

ROGERS, Mr Dan, Solicitor, Caxton Legal Centre

ACTING CHAIR: Good afternoon to Dan Rogers from the Caxton Legal Centre. Thank you very much for coming to speak to us. Would you care to make some comments to your submission and then we may ask you some questions?

Mr Rogers: Just briefly to put my submission and further comments into context, I understand that Caxton produced a short submission and I am keen to elaborate on some of the points raised in that.

ACTING CHAIR: A short submission and a long book.

Mr Rogers: It is a long book and I had significant involvement in writing that long book. It was a painful process, but I do commend it to you.

ACTING CHAIR: I use it all the time actually in my electorate office. I love your work. Nevertheless, I am going to have to excuse myself about five minutes into your presentation, because I am supposed to speak to the media on behalf of the committee at 3.30 pm and we are not going to have an afternoon tea-break. We are going to work through. Because we have so many questions to ask of the witnesses, it is taking longer than we anticipated. So I am going to have to excuse myself. At that point, John-Paul will take over. Right now the floor is yours. So if you would care to begin and if you would not mind introducing yourself for the *Hansard* record.

Mr Rogers: I am the secretary of the Caxton community legal centre. I am a full-time legal practitioner in criminal defence and teach criminal law at the University of Queensland. Thank you for the opportunity to make further submissions today. The work of this committee is most important, particularly when we do not have an upper house, and Caxton appreciates the opportunity to contribute. I regret to inform you that the theme will remain the same from the last two speakers, but that does not detract from the importance of the issues that have been raised by the previous speakers. I will focus just briefly on the two key changes: those being the pat-down searches of minors and the pat-down searches for breaches of the peace. In Caxton's view there is no demonstrable justification for the extension of these powers in circumstances where police already have very broad powers to deal with these types of situations.

The minister in introducing the bill stated that the reason for the amendment to pat-down searches was the prevalence of under-age drinking, a concern for the associated offending behaviour and a strain on police resources. Caxton accepts that under-age alcohol consumption is a widespread problem, and we support measures to curb this behaviour and in particular education and awareness campaigns have been raised as a suitable way to deal with this problem. I note that the report in respect of alcohol fuelled violence, in which a number of members of this committee were involved, spoke specifically about that. In our view that is a more effective way to deal with this issue than giving police more powers.

The problem with this reform is that there is no evidence based research to suggest that allowing police to search children will reduce under-age drinking and associated problems. Good policy and good legislation is based on evidence based research and in the absence of that we should not give police more powers, particularly in relation to children. Our concern is that the police are seeking this power for convenience sake and that they are doing it without any real regard for children's civil liberties, their privacy, their personal integrity, and they are also forgetting the serious consequences that will flow from the negative interactions that will occur between children and police on a daily basis.

The definition of a pat-down search firstly is most concerning. It is described as quickly running the hands over a person's outer garments. In my experience daily, taking accounts from persons charged with criminal offences or working at a community legal centre, this will not in any proper way describe the sort of physical invasion that will occur if police are allowed to pat down and search children. The reality is that children are extremely vulnerable and often very intimidated by police, and this is often conveyed to me by children defendant clients. There will be no real accountability or oversight in the way in which police conduct the search. The requirement for reasonable suspicion is not a safeguard. It will be so easy for police to misinterpret either youthful excitement or exuberance as an indication of some level of intoxication to justify their decision to take hold of a child and pat them down. We are quite concerned that the actual search will include a significant interference with their personal integrity and a public humiliation.

We are also concerned about the broader consequences of this power, such as the deterioration in relationships between police and young persons. The criminal law students who I teach at UQ are aged 18 and 19 and in class discussions they openly talk about the perceptions that youth have of police at this point in time. It is with regret that I hear a common theme of distrust and dislike of police and a real concern about the visible police violence that is commonly seen in the Valley, in the city and in other entertainment districts. I see that in my work as a criminal defence solicitor all the time, and it is concerning to see that this negative perception runs through young persons in our community. This power will only worsen those negative perceptions and further isolate those two groups, where instead they should be working together to reduce this problem of under-age alcohol consumption.

With increased powers and interaction, the flow-on effect will be more children coming before the criminal justice system, and this is a highly undesirable. The best example of this is from public nuisance offences and move-on directions. There were many submissions put to the Crime and Misconduct Commission review about the effect of move-on directions becoming state-wide, and the courts and magistrates I have spoken to are already demonstrating and seeing an increasing number of people coming before the court. The issue with pat-down searches of minors for alcohol is not so much the ticket

that they might get if they have a sixpack in their bag; the issue is the negative interaction is likely to lead to more serious consequences. Young persons are generally anxious around police. They are not aware that police have certain powers and they are often quite intimidated.

We are concerned that if police exercise these powers on young persons then it is inevitable they will be charged with obstructing police or public nuisance or a minor assault. The indirect consequence is that a large number of children will come before the Childrens Court. Although magistrates take great care in not recording convictions, convictions are recorded for those sorts of matters, and a juvenile history, particularly for a 17-year-old who will appear as an adult, can have crushing effects on a person's future prospects, particularly where government employers and private employers require mandatory criminal history checks on a more regular basis. There will be that negative consequence as a result of this search and it will put many youth in a disadvantageous position when they advance through life. We are concerned also that by seeing more people in court there will be a real problem in a greater number of youth being exposed to the criminal justice system, and this can desensitise them to authorities. It can have a labelling effect on them. It can certainly see them associate outside of court with more serious troublemakers and there is that real potential for convictions to be recorded and that will have a long-term effect.

The criteria for conducting a pat-down search in respect of breaches of the peace are just so vague that it will be used for very minor public nuisance type situations where someone is perhaps intoxicated to a degree and yahooping and it is deemed that they are breaching the peace and the police will seize that person and conduct a pat-down search. I urge the committee to remember that police have very wide powers at the moment, including once a person is arrested they can search them. So if a person is causing a public nuisance, they can be arrested and they can be searched. If a person contravenes a move-on direction, they can be arrested and they can be searched. If the police believe that the person has a dangerous item, a drug or a weapon on them, then the police, using their own subjective test of reasonable suspicion, can search the person. Those powers are broad and, in our view, they are sufficient to deal with this problem. The consequences of broadening these powers are unjustified, and there is no evidence to suggest that they will be helpful.

DEPUTY CHAIR: Thank you, Mr Rogers. Questions, members? Member for Kawana?

Mr BLEIJIE: Just continuing the theme I was on earlier about this juvenile pat-down, which I have been on about all day, is it more the fact that these days, as opposed to when you were growing up and I was growing up—

DEPUTY CHAIR: Which were two different times!

Mr BLEIJIE:—and those who are more senior in the room today—there is just a lack of respect for police that used to be there? People used to look up to the blue uniform and had an enormous amount of respect. People got a boot up the backside if they mucked around, particularly in regional Australia. Now we talk about all this fear: young people fear police. Isn't the simple message—and I guess that is where we are going with education—that you have nothing to fear if you are a 12-year-old not carrying alcohol in a park; you have got nothing to fear if you are a 16-year-old and you are not carrying alcohol? I think we have just gone down this track of kids fearing police rather than respecting the uniform and position.

I was on that alcohol inquiry that we did. We went to all the alcohol related nightclub districts around Queensland from midnight until five in the morning. The member for Murrumba and I were the only ones on that committee at that stage. What we saw was when things happen with alcohol related violence with young people, the community—us—detract ourselves from that environment but we send the police in to fix the mess. I just seem to have issues with this whole fear factor now of police, that young people are going to be more fearful of police and it is going to create this problem with police and young people whereas years ago it used to be a respect issue and if you had nothing to hide then you had nothing to fear.

Mr Rogers: I accept that. The police have a very difficult job. I do not think anyone would disagree with that. Those situations where police have to engage in alcohol fuelled violence situations are inherently dangerous, and the physical consequence to police safety is an important issue. Unfortunately, the number of police assaults has increased so significantly recently that there have been calls for mandatory jail sentences for any police assault.

In respect of your question about this issue of fear, the clients that I speak to often report very aggressive interactions by police with them when they are approached. If I can give you an example, at present police do not have the power to search a bag for alcohol. Clients will often report that police will approach them in an aggressive way and say to them, 'You've got no problem with me searching your bag, do you? Nothing to hide? That's okay if I search your bag, isn't it?' A 14-year-old kid is hardly going to say in that situation that he is not happy with his bag being searched or his physical person being searched. Youth generally, I think, are more fearful than they are lacking respect for police. If they are fearful of police, they are clearly aware that police have broad powers already and that police can take certain actions such as charging them. The issue of youth justice cautioning is not something that police always invoke. Police will, in my experience, quite readily charge a youth with a criminal offence and see them go to court.

I am concerned that, by broadening these powers, the already existing fear that is displayed to me by clients is only going to increase and will worsen the relationship between youth and police. As for the suggestion that currently youth do not respect police, it is just not my experience that they have that disrespect. They are actually quite fearful of them in most of the cases that I deal with.

Mr BLEIJIE: I make the point that I think fear is different to respect.

Mr Rogers: I accept that. Perhaps they do not respect police because of the negative interactions they experience. Those negative interactions will only increase if this provision is passed. I think it is more important to develop better relationships between police and youth. Certainly allowing police to grab hold of them and search them is not going to achieve that end.

Mrs ATTWOOD: Just following up on the last question in relation to how young people view police these days, what do you think has occurred over the last generation in relation to changing young people's attitudes towards police?

Mr Rogers: My principal, Mr O'Gorman, made me read the Fitzgerald report on my first day as his articulated clerk. It was quite concerning to read of the sort of police mispractice that was occurring in the eighties. I am of the strong view that that sort of systemic problem no longer faces the Queensland Police Service. But as a general comment in respect of police interactions with younger persons, the key issues that I see in practice are excessive use of force in circumstances where the person is being charged with a minor offence. For 90 per cent or more of persons charged with obstruct police, public nuisance or a PPRA assault, they do not have the resources or the capacity to defend those charges and have the court see the sort of mistreatment that they have experienced by police during an arrest or an interaction. The consequence of that is that there is no real oversight or accountability in terms of those situations which commonly occur between police and young persons when they are charged with those minor offences. If this provision were passed and the pat-down search escalated to those minor offences where people are brought before the courts, it is unfortunately the reality that Legal Aid would not be able to fund the representation of those persons for a minor matter such as obstruct police and police will continue to realise that they do not have any real accountability because the matters are not progressing through the courts because they are seemingly not significant enough for Legal Aid funding or people cannot afford private representation. Working in a private firm, I do see examples where supportive parents can fund representation for those minor matters out of principle, and the experience we have at summary trials is very positive in respect of disclosing some of these problems. But it is a rare breed of client or person that appears before the court.

DEPUTY CHAIR: You are not suggesting that by this provision potentially being passed our Police Service will head back towards the days of pre Fitzgerald?

Mr Rogers: I am not going that far. In terms of the examples I give of negative police interactions, I do not suggest that they are a majority. From dealing with police on a daily basis and going to police stations and going to raids, I think that police do an excellent job. But I believe that by this provision being passed there will be a lot more negative interactions between police and children and that those negative interactions will see more people come to court and it will create a situation where physical confrontation is facilitated by a power allowing police to physically pat down children. I am concerned that the types of examples that the member for Kawana gave are at this end of the spectrum and that police may decide to set up outside school dances and search students coming and going because they are in a public place. That sort of invasion would be really disappointing but an unintended and perhaps not foreseen consequence of this power. There is a really broad power that lacks any evidence to suggest that it will directly deal with the issue of under-age drinking.

Mr BLEIJIE: I was not going to ask, but you have spurred the question on. Let us use the under-age school dance as an example. If there were going to be one or two children who were going to bring alcohol into a dance in a jacket or a bag and then give it to other kids and you said to the parents of those other children, 'Would you have an issue with children's bags being searched as they leave a dance?', I think you would be hard pressed to find a parent that would not say, 'Well, it is actually a protection mechanism for my child. I haven't given them alcohol but there is a chance that someone else is going to.' Isn't that a security measure and you then get rid of the alcohol out of the situation?

Mr Rogers: Certainly. For police to use this power they have to have a reasonable suspicion that a person has alcohol on their person. If we take the school dance example, you might have 50 to 100 students in a public area lined up on the street waiting to go into the school dance or going from the school dance. There are a large amount of people who will be excited, possibly screaming and yelling, and police will be given the power to search any one of those persons. My view is that the parents of those children would be appalled to think that police have the power to, on such a low threshold, pat down those children as opposed to searching their bag. The real issue is the pat-down search. So, respectfully, I disagree that parents would be fine with police exercising that power on any number of students out of a large group because of concern that there might be a few troublemakers consuming some alcohol. Coming back to the age point earlier, I do not have children yet but I would not like my children being patted down by police as one of a number of other students outside a school dance.

Mr BLEIJIE: I have three children and I would rather them not have alcohol at a school disco, and if we can prevent that then I guess that is where I am coming from. But I take your view.

DEPUTY CHAIR: Thank you, Mr Rogers, for coming. Thank you for your testimony today.

Mr Rogers: You're welcome. Thank you.