



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: Police powers of crowd control)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 23 SEPTEMBER 2005

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

By authority of the Legislative Assembly for the Australian Capital Territory

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

The committee met at 9.34 am.

JOHN HARGREAVES,

AUDREY FAGAN,

MICK GORDON,

BRIAN McDONALD and

MATTHEW VARLEY

were called.

THE CHAIR: Thank you very much for attending, minister, and thank you for bringing along so many officers. I think that will greatly assist the committee. Initially, we were not sure what would be happening there and I thank you for that.

Lady and gentlemen, there is a statement that I have to read to witnesses before the start of any proceedings. Being police officers, you are probably well aware of similar sorts of things being said elsewhere. You should understand that these hearings are legal proceedings of the Legislative Assembly, protected by parliamentary privilege. That gives you certain protections but also certain responsibilities. It means that you are protected from certain legal action, such as being sued for defamation, for what you say at this public hearing. It also means that you have a responsibility to tell the committee the truth. Giving false or misleading evidence will be treated by the Assembly as a serious matter. If the five of you understand that, please nod. Thank you very much.

I thank you for appearing before the committee. The committee is, as you know, looking at police powers for crowd control. Minister, I thank you for your department's detailed summation of various laws in the ACT that might apply to that. That has been of great assistance to the committee. The inquiry was raised initially by Dr Foskey, who had concerns relating to the use of pepper sprays and Tasers, especially in relation to demonstrations. Firstly, does anyone want to make an opening statement?

Mr Hargreaves: Yes, I do, Mr Chairman. I thank you for the opportunity to appear before the committee. For the purposes of Hansard, I am John Hargreaves, Minister for Police and Emergency Services. As we go round, I will ask officers to identify themselves for Hansard prior to making any comment.

THE CHAIR: Perhaps everyone should state their names now.

Chief Police Officer Fagan: I am Audrey Fagan, Chief Police Officer for the ACT.

Sgt Gordon: I am Mick Gordon of the Australian Federal Police's specialist response and security.

Mr McDonald: My name is Brian McDonald. I am Acting Deputy Chief Police Officer Response, ACT Policing, AFP.

Sgt Varley: My name is Matthew Varley. I am the officer-in-charge of the city police station.

Mr Hargreaves: Mr Chairman, the government's submission, which you have received, restricts its comments to the terms of reference for this inquiry, that is, police powers for crowd control, and the legislation and policies that relate to crowd situations. Examples of such control situations include policing of incidents such as those occurring at late night entertainment venues, out-of-control parties and special events such as major sporting events and public demonstrations. It does not include any reference to legislation or policies that relate to terrorist or emergency management incidents where crowd control such as evacuation procedures may be needed but where there is no threat of crowd violence. Our little exercise of 7 September will do as an example.

I would appreciate it if in this hearing we stay within the parameters of the provided terms of reference, which are current police powers under the legislation, instances of misuse of current powers and special powers for particular events. The officers appearing with me today have particular expertise of relevance, I think, to Dr Foskey.

I think we all understand and share the notion that the police and the minister for police do not actually make laws regarding current powers, or any other powers for that matter. We merely enforce the laws of the territory and we do not actually introduce legislation governing the activities of the police. That is within the purview of the Attorney-General. As we go down the track, I may very well refer to that, just to let you know. Thanks very much for that. I am happy to take questions from everybody.

THE CHAIR: I will start with a couple and then my colleagues can ask some. We have been talking to the Tasmanian police and they, and I imagine all police forces, certainly have protocols in place for dealing with incidents in relation to crowd control, standard operating procedures as such, I suppose. Perhaps you or some of the officers could assist the committee as to whether the AFP has standard operating procedures and guidelines for members in dealing with demonstrations and any incidents at demonstrations that might get out of hand and necessitate some use of force.

Mr Hargreaves: Yes. It would be a pretty funny police force if they did not have a set of standard operating procedures governing that sort of thing, which is asking the police officers, in the context of holding the office of special constable, to put themselves in front of a crowd. It would be pretty ordinary not to have a set of procedures that goes to the safety of the crowd and, of course, the safety of the officers themselves.

THE CHAIR: I am just wondering if you could tell us what they are.

Mr Hargreaves: I will get the Chief Police Officer to go through it, but I just put a bit of a caveat on this. I am sure that you will appreciate this and sure that the Deputy Chair, Ms MacDonald, will appreciate it. This is, in fact, a public hearing. Your conversations with the Tasmanian police would have been, in a sense, in camera. I am going to be a little bit twitchy, so I might as well apologise for it up front. If you want in-camera briefings and things like that later, these things may be possible, but I am a bit cautious about putting too much about standard operating procedures out there in the public arena, because I do not want to assist those twits that will actually endanger the lives of our

police officers.

THE CHAIR: I entirely agree with you there, minister. I might say to you and your officers that we got full assistance from the Tasmanian police but a lot of that was in confidence. Certainly say what you can say publicly. If there is additional information or there are additional guidelines that we should see, we would be happy to take that in confidence.

Mr Hargreaves: Sure, Mr Chairman.

THE CHAIR: And give the AFP that assurance.

Mr Hargreaves: You would know, that, for example, commissioner's order No 3, which I would prefer not to be putting in the public arena, actually talks about gradations for the use of restraint, from the very point of suggesting to someone quietly that they calm down to the time where a firearm may be drawn, and everything in the middle. That sort of level of detail I think is not something for the public arena.

THE CHAIR: That is okay. You can provide us with anything you want in confidence.

Mr Hargreaves: I would prefer to respond to queries on that, if it is all the same to you lot.

THE CHAIR: I suppose something we could ask is: do you carry Tasers and capsicum spray to demonstrations?

Mr Hargreaves: Yes, I can answer that. With respect to the use of Tasers, the committee ought to be aware of two things. The first thing is that we have a trial going on in the ACT at the moment. That trial is due to conclude in December. I am asking the Chief Police Officer to consider extending that review for a week or so, so that we can actually have it evaluated over the New Year partying regime, shall we say.

It would seem to me—I hope the committee would agree—that the biggest event in the year in the ACT with respect to alcohol-fuelled partying is the evening of New Year's Eve, and it would seem that if we are going to be evaluating the use of this restraint we ought to include that particular period in that time. It would only be a week or so, for the committee's information. That is when the trial concludes. Of course, it will take a certain amount of time to have the issue evaluated and then reported. I have absolutely no difficulty in going public with that report.

Please understand, though, Mr Chairman—I am sure you will agree—that we would be very careful about the actual detail of that sort of thing. I have no difficulty with your committee having confidential briefings on that matter, but putting things into the public arena about the operational stuff is a bit of a no-no. But certainly, again, the findings and recommendations I am very happy to have out there. The application of Tasers in crowd control in the ACT is not carried out by officers generally deployed. They are only carried by SRS officers.

THE CHAIR: For the transcript, what is an SRS officer?

Mr Hargreaves: Special response and security. For the purposes of the crowd looking on—it depends on the incident, of course—the crowd may not be aware that this person is an SRS officer. Sometimes they are wearing black overalls and you can tell pretty quickly that they are SRS officers. That would happen if, for example, you have a very large demonstration going on. The reason for that is to show the visibility of the squad, so there is a prevention mechanism involved there.

Sometimes—for example, around the city precinct on a Thursday, Friday and Saturday night—the good burghers of Canberra city will have noticed an increase in the number of police officers patrolling the area, showing the visibility of the police as a disincentive to antisocial behaviour more than anything.

THE CHAIR: I am glad to hear that.

Mr Hargreaves: In fact, Mr Chairman, it was observed to me only the night before last as I was sitting enjoying the culinary delights of the Holy Grail at 9 o'clock at night that a number of squad cars had actually cruised past. I was quite pleased to be congratulated for that. But I have to go back just a second. Some of those officers patrolling the city area may very well have a Taser. They are still SRS officers. They are SRS officers deployed to assist the city beat police, and they are deployed specifically in instances of a high probability of a problem, and on the judgment of the officer-in-charge of the city police station.

MS MacDONALD: With regard to Tasers, minister, is there a set of protocols utilised in the decision to use a Taser?

Mr Hargreaves: Yes, there is, Madam Deputy Chair. With respect to the committee's public hearing, I would be happy to provide that to the committee at another point. Mr Chairman, I reiterate for your information and that of Dr Foskey that I am happy to provide details of the protocols that are in place and which are, in fact, the subject of a trial. It is those protocols that we test as much as the efficacy of the actual issue itself. I am quite happy to provide that detail to the committee outside this public hearing. In other words, I will provide it. I should also advise officers, Mr Chairman, from my former position and yours, that we would be grateful if we could have that response within three working days. If the committee is happy with us providing that information at a later date, within three working days, I am happy to do that, but I do not want to put it in the public arena.

THE CHAIR: That would be fine.

Mr Hargreaves: Also, I urge the committee to consider labelling it confidential in the context of the writing of your report.

THE CHAIR: That goes without saying.

Mr Hargreaves: Sometimes, though, it does not get through, so I thought I would just ask that question.

THE CHAIR: You need to stipulate, though, what is confidential.

Mr Hargreaves: It will be sitting up there on the top of the paper.

MS MacDONALD: Would you be able to provide at the same time, if you cannot provide them now, details of what protocols are used in terms of the use of capsicum spray?

Mr Hargreaves: Yes. There is a hierarchy within commissioner's order No 3, as I mentioned before, about whether we just talk calmly to some person and say that it would be a good idea if they had a Bex and a good lie down or whether a weapon is drawn, and all those bits in the middle. There is this hierarchy, but we need to understand that the hierarchy is not necessarily "go to point A; if not, go to point B". For example, an example given to me recently, the use of OC spray in confined space will put the officers in as much danger as everybody else. It is a case of the environment as well as the results in the application of that particular restraint.

DR FOSKEY: Just to clear the record, I'd like to say that I've never encountered either Tasers or capsicum spray in my own activist life.

Mr Hargreaves: We can arrange for only one of them, Dr Foskey.

DR FOSKEY: Thank you very much. I am very pleased that I haven't. One of the reasons I was motivated to ask the legal affairs committee to do this inquiry was an issue concerning some constituents who were involved in a bike ride that has been a regular monthly event. This particular one was on the day of the election. I can't remember the name of the event. Everyone would get on their bikes and ride across the bridge. It was to sort of emphasise the notion of people riding together being powerful.

There were a couple of people—a 16-year-old and an 18-year-old—who it seems were met with—I don't want to use the word "forces"—perhaps more police power than we would have thought that particular action should have elicited. These young people were sprayed with chilli pepper spray on election day, 9 October. They are going through some processes about that. It made me want to know what really are the operating procedures. If you can give those to us, that will help us greatly. In that sort of situation where there's a peaceful rally—that's what we're led to believe—why would police officers feel it necessary to use capsicum spray?

Mr Hargreaves: I am delighted to address that. The picture painted here is that we have a bunch of politically happy cyclists riding three or four abreast, reclaiming the city, going over a bridge.

DR FOSKEY: It was, "Reclaim the streets."

Mr Hargreaves: There was nobody on the street except them, so they had already got it back. They're riding merrily down the road and, out of the blue, on white horses come these police officers who promptly spray them with this spray and take them into custody. That is about as far from exactly what happened as one can get.

DR FOSKEY: I don't think that's fair.

Mr Hargreaves: Let's be a bit careful about putting some facts on the table. Firstly,

police officers don't run around this town willy-nilly, spraying everybody with OC spray to see what will happen. There has to be—and you'll see this in the procedures—a certain sense of incident.

THE CHAIR: Just stopping you there, we're not actually looking at the incident, which I understand hasn't been finalised. We are just looking at the general procedures.

Mr Hargreaves: Yes, I know. We're talking about why X happened, not the issue. I put this information before the committee. Officers don't use OC spray just willy-nilly; there's a reason for it. It's because a situation has become worse, to the point where that seems to be the best way—the only way—out of it. The image of these people reclaiming the streets by peaceful protest needs to be addressed. In this particular incident one of them, who was a 16-year-old juvenile male—no names, no pack drill—was charged and convicted.

THE CHAIR: Just—

MR HARGREAVES: Hang on a second, Mr Chairman. The other one, an adult male, was convicted and the next one was convicted. One of them was in fact arrested the previous day at a similar demonstration. We're seeing a completely different picture being painted. I understand the concerns of Dr Foskey and I respect those concerns. We need to understand inherently, however, that police officers are members of our community. They walk within our community. They are not macho testosterone-driven people, they are people who are trying—

THE CHAIR: I don't think she's suggesting that at all.

DR FOSKEY: Not at all.

Mr Hargreaves: I am not suggesting Dr Foskey is, but I've heard other members of the Assembly suggest that sort of approach, and I reject it. The use of OC spray is not the preferred method of asking someone to desist or, in fact, to restrain someone. It's not. You would know from your own experience, Mr Chairman, that commonsense and good argument are employed first up and that then, as people become more violence inclined, so too it increases. You will see the steps when we indicate that hierarchy to you. I have every confidence that, in this particular incident, the police deployed that device because there was no other choice.

THE CHAIR: Let's put any incidents to one side. Are you able to say—just give at what stage—police would be able to use, and should use, OC spray?

Mr Hargreaves: As to the procedures and policies in respect of the use of this, I will ask the officer for a generalised description of how we do it because you'll get the detail a little later. We need to understand that, with the application of these procedures and methodologies, we have human beings having a go at this and they're the ones fronting the particular incident.

They're the ones looking into the eyes of the person who has violent intent. None of us will ever be asked to do that. These officers do that. We need to understand that when they're discharging their duties. This is why we entrust these officers to the special office

of constables. They have a unique responsibility, on behalf of the community, to put themselves between the community and a perceived or real danger or threat. We need to have it against that background. I will ask the chief police officer—or she may wish to refer to her other officers here—to give you a generalised feel for when those procedures are done.

Chief Police Officer Fagan: In relation to the use of the powers, all sworn police officers are trained, with an annual recertification, in the use of force. There's a continuum of force articulated in Commissioner's Order 3. That has the security-in-confidence classification and we will provide it in camera or in confidence later. So I will restrict some of my remarks based on that.

THE CHAIR: That is understood.

Chief Police Officer Fagan: The continuum starts with the premise of verbal communication. That involves eye contact, looking for body signals and asking the person to comply when the officer chooses to exercise his or her powers lawfully, obviously. The continuum then has a range of responses. That goes from soft hands, where we will place a hand on them to effect an arrest if that person isn't complying, through to lethal force, being the final power available as far as crime prevention, preservation of life, et cetera, are concerned.

The oleoresin capsicum spray, or OC spray, is well within that continuum. The continuum is not linear, it depends on conditions, as the minister raised. Similarly, the Taser X26, which is only deployed to our specialist response and security team, is part of that continuum. We think about it in the context of the situation, both for preventing injury to the person who may be being arrested—that is probably the easiest way to think about it—and to our officers. That's the prime driver. If you move up the scale in escalating the use of force response, it doesn't diminish the others. There will be a continuation of verbal command, and they will be asked to comply. That gives you an overall view of how we work through that. As I said, there's an annual recertification that takes them through that continuum of force that all sworn members are required to do.

DR FOSKEY: Is OC spray carried at all times by police officers, or only at certain times? What might those certain times be?

Chief Police Officer Fagan: The oleoresin capsicum spray is given to all officers as part of their accoutrements and is carried by them, along with the other accoutrements—handcuffs, baton and firearm.

DR FOSKEY: That's whether they're at a demonstration or just in the normal course of their duties?

Chief Police Officer Fagan: It's standard issue for their work operational duties.

Mr Hargreaves: I guess it needs to be considered in the context, as the chief police officer said, of that continuum of response. It is a lesser restraint than the firearm on the officer. One of the points put to me when I was shadow minister for police was that police officers have no predictive powers. They don't know when they're going to be

asked to restrain somebody or whether they're going to be called to a small-scale ruckus. So we try to prepare them for it as best we can. Within the context of that, their training in hosing down potentially violent situations through verbal means is, in fact, employed more often than others. They carry that ability around with them as well.

MS MacDONALD: I think it is the case in some jurisdictions—I am speaking out of ignorance here—but is it part of their training that sworn officers must undergo receiving a dose of the capsicum spray themselves so they know the effects of the spray?

Chief Police Officer Fagan: I can speak from personal experience in relation to this. It's voluntary. It's something that officers are offered. The recent recruit class that is going through training have all been exposed, in order to understand the effects. I might add that, for every deployment of these, first aid is paramount once it's deployed. That's part of the officer's complete training as well. So it's not something officers are required to do but it is an option available to them as part of their training.

Mr Hargreaves: One of the other things that is considered by officers when considering the deployment of OC spray is whether or not it's going to have an effect on the person at all. For people of medium height and weight it may but, on some people who are quite large of stature, it may have absolutely no effect at all. Also there is experience that, when it has been attempted, there hasn't been any effect, or the effect has been really minimal, and it hasn't actually diffused the situation at all. So they are trained in the application of it as well as in the circumstances in which it could be applied.

DR FOSKEY: One of the other issues raised by one of the people who put in a submission to our inquiry concerned the use of certain pain compliance techniques. I am just wondering if you have anything to say on that?

Mr Hargreaves: Pain compliance techniques?

MS MacDONALD: Using pressure points around the neck.

Chief Police Officer Fagan: I will have to answer this. As I said when talking about the continuum of force, there are a number of ways to effect an arrest. One is that you can ask the person to comply through placing pressure on certain places, which is well below, for example, using a baton. We only focus on soft tissue with the baton. That's part of the training for officers in the regular use of force training.

DR FOSKEY: Are they part of this continuum of responses you were talking about? Are these somewhere along that continuum?

Chief Police Officer Fagan: As I have explained, the continuum can't be thought of as linear. It's circumstantial to the circumstances the officer is presented with. That's why they're trained to start from the verbal command. But preservation of life and prevention of further harm, either to the person or to themselves, is their priority.

MS MacDONALD: I am sorry, I wasn't listening to your question just then, Dr Foskey. You may have spoken about this. The person who put that submission in was talking specifically about mandibular angle pressure—applying force to the infra-orbital nerve and the sternal/jugular notch points around the neck. This issue came up in Victoria

a few years ago. It was an issue of controversy in Victoria, where it was being used in antischool closure demonstrations. It was decided not to use it anymore in Victoria. I think I asked if there'd been any incidence of its use here in Canberra. I don't think there had been since the NATEX thing.

DR FOSKEY: That's right.

Mr Hargreaves: My understanding is that it is not used. For the committee's information, I'll ask Mick Gordon to explain a little further as to exactly what it is—and that we don't use it.

Sgt Gordon: I think that incident was at the Geelong school, in relation to protests at the school closure. A number of pressure points used were above the neck, the ones they've discussed. The pressure points themselves are effective, but they weren't being executed correctly by those people. Due to the fact that they were above the neck, after the incident there was a decision made by the Victorian police to stop using them. That decision pretty well flowed down to most police services in Australia. Since that incident they have not been taught. The only one that is taught is the jugular notch, which is just at the bottom of the throat. Anything above the neck is out.

DR FOSKEY: Going back to the capsicum spray, there are a number of health risks with that. Of course, a police officer wouldn't necessarily know if the person was susceptible: for instance, an asthmatic or someone with a heart condition. I am just wondering whether that would mean more caution about its use, given that it could have really untoward effects that I am sure are not the intention of its use.

Mr Hargreaves: There are a couple of things there. You're right. It's acknowledged that police officers have no way of knowing, unless there has been prior contact with the particular individual, that there's an asthma condition involved. If that were known to officers, then OC spray wouldn't be used. Second is something the Chief Police Officer said just a few minutes ago—that, instantly, at the conclusion of the OC spray being used, first aid is applied. That is something that needs to be underlined here.

The possibility of a heart attack would be on. I might suggest to you that being hit in the head with a truncheon might also cause considerable concern to the person being clobbered. It is part of that suite. It is recognised that nothing other than the touch of soft hands comes without risks. The officers are concerned as much for the welfare of the person as they are for themselves. The committee needs to be assured that, particularly in respect of OC spray, the first aid regime is taught as part of the basic training of officers in the use of that instrument.

THE CHAIR: Mention was made of an incident, which we're not going to go into, in relation to crowd control where capsicum spray was deemed to be necessary. Since capsicum spray has been available to the AFP, have there been any other incidents in the crowd control context where the use of capsicum spray has occurred?

Mr Hargreaves: I will have to defer to the chief police officer on that one.

Chief Police Officer Fagan: I can talk about when the OC spray has been deployed. In 2003-04 it was used 83 times and in 2004-05 it was used 94 times. I don't have further

detail on the breakdown of that information with me. I would need to do some further work on that.

DR FOSKEY: Were all those incidents in the ACT? Are we talking about 83 times in the ACT?

Chief Police Officer Fagan: I am referring to the ACT.

DR FOSKEY: We wouldn't have that many demonstrations in a year, so clearly they are used in other situations. Could you outline those, please?

Chief Police Officer Fagan: As I've explained, I've given the numbers but I don't have the detail.

Mr Hargreaves: We can give you an example of the types of things. There is a range of activities where OC spray may be applied and, therefore, year to year you'll have different ones. Mick Gordon might be able to give you an idea on that one.

Sgt Gordon: As the CPO said, OC is one of our tools in the whole range of use of force options we have available. It can be used simply to deal with an aggressive offender who won't comply with verbal instructions. Rather than placing hands on the person and increasing the risk of injury to yourself and them, OC may be chosen to be deployed. The majority of times we'll gain subject control with a bit of discomfort to them, but it's not ongoing discomfort. Once the affected areas are flushed with water and the person is exposed to fresh air, the effects go away relatively quickly.

THE CHAIR: Reluctant as I am—I hope it won't take too much time—to impose on your meagre resources, see if you can tell us, when you go through those figures, if any of those incidents were in crowd control. I don't think we need to know in what other incidents you use it. Your instructions give us a pretty fair idea. I can imagine incidents when you might have to use it. We've obviously had one incident of crowd control, which Dr Foskey and the minister have referred to. I just wonder if, in those figures, there are any other incidents, in the crowd control sense, where capsicum spray has had to be used. That's basically all we need.

Mr Hargreaves: One of the ways—and perhaps you can assist in this—is what constitutes a crowd. Is a crowd three people in Civic who are misbehaving? Is a crowd a demonstration registered with the AFP for the purposes of a peaceful demonstration that gets out of hand? That would be helpful for us because, at the end of the day, it's a one-on-one between a particular person and a particular officer. That would be helpful for us. The deployment of OC spray in Civic on a Friday night is a distinct possibility.

THE CHAIR: It would be.

Mr Hargreaves: But it's not necessarily a crowd. You might try to get a beer in King O'Malley's on a Friday night. There's a crowd in there, let me tell you, but is it regarded as a crowd for the purposes of crowd control? No.

THE CHAIR: The point of the inquiry is crowd control. The point of Dr Foskey's concern is, effectively, use in demonstrations. I think that narrows it down.

Mr Hargreaves: We haven't had too many demonstrations in the last year or so.

THE CHAIR: It's the sorts of incidents where you might have several hoons who are getting pretty violent where you might need to use it because of threats to other people and to yourselves on a Saturday night in Civic. The point of the inquiry relates very much to political demonstrations. I don't know if you would include union demonstrations in that.

DR FOSKEY: Yes. They're political.

THE CHAIR: The obvious demonstrations.

DR FOSKEY: Organised demonstrations.

THE CHAIR: Organised demonstrations, protesting against something.

DR FOSKEY: Usually, of course, the police will have been notified that such is occurring.

Mr Hargreaves: I can offer you some statistical information, which we'll get to you very quickly. For example, I am aware that, in the not too distant past, there were collections of people outside embassies. I was one of them, actually, outside I think the Indonesian embassy. They are very small-scale, and there would be 10 people. You would, for example, know that Falun Gong has an ongoing demonstration outside the Chinese embassy. And we may have a range of trucks turning up in town.

To assist the committee, we will look back over the last 24 months and identify where we, the AFP, consider a demonstration to be a collective of people demonstrating a single point coming together. I am thinking of the Parliament House demos, the embassy demos, trucks around Civic, marches over the bridge to support indigenous rights and those sorts of things. We'll look back over the records and let you know how many times the use of OC spray has been deployed. Would that assist, Dr Foskey?

DR FOSKEY: That's exactly what we would like. Thank you.

Mr Hargreaves: Two years. Any further than that and it will be a month of Sundays before we can provide you with the information.

DR FOSKEY: Yes.

Mr Hargreaves: Twelve months would be even quicker!

DR FOSKEY: For the purposes of this inquiry, we're not interested in other uses.

Mr Hargreaves: Other what?

DR FOSKEY: For instance, the Friday night in Civic application. That is also obviously of interest, but not to this inquiry. I don't think so. Do you?

THE CHAIR: Your concern is demonstrations.

DR FOSKEY: Yes.

Mr Hargreaves: I know the committee's interest in crowd control goes to these demonstrations, Dr Foskey, but I would argue that the police presence at New Year's celebrations in Civic has exactly the same process as it would for a union demonstration outside Parliament House. In fact, I might suggest to you, Mr Chairman, that it is a far more dangerous process for the people from City police, City Beat police.

THE CHAIR: Yes. Do you want that information as well?

DR FOSKEY: Yes, and I actually—

Mr Hargreaves: If you want that, I am happy to dig that out of the file. I think I had better shut up in that case, Mr Chairman.

THE CHAIR: Yes. You could be making more work for them.

DR FOSKEY: The issue raised by the submissions is the impact of the capsicum spray itself. It would also be interesting to know if there were any times it was used when the flushing of the eyes with water and the breaths of fresh air were not adequate to make someone—and I am assuming you only do this after the capsicum spray has had its required result?

Mr Hargreaves: It is part of the process, Dr Foskey. It is just part of the rote that is applied to that.

DR FOSKEY: But if there have been incidents where there have been adverse reactions, we would be interested in hearing about those as well.

Mr Hargreaves: Where they are known to police, we are happy to tell you. If they are not known to police, I am sorry—

THE CHAIR: Exactly.

DR FOSKEY: Absolutely.

THE CHAIR: You cannot do any more than what you actually have in your records.

MS MacDONALD: Is it standard practice to provide those people that have been sprayed with OC spray with water and to flush the eyes out after such time as—

Mr Hargreaves: We just do it because a person, with a bit of luck, is under restraint at that particular time. So there is an obligation on the part of the police officer to look after the person in their custody. So we just do it. We do not ask them whether they like it or not. We just do it.

Ms MacDONALD: You flush their eyes out?

Mr Hargreaves: Yes, absolutely. Can I also just point you to the submission? If people have had adverse reactions, they are, of course, entitled to make complaint about it. I apologise if the papers are not page-numbered, but on the fourth page in there is a chart of instances of misuse of current powers. Mr Chairman, you will notice that the total number of complaints lodged was 597. That needs to be taken in the context that this is total AFP. This is not just ACT policing. I point out to you that people who have had an adverse effect, particularly with political demonstrations, are the type of people who will lodge a complaint about that. They are perfectly entitled to do so and I would not wish to stop them. But they will be in here.

Mr Chairman, you will note that, across the whole of the AFP, two out of 597, that is, two out of 600 have been actually substantiated. A whole stack of them has not. If you have a look at the range of things that people complain about, misuse of authority and neglect of duty may in fact be the couple that would come under that. I take your advice. You are much more skilled in the law than I am. But I would imagine that it would come under assault or arrest, and not one of those has been proven.

THE CHAIR: It is an admirable record.

Mr Hargreaves: Yes. I point out the sentence prior to that, “There are no substantiated complaints relating to the use of force by police.” We do not actually use it a lot.

THE CHAIR: No. One thing that has been raised by several people who have appeared before the committee, and I am interested to see how they are going, too—it is not a conflict of interest; I introduced them and I am very proud to have done so—is the move-on powers. That has been raised. They cannot be used for demonstrations, and no one is suggesting they have, but they were introduced to be a useful form of defusing difficult situations and crowd control, to an extent. Are they used frequently, and how? I have got three questions here. Are they used frequently? How are they going? Are there any deficiencies that could be improved?

Mr Hargreaves: Two points, Mr Chairman. Firstly, let me tell you that, for police officers, merely asking someone to move on through eye contact and use of body language actually works. Most people comply with that—

THE CHAIR: That is true.

Mr Hargreaves: because they respect the authority of the police officers. But I will ask Matthew to give you a bit of a feel for how we have dealt with the Civic area on Thursday, Friday and Saturday nights. That is the bit that I would imagine is more in line with what you are thinking about, the possibility and the potential—

THE CHAIR: Certainly one of the main uses would be in those sorts of situations, I would imagine.

Mr Hargreaves: Yes. It is over to Sergeant Varley.

Sgt Varley: We have used the move-on powers quite successfully in town. I have been at City police station for quite a while now and I was the team leader of the Beat team before I took up my current position. I have some first-hand experience in seeing how

these things do work. As the minister says, we are obviously much more commonly using our verbal communication and our persuasion, if you like, that people should move on and leave the area if they have been involved in a violent situation, which is common after a disturbance outside a club.

Ninety-nine times out of a hundred, that is more than successful. There are occasions under the move-on powers legislation where formal directions are issued. Again, the overwhelming majority of the time people do comply with those directions once they realise that they are being given lawfully. To be frank, we have had a small number of prosecutions that go through the courts in relation to contraventions of those move-on directions. I was involved in one myself approximately 18 months ago where the prosecution was lost, actually, based on a difficulty that we had with a technicality in the legislation.

THE CHAIR: And what was that?

Sgt Varley: Essentially, sir, the defendant was required to prove that he had a reasonable excuse for not moving on under the direction. He raised a reasonable excuse, but under the law, as you would know, once he raised that reasonable excuse, the onus returned to the prosecution for us to disprove that that reasonable excuse was not valid. We were unable to do that because of the nature of the circumstances outside the club. As a result, the charge was dismissed. I understand, having done some research on this, that the issue has been flagged. We have looked at similar legislation interstate. I believe that New South Wales may have encountered this problem several years ago in their legislation.

Mr Hargreaves: Mr Chairman, sorry to interrupt—

THE CHAIR: No, let him finish please.

Mr Hargreaves: Can I just say, though, that we are now entering into the realm of the Attorney-General. I have to suggest to you that these incidents and their implications with respect to those powers would in fact be the province of the DPP into the Attorney-General for a change of that legislation.

THE CHAIR: It is a police role. Let him finish his sentence.

Mr Hargreaves: Mr Chairman—

THE CHAIR: I will let him finish his sentence, thank you, minister.

Mr Hargreaves: Well, I am exercising my prerogative, Mr Chairman.

THE CHAIR: I would like him to finish the sentence.

Mr Hargreaves: Well, I shall stop him, Mr Chairman.

THE CHAIR: So you are actually exercising your prerogative as police minister to shut him up?

Mr Hargreaves: I am indeed exercising my prerogative, remembering what I said earlier

on. It is our job to actually enforce or apply the law, not to actually make it. What we are hearing from the sergeant, and I think quite validly, is something that would be of interest to the DPP to pursue with the Attorney-General.

THE CHAIR: I would have thought it would be of interest to the police minister.

Mr Hargreaves: Well, it may be.

THE CHAIR: Let us do it a different way.

Mr Hargreaves: We do not make the laws, Mr Chairman.

THE CHAIR: No. Let us do it a different way. The sergeant is saying that there was an incident in New South Wales, what, 18 months ago, where they encountered the same problem. It would seem that he was perhaps going to say that they might be doing something to fix it up.

Mr Hargreaves: Well, that is for you to find out.

THE CHAIR: Could I ask you, minister—?

MS MacDONALD: Excuse me—

THE CHAIR: Could I ask you, minister—

MS MacDONALD: Excuse me, Chair.

THE CHAIR: No, excuse me.

MS MacDONALD: No, point of order.

THE CHAIR: Can I ask you to take that on board? Now, you may come back to me and say you cannot.

Mr Hargreaves: I can tell you right now, Mr Chairman, in answer to your question, that this is a matter for the Attorney-General that you should take up with the Attorney-General. It is not up to the police or the police minister to introduce legislation to increase or decrease those powers.

MS MacDONALD: Can I also—

THE CHAIR: It is not DPP powers.

Mr Hargreaves: No, but it is the DPP that advises the A-G on it.

THE CHAIR: It may be in an act administered by the attorney. We will check that.

MS MacDONALD: Chair, can I respectfully suggest that this does not relate to this particular inquiry.

THE CHAIR: I think it has got a fair bit to do with it. People have raised it, Karin.

Mr Hargreaves: I just wanted to make sure, Mr Chairman, that the committee did not focus necessarily on Civic on a Friday night.

THE CHAIR: No.

Mr Hargreaves: It is also the case that we have had in the media in recent times activities in Manuka and, no doubt, on the odd occasion in your own electorate of Ginninderra in Belconnen. The same thing applies. Generally speaking, as the sergeant has indicated and, as you know yourself, the presence of a police officer, and quite often—

THE CHAIR: I will just stop you there. I will put the other issue to rest. I am quite happy to take that up with the New South Wales authorities myself. I will do that on the basis that it is probably in the Crimes Act or some other act, which is the purview of the Attorney-General. I appreciate your sensitivity about it, minister. In view of the history of the move-on powers, and I think it is something the Labor Party has always opposed—

Mr Hargreaves: Mr Chairman, I cannot let that slide.

THE CHAIR: I will take it up with the New South Wales authorities.

Mr Hargreaves: Mr Chairman, you cannot just throw a hand grenade in there and just watch the pin go off.

DR FOSKEY: I just wonder if I could—

Mr Hargreaves: It has to be said, Mr Chairman. I need to respond to this. The reason why I am not responding to that particular point has nothing to do with its validity or lack of it. It is a law of the territory that you introduced as Attorney-General. You introduced it as Attorney-General. Indeed, it is appropriate that the Attorney-General should have responsibility for the DPP and the courts to establish the laws that the police actually enforce and apply. Now, it is not for the police to say the law must be changed. It is for the police to say that this is their experience in the application of the law. They say that to me and I convey those experiences and that information to the Attorney-General. It is up to that minister, through advice from the DPP, as to whether to change it up or down. I suggest very seriously, Mr Chairman, that really the opinion of the DPP and/or the Attorney General ought to be sought on this one.

THE CHAIR: Thank you for that, minister. Dr Foskey, you have got a question?

Mr Hargreaves: I am not going to answer it.

DR FOSKEY: Yes. I think we must be coming to an end, are we?

THE CHAIR: Yes.

DR FOSKEY: It is more a speculative question, in a way. I was wondering if the sort of

current emphasis or growing emphasis on security is likely to lead to more use of these kinds of methods of crowd control in a routine fashion?

Mr Hargreaves: Dr Foskey, we look at the security of the people of the ACT in the context of their security and the security of other police officers. What we do not do is develop policies by looking into the empty teacup, stirring the tea leaves around and having a good look at it. Speculation does none of us any good. All it actually does achieve, in fact, is to put inappropriate thoughts into people in the community. The people out there in the community need to have confidence that the police have their safety as their supreme motive for being.

We look at the processes all the time. There is evidence of the trial of the Taser. What we do not do is say, "We might have a big terrorist attack. We had better now do this or do that or do something else." We will not change policy and procedures on the basis that something may happen. It has to be properly substantiated with a valid academic reason to change anything. I am sure you would appreciate that with your substantial academic qualifications?

DR FOSKEY: No. I actually thought we might have gone a little bit further than speculation, given that we live in Canberra. It is the national capital. I read in the *Canberra Times* today that we are having some kind of conference with a number of US dignitaries attending. Because of our location, there are special calls on the police in this territory and I suspect that extra precautions might be taken than, say, if it was people riding across the bridge on a monthly reclaim the streets protest.

Mr Hargreaves: I have to reject that innuendo, Dr Foskey. As far as I am concerned, our police officers are particularly skilled in demonstrations. They are particularly skilled with crowd control. They are particularly skilled—

DR FOSKEY: No, that was not the question.

Mr Hargreaves: in dealing one-on-one. So far I have not seen any risk to the ACT commensurate with upscaling the need for restraint. What we have in place at the moment seems to be adequate.

DR FOSKEY: We have done all right so far.

Mr Hargreaves: Yes. Let us be realistic about this, Dr Foskey. There has been one bomb go off, one terrorist attack, in 1975. Let us not to get too carried away with this.

DR FOSKEY: No, I am not.

Mr Hargreaves: Let us not get carried away. Just the presence of American dignitaries telling us how to do it does not impress me one bit, Dr Foskey, I must say. They can go back and look after New Orleans.

THE CHAIR: Any other questions? I thank you all for attending. You will be giving us that stuff in confidence? We might have questions on that. Minister, if need be, we could have a convenient time in confidence just in relation to that material.

Mr Hargreaves: Mr Chairman, can I just ask for a little assistance? We have undertaken to do this and we are very willing to do it, but I would be nice if we could have from the secretary, through the CPO's office, what it is exactly, just to refresh our minds, if that is okay?

THE CHAIR: Yes.

Mr Hargreaves: Further, if, as a result of this information we give you, you require some further briefing, I would appreciate an in camera hearing.

THE CHAIR: Yes. It is done on that basis.

Mr Hargreaves: We would be quite happy to do that.

THE CHAIR: It would be restricted to the issues raised in the in-confidence submissions.

Mr Hargreaves: Just one other small point, Mr Chairman. It is large for us, small for you. The commissioner's orders, which govern the hierarchy, are in fact the orders of the Commissioner of the AFP. They apply to all officers of the AFP, not just ACT Policing. I will have to seek the commissioner's agreement to give you the detail of commissioner's order No 3, because it is his order.

THE CHAIR: That is understood.

Mr Hargreaves: That may have a delaying effect. If he does not wish to give that, I will convey that message and his reasons to the committee.

THE CHAIR: Then we can approach him and assure him it is in confidence.

Mr Hargreaves: Absolutely.

THE CHAIR: We appreciate the need for that. We appreciate your concerns. Thank you, lady and gentlemen, for your attendance.

The committee adjourned at 10.32 am