

**Det.Insp. Seivwright:** That is right.

**The CHAIRMAN:** Thank you; that certainly clarifies it better.

**Hon HELEN BULLOCK:** Why do you prefer to deal with these matters in that way?

**Det.Insp. Seivwright:** It is easier to prove.

**The CHAIRMAN:** You would have heard when we were interviewing our earlier witnesses about my situation when I was sent a photograph of a male private body part and that, as soon as I was able to, I went to the police station and reported the incident with my mobile phone and showed it to them. I have had a history of a stalker and I was unclear whether it was just another effort by my stalker. In any event I wanted the matter investigated even if it was not the stalker. I am concerned about the intent of this bill, which seems to be that if you get an image you delete it, rather than report it. The government response to some of the questions that the committee raised in relation to our thirty-sixth report on this bill concerned. Their response was, "The police cannot deal with every complaint they might receive and, therefore, we would prefer people delete rather than report." That concerns me. Clearly, my initial reaction was that I wanted to report this matter because, obviously, if someone is being exploited, I want it investigated and I want the perpetrator



to feel the full extent of the law. It seems odd to me that we are taking a position through this legislation that does not seem to provide a lot of protection because it is basically saying “delete it—pretend it does not exist”.

**Det.Insp. Seivwright:** That is certainly not the intent from police. We cannot handle the one-off photographs.

**The CHAIRMAN:** You handled it very well in that situation.

**Det.Insp. Seivwright:** Because you wanted to complain. If someone feels aggrieved and wants the matter investigated, we will absolutely investigate it. However, in the majority of cases—these are the discussions we have with our legal people and the AGs—in the normal course of business, if you have an unsolicited email on your computer of child exploitation material and you do not want the police to do anything with it, we want you to delete it so that it does not create an issue for you further on down the track. If you want the matter investigated, we will obtain the internet protocol address. We will find out who sent it and investigate it. That is not an issue at all. However, given the amount of spam emails and things like that generally that are occurring, unless you had a situation like yours when you have a particular issue with a particular person, most people would just want to delete it. We want to provide the public with that opportunity to do that. If they want it investigated, that is not a problem; we will do that. The intent was to provide the public with an opportunity to delete it—delete it from their deleted items so they cannot view it, because computer forensics can tell us if you looked at something from your deleted items and things like that. You are protecting yourself, not causing yourself any consternation and you do not have to spend time with the police reporting it for something that may have caused you no angst. That was the intent.

**The CHAIRMAN:** My next question is: what constitutes “reasonable” under the act. I reported it as soon as I could. Now that I look at it in the context of this legislation, if I managed to misplace my mobile phone during those intervening hours and it was picked up by someone else, I could have found myself in trouble?

**Det.Insp. Seivwright:** Sure. Reasonable!

**The CHAIRMAN:** It is a hard one?

**Det.Insp. Seivwright:** I have made some notes. In answer to question 4 I did mention reasonable.

**The CHAIRMAN:** There is a fair amount of case law on reasonable. I suppose the problem is that you do not actually anticipate an intervening act such as my misplacing my mobile phone.

**Det.Insp. Seivwright:** Exactly. If you need to look at it in the context of one image, or a small group of images, and you are a normal everyday person who has come to the police to say, “I have had these images unsolicited appear on my telephone or my computer.” Any investigator—I mean any investigator—will take that on face value and try to assist you to sort the problem out. However, if we were to come to your house and you had those images there and we found them, that may change what is reasonable. It still may be reasonable because it may have happened earlier that day and you did not have an opportunity, and the explanation you provide may be reasonable to the police. If it is reasonable to the police, we would not charge you. Although we would not want to put anyone through a court process, people get several opportunities to prove they are reasonable. They can present reasonable to us at the initial investigation stage. If we do not accept it and charge them, they get to prove reasonable to a jury and even before the trial they can go to the DPP to argue reasonable, as well as public interest and all those issues.

So I think there is plenty of opportunity, and there is very little opportunity for it to go wrong for—dare I say it in inverted commas—a “normal person” who brings that sort of stuff to our attention.

[2.10 pm]

**The CHAIRMAN:** In my particular case, the police officer then asked me to keep that image on my mobile phone while the police undertook investigations. It was not for an unreasonable period

of time—I think it was a couple of days, from memory—but clearly I was potentially at risk during that time as well. Also, I did not get it in writing. The police officer asked me to keep it, and I said “You’re joking”, and he said, “Well, we’ll need it”, so I kept it until I heard further from the police officers.

**Det.Insp. Seivwright:** I would think that, yes, you are potentially at risk. However, I would see the risk of anything going wrong adversely for you—from the police attention to you—as minimal. I would see that as very low risk.

**The CHAIRMAN:** So you do not feel that there are any protections that we need to build into this legislation to cover that sort of situation?

**Det.Insp. Seivwright:** No, I do not. The general gist of the laws that we need to enforce deals with much more vast issues than those ones—the organised criminal networks by which people exchange child exploitation material and things of that nature.

**The CHAIRMAN:** I now move on to question 20, which deals with the issue of whether a child under the age of 16 years could be captured as a perpetrator under the offence provisions of the bill. Is it your view that that would be the case?

**Det.Insp. Seivwright:** Yes, they can, and they have under the current legislation.

**The CHAIRMAN:** You would have heard about sexting.

**Det.Insp. Seivwright:** I have heard of it.

**The CHAIRMAN:** That is where children are taking photos of themselves in various levels of undress or engaging in various activities and then either putting that on their facebook or texting that image to others. Would a child or a juvenile who was doing that be committing an offence under the act?

**Det.Insp. Seivwright:** Yes, they absolutely would. However, I would counter that by saying that in the few texting cases that we have had—as you know, it is a fairly new phenomenon—we have gone more down the educational path with the child, because we have the Young Offenders Act and we have all those options when it appears that it is a technical offence rather a true exploitation offence. However, we need to make sure that we do not exclude children from committing this offence, because a lot of children are very text savvy and a lot of them have some malicious intent in what they do with the images, so if we give a blanket protection to children, it will mean that every child under the age 18 can get involved in some “nasty” sexting, for want of a better word. An example may be a boy and a girl who are going out, and they are 15 years of age, and the boy convinces the girl to send him a pornographic photo of herself, and the next week they break up—as 15-year-olds do—and the boyfriend sends the photo to his entire contact list or posts it on the web or puts it on YouTube or something like that. We would charge that person with that, because that is malicious—and that is the only option that we have from a charging perspective, because the person has not committed any offence other than this one.

**The CHAIRMAN:** Distribution.

**Det.Insp. Seivwright:** Yes.

**The CHAIRMAN:** So if a child takes a photo of himself or herself naked, is that an offence?

**Det.Insp. Seivwright:** Once they process that image, yes, it is. That is the educational route that we take with our kids.

**The CHAIRMAN:** So it is not just the distribution of that image?

**Det.Insp. Seivwright:** No. They are possessing that image. I know it sounds weird, but quite often we get calls from parents who have looked at their kid’s phone and have seen a photo of their daughter, naked and doing whatever she is doing, and they contact us. So we then engage the child

down the educational path, rather than saying, “We are the moral police, and you are coming with us”, or that sort of thing. But to provide a blanket for children is very, very dangerous in my view.

**The CHAIRMAN:** Is there currently a police set of guidelines or a directive in relation to charging children in those sexting circumstances? Do you have any established protocols for that?

**Det.Insp. Seivwright:** No, we do not have established written protocols. However, we have an agreed course of action within our division, which generally—not generally; exclusively—ends up with those investigations.

**The CHAIRMAN:** You say “exclusively”. So that would not occur for a police officer working at a suburban police station?

**Det.Insp. Seivwright:** Not without consultation with us, I would not think. That is because generally they do not deal with that type of crime on a regular basis. They would seek guidance from their local detectives in the first instance, if they were uniformed officers out in the suburbs, and the detectives would then most likely call us.

**The CHAIRMAN:** I will move on to question 24. What child pornography-related offences does each jurisdiction—commonwealth and state—investigate and prosecute? Is there a consistency across the board?

**Det.Insp. Seivwright:** Yes, there is. We actually have a joined-up approach with the Australian Federal Police. There are two AFP officers attached to our online child exploitation squad. So we are able to leverage off both agencies, and both criminal codes, depending on the circumstances, and we generally investigate them jointly. There may be some specific AFP investigations that they choose to do on their own, and there may be some state offences that do not fall under our jurisdiction. There might have been contact offences committed as well, and that is not the AFP’s mandate—not their charter—so they might say that we state guys can do that, but generally it is a joined-up approach; we generally investigate them together.

**The CHAIRMAN:** Is the prosecution then done by whichever jurisdiction —

**Det.Insp. Seivwright:** If we charge under commonwealth legislation, the commonwealth DPP will prosecute; and if it is the state legislation that we use, it will be the state DPP

**The CHAIRMAN:** Can you confirm that the bill covers phone messages?

**Det.Insp. Seivwright:** Yes, it does—phone messages; any literature at all.

**Hon LIZ BEHJAT:** Twittering?

**Det.Insp. Seivwright:** Yes—god bless—twittering. Yes, it does cover that. In fact, we charged someone under the current legislation two weeks ago with possessing 10 and a half kilos of stories of child exploitation—just typed out stories that the offender had composed. It is unusual for us to get hard copy. That is a bit retro for us, given that most of this stuff is now online-based offending.

**Hon LIZ BEHJAT:** So it would also cover messages backwards and forwards in online chat rooms? The online child exploitation squad, would that be part of its remit?

**Det.Insp. Seivwright:** Absolutely—dealing with the adults who try to procure children to commit sexual offences. Frank was right—section 204B deals with the offence of procuring a child to engage in sexual activity. We have online operatives who pose as children online, and they engage targets who commit offences online by discussing what they want to do to the child in explicit detail, and once they have done that, they have committed a section 204B offence.

**The CHAIRMAN:** Would an author who decided to research and write a book on child exploitation be caught by the provisions of this bill?

**Det.Insp. Seivwright:** I would see that as another Henson issue, because if an author were to published a book that had detailed CEM in it, I would say it would become a matter of public

interest and we would be shunted into the investigation. We would be given the book and asked to make a judgement call.

[2.20 pm]

**The CHAIRMAN:** Obviously, one of the problems with dealing with this sort of legislation is keeping up with the pace of technology and changes in media and communication. Do you feel confident that the bill the way it is currently drafted would cover possible offences created in the future with changes to media and communication?

**Det.Insp. Seivwright:** Yes I do. I am very confident of the fact. We had a situation recently with a 204B offence, where the offender was on the telephone to our on-line operative, who is very talented and can do a child's voice. She was speaking with the offender on the phone and he was telling her what he was going to do with her in a sexual manner. We charged him with 204B and we found out that telephones do not count as a communication. I cannot think of the terminology, but there is a definition in some other obscure piece of legislation about what communication is, and it needed to be actually online. I do not see any gaps with this as far as that goes. I think it is fairly robust and will be good certainly for at least the next five or six years. We are talking technology remember. Think about five or six years ago, and 10 years ago mobile phones were much bigger, so I will not make any bold predictions that technology is going to slow down. In fact, I have something that may be of value to you. It will give you some ideas. When we are talking about seizures—child exploitation material—that has been the biggest significant impost on police because of the storage device capacity, of the things that we are seizing: external hard-drives, thumb drives and things of that nature. That gives you some details about how a 64 gigabyte thumb drive, for instance, can hold 370 000 CEM images. It is quite significant. To seize 300 or 400 thousand images from an offender is not unusual. I wish it was. We, in fact, recently seized two terabytes, which has the capacity to be 12 million standard internet images. Some are videos and things of that nature, so it is not that many, but it is in the millions. It is presenting. When we get to talk about penalties, perhaps we can go into that a little deeper.

**The CHAIRMAN:** The situation in which someone took a photograph of children in a playground or at a school doing handstands and the girls were wearing skirts and their panties were showing, would that be classified as child exploitation?

**Det.Insp. Seivwright:** No. In fact, because of the volumes, but not just because of the volumes we deal with, I was fortunate enough last year to work for five weeks with the FBI. Their child exploitation material investigators are called innocent images. That is what they call them. I do not know why. But if there is any pubescent development with a child, whether it be a male or female child, they file it. With females, if there is any breast development, any pubic hair or anything like that they do not even charge; they do not bother. There is so much material out there with their offenders they focus on. Generally, you are talking about under 12s because they have different laws over there. Let us hope we do not follow their path with the way they construct their laws. That gives you an indication. We are following in the path of the US. We are a much smaller community and will not get there as fast, but we will get there. Within the next five or six years we will be in that space as well, because there will be so much material out there that we need to investigate. The options are for government to provide us with the resources we need to investigate it, which is nigh on impossible at the expense because of competing priorities, or we narrow the focus of what we investigate. That is a problem for now that we are trying to plan for. Moving the legislation into the Criminal Code is what I see as the first step.

**The CHAIRMAN:** Would the offences outlined in the bill be tried only on indictment before the District Court?

**Det.Insp. Seivwright:** Yes; that is right

**The CHAIRMAN:** To the best of your knowledge, are any further amendments contemplated to the bill other than potentially the one we have already discussed, which you have not formally contemplated yet or taken back to the police?

**Det.Insp. Seivwright:** Sure. I have another one I would not mind contemplated, and that is the one I think I heard you discussing with the previous witnesses about an aggravated offence. Similar to drugs, once a person is in possession of so much illegal material, there needs to be aggravated circumstances that causes them to have more jail time. I would suggest that if anyone had more than 10 000 child abuse images, that would be an aggravation and that would be up around the 14-year mark. I have children aged six and four, and I have been taking so many photos of them since they were born, I have a total of 4 500 pictures on my external hard drive, and it is about eight per cent full. We are seizing external hard drives that are chock-a-block. We have hard drives that are plugged into other hard drives. We are talking about hundreds and hundreds and hundreds of thousands of images. They get 18 months jail generally. I think at the current time the maximum is five years. I would think that, if we made it a circumstance of aggravation past a certain figure, whether is 5 000, 10 000 images—whatever the legislators determine—that would be significant and would certainly in my view show the community that the legislators are aware of the significance of the problem, which I do not believe they are.

**The CHAIRMAN:** What percentage of cases that have come across your desk would involve more than 10 000 images?

**Det.Insp. Seivwright:** 85 per cent.

**The CHAIRMAN:** In view of that information, it seems odd to me that the government did not include an aggravated offence provision in the bill. Were you party to, or are you aware of the discussions and the reasoning, why that was not included?

**Det.Insp. Seivwright:** I think, again, because we were just keen to get the legislation into the Criminal Code, I did not give it enough thought. But I put this proposal together pre-going to the US. Having been to the US, having been to Interpol conferences and Euro-pol conferences and things of that nature, I am now convinced there needs to be a circumstance of aggravation in there.

**The CHAIRMAN:** Are you aware whether any of the other jurisdictions—either the commonwealth or other states—have an aggravation circumstances?

**Det.Insp. Seivwright:** No, they do not. That is why I think our state could be a leader in drawing a line with this type of material.

**Hon LIZ BEHJAT:** Are you aware of whether any other jurisdictions, commonwealth or state, have contemplated it and disregarded it or, like us, just have not contemplated it?

**Det.Insp. Seivwright:** No, they are not aware. I think, generally, they would be supportive of it. In fact I know they would be supportive because we are having our ANZPAA CPC conference yesterday and today. All our heads of sex crime divisions Australia-wide and the AFP are here at the moment.

**The CHAIRMAN:** I am sorry, we are keeping you from that conference?

**Det.Insp. Seivwright:** No; thank you for having me here. Some of the content gets a bit droll.

**The CHAIRMAN:** Earlier we asked you to go back and talk to your legal division about the law enforcement agencies possible amendment to that. In providing your written reply back to the committee, would you also like to address the issue in writing of the aggravated offence so that our committee can then consider it in its report?

**Det.Insp. Seivwright:** Sure.

**Hon LIZ BEHJAT:** Which is recommendation 9 of the MCCOC report.

**The CHAIRMAN:** Are there any other questions from other members of the committee? Are there any concluding comments you would like to make to the committee?

[2.30 pm]

**Det.Insp. Seivwright:** Sure. Just very briefly, I know that you have looked at a lot of this subject matter, and it does get a bit burdensome, but I just want to explain to you the different ways that offenders obtain CEM. There is the standard that most people would understand, where they go onto websites and they download images and perhaps even pay for those images. There is also a significant amount of what we call peer-to-peer exchange of child exploitation material images going on. Basically what that involves is there are file-sharing websites and file-sharing programs that you may be aware of, things like LimeWire and GigaTribe and internet relay chat or IRC. Most people use LimeWire for music—you can download music and then upload it onto your MP3 player or things like that. It is also can be used for CEM. So we have in Western Australia and in Australia, and internationally, organised groups of paedophiles who exchange CEM on a regular basis. Also, it is not internet-based, so it is a lot harder to detect. So that is the space that we are in at the moment. When you do not have to pay for the CEM, and it is not internet-based, that is where the paedophiles—who apart from their offending are often quite intelligent in computers and tech-savvy people—are getting their images from. They may have a contact list of 50 people, and they will get all the images from person number one and add them to their library, and then from person number two, and then they would exchange with that person as well. So a lot of child abuse images are being exchanged on line, every day, and this is quite a significant problem now in our community. I just wanted to give you some sort of picture of the criminality so that you can understand the emergence of this crime type. This online offending is in line with things like the fraudulent skimming of credit cards, and counter-terrorism—all those things where technical ability can be used to commit a crime. The emergency of technology crime is quite amazing stuff. That is why I cannot commit to a period of time for which this legislation is going to be the right fit, but I would estimate that certainly for five years it will be quite solid.

**The CHAIRMAN:** Thank you for your forbearance and patience with us in terms of the delay in getting started with your hearing, and thank you very much for your cooperation and for the information that you have provided to the committee. Obviously you are invited to provide the committee with any further information. If after going away and considering the matters that we have discussed today you think there are other matters that you would like to bring to our attention, please feel free to do so.

**Hearing concluded at 2.32 pm**