COMMUNITY SUPPORT AND SERVICES COMMITTEE

Members present:
Mr A Tantari MP—Chair
Mr SA Bennett MP
Mr MC Berkman MP
Mr JP Lister MP
Mr PS Russo MP
Mr RCJ Skelton MP

Staff present:
Ms L Pretty—Committee Secretary
Ms A Bonenfant—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE CRIMINAL JUSTICE (SEXUAL VIOLENCE AND OTHER MATTERS) AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Friday, 19 July 2024

Brisbane

FRIDAY, 19 JULY 2024

The committee met at 9.01 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Criminal Justice (Sexual Violence and Other Matters) Amendment Bill 2024. My name is Adrian Tantari. I am the member for Hervey Bay and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people, whose lands, winds and waters we all share.

With me here today are: Mr Stephen Bennett MP, member for Burnett and the deputy chair; Mr Michael Berkman MP, member for Maiwar; Mr Robert Skelton MP, member for Nicklin; Mr Peter Russo, member for Toohey, who is substituting for Cynthia Lui MP, member for Cook; and Mr James Lister, member for Southern Downs, who is substituting for Dr Mark Robinson MP, member for Oodgeroo.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. To assist the committee, please turn your mobiles phones off or to silent mode.

The committee notes that the content of today's hearing may be distressing. If you or someone you know needs help, the contact details for support services will be available from the secretariat on request. If you or someone you know is in immediate danger, please contact triple 0.

MOHENOA, Ms Rhea, Director Client Services (Recovery and Healing), DVConnect

ROYES, Ms Michelle, Social Impact and Advocacy, DVConnect

CHAIR: Good morning. Would you like to make an opening statement before we start our questions?

Ms Mohenoa: I would also like to begin by acknowledging the traditional custodians of the land on which we meet—the Turrbal and Yagara people—and pay my respects to their elders past and present. I would also like to acknowledge those with a lived experience as a victim of crime, which includes domestic and family violence and sexual assault.

We have had the good fortune of having our voices heard at a number of Community Safety and Legal Affairs Committee hearings. We welcome the new members to this committee and we look forward to our discussions today. We appreciate the opportunities to put forward the considerations on behalf of the thousands of individuals we have supported across our services.

We are here today representing DVConnect as the statewide crisis response service for domestic, family and sexual violence as well as the statewide helpline for victims of violent crime in Queensland. In my portfolio I am explicitly responsible for our victims of crime and sexual assault services. We provide the 24-hour Queensland-wide helpline for victims of violent crime known as VictimConnect. People who have experienced crime in Queensland can call us any time of day or night to talk to one of our skilled practitioners. VictimConnect also provides specialist victim counselling, where people can access several sessions of trauma informed counselling with the same highly qualified counsellor. There is also available a service where we can support victims with practical matters where there are additional vulnerabilities. In the last financial year we worked with over 5,500 people through the service.

Under our VictimConnect banner we are also running the after-hours component of the Victims of Crime Community Response pilot. This is to provide immediate practical and emotional support to people who have experienced violent crime in Queensland in three trial locations. Alongside Victim Assist Queensland, in the few short months we have been running we have been able to provide, in the hours following a crime, people with the means to replace items damaged in a violent attack—items that can help a person be safe again, like repairing broken doors or completing things like forensic cleans of their home. We have also been able to place people somewhere safe for the night when it is unsafe for them to return to their home. We have paid for food and clothing in those first few days after a violent crime and we help people plan for their next steps and connect with services.

Beyond this, we also run the sexual assault helpline. It is a 365-day phone line that anyone in Queensland can call if they have experienced or are concerned about someone they know who has experienced sexual violence. We provide information, guidance and on-the-spot counselling for these callers. We find that many of our calls are people's first step in reaching out for help, whether the assault happened yesterday or 10 years ago. Alongside our sexual assault line, we have our forensic support line—an additional intensive counselling and case management service for people who have had their sexual assault cases impacted as identified in the inquiry into the management of forensic DNA in Queensland.

My colleague who is not here today is responsible for our two other major programs in Queensland—the statewide crisis response service for people impacted by DFV, providing practical support and pathways to safety for women and children escaping violence. This is perhaps the most known service we offer and what most people think of when we say DVConnect. In 2022-23 we provided over 8,000 nights of safe accommodation for women and children who were at immediate risk of serious harm from their partner of family.

At DVConnect we also work with men who are either using or victim-survivors of DFV through our men's line. With an increase of 38 per cent in new clients in the last year, we are seeing increasing demand as men who are using violence are reaching out to stop their use of violence, or men who have experienced violence are seeking support for themselves.

Today we bring not only our professional expertise and research in these areas but also the voices of the thousands of people we work alongside every day in Queensland—and those people are diverse. Over 77 per cent of the people we have worked with are from regional Queensland and eight per cent of our callers to VictimConnect identify as having a disability.

Ms Royes: I am pleased to have the opportunity to speak to the Community Support and Services Committee. I would also like to acknowledge the traditional owners of this land—the Yagara and Turrbal people—and also those with lived experience. As outlined in our submission, we are in general support of this amendment bill. We have limited direct experience with the justice service within our scope of service delivery, so there are lots of nuances in this bill that we cannot speak to. However, we have reviewed the statements of fellow submissions such as QSAN, the Sunshine Coast University and the Queensland Indigenous Family Violence Legal Service, and we defer to their expertise in some of those areas. We also acknowledge that most of the discrepancies between our submissions and theirs are about nuances of the framework, not the overarching framework itself.

Of greatest consideration from what we hear with the people we work with and our practice experience, as well as academia, is that provisions for special witnesses must be prioritised. While this bill creates a legislative pathway for witnesses to have choice and control over their engagement in the process—which ultimately is important for a robust judicial system as well as the wellbeing of the victim-survivor—what will be of critical importance is the practice and resourcing to ensure these provisions are enacted as we fully see them happening. Therefore, we think this is an area that will need considered review over time.

We stand wholly behind the positions of authority changes. From our point of view, these appear to be crafted well to capture those who use positional power to abuse others. We like how this bill makes space for the authority to come from social, political, religious or other unique power structures. It is not always from formal power frameworks that power comes. However, this will remain a critical area that must be reviewed over time to see how it is enacted.

The increase in protection through the PSA timeframes is also fully supported. Bringing these types of protections in line with domestic violence orders just makes sense. We know that abuse and control continues throughout incarceration and post incarceration. Therefore, it is an important element of safety and wellbeing for victim-survivors. It is often highly unsettling and a risky time for victim-survivors when offenders are entering jail or being released from jail whether on parole or probation. This offers them more enduring protections. As we have outlined in our relatively short submission, these are the areas that we make specific comment on. Now we welcome questions.

CHAIR: Thank you. To commence proceedings, I ask the deputy chair to ask the first question.

Mr BENNETT: Thank you for acknowledging the complexities. It is certainly a challenge for the committee as well. We have some legal minds here today but some of us do not have that privilege. I am interested in your opinions about the exploitation of children—in particular, the issues around consent, age and the discrepancies with that. From DVConnect's perspective, when sexual violence in particular is reported to you, is there an age when that is treated differently—that is, at 16, 17, 18 or 19—or is it all considered the same, in your opinion, in terms of safety?

Ms Royes: There are many elements that we consider when we are looking at the experience of abuse and the safety for victim-survivors or people who call us. Age is a factor of that, but there are many other things that contribute to those factors such as the environment they are in, the person's understanding and social capacities or the trauma they have experienced historically. We might have people contact our service who are 14, and we may lean into responding to them as if they are more like adults and more autonomous, but there are other times when we will respond to them more like they are children. It is the same for 16 and even for 18.

At 18 there is the clarity of them being an adult and the responsibility we feel to stand behind them to support them to make their own good decisions versus that obligation that we recognise when people are under the age of 18 who are still building some of their capacities to keep themselves safe and to make really well informed decisions especially about consent. It is a grey area. That is why we like the framing of this bill.

We recognise that if you are 16 you probably are in a space where you can make choices about sex and sexual activities but you are still subject to lots of power—positional power, age power, intellectual power, understanding how the world works power. We do think it is really important that this framing exists and that we are going to implement it. We are just not sure how it is going to play out. They are some of the legal elements that you spoke to that we are not across ourselves.

Mr BENNETT: Do you see any potential issues around the consent laws that we passed in this place just recently and the fact that 17 is now caught up in that unfortunate dynamic you have described? Do we see any potential conflicts with the age of consent and the issues of giving consent?

Ms Royes: We were just discussing this in the car, essentially.

Mr BENNETT: You need to listen to the radio!

Ms Royes: We probably should have; I might not have missed my turn! We acknowledge that that is going to be a bit tricky. Legislation is blunt and it has to be enacted. Giving space for some of that practical application will be important. We know from our practice experience that age matters when it comes to consent. You can have significant age discrepancies in relationships—absolutely. For us, it is something we always want to explore more when there are significant age or power differences. Therefore, we think at the age of 17 you can be consenting but we want to unpack that positional power that might exist.

Ms Mohenoa: I will add that I think the intersectionality comes into play here. There could be a 17-year-old who has had minimal or no trauma, who has been supported through all development to make sound decisions, and there could be a 17-year-old who has had historical trauma, intergenerational trauma, who, due to the intersectionality of various factors, is much more vulnerable as a 17-year-old, and that idea of positional power plays much more into that second scenario.

Mr RUSSO: In your submission you have advocated for similar inadmissibility provisions for men on remand and have pointed to the success in its implementation. Is there anything that you feel is missing from the proposed legislation which could advance that submission?

Ms Royes: Again, this moves into a little bit of the grey area—probably more black and white area—that we are not across; we sort of live in the grey area. We think it is really important that people are able to access supports to help them change behaviours as early as possible. It is something that we have advocated for—particularly men who use violence who are on remand, being able to access program quickly. We see it applying well here. We cannot really comment to some of the technical aspects that sit around it, but we do have some concerns and we defer to more learned colleagues to talk to that. Some of our worries about availability of program, length of program, length of remand et cetera still play into the practical rollout of that issue. It is a step in the right direction. We like the comment that it makes to community about the importance of accessing supports. It probably is an area where we are very interested to see what it looks like in reality and what is funded to support that.

Mr RUSSO: Are there any other examples in other jurisdictions where it goes towards having men participate?

Ms Royes: From the scope that I am aware of, the issues lie in the practical availability of program and length of program for effectiveness and lack of ability to effectively and safely research that. Again, I cannot really talk to that.

Mr BERKMAN: Thanks for your time this morning. In the interests of complete transparency, I should declare that my wife is, as of today, still employed at DVConnect and is one of the colleagues I think you referred to before. Nonetheless, I do not think that bears any real relevance on the hearing today.

On that same point raised by the member for Toohey, the other submitters have raised some concerns that the exclusion of certain particularly harmful or high-impact crimes from the inadmissibility provisions or participation in certain programs is inconsistent with the need for all convicted persons to be able to access those programs. Do you have a view on that?

Ms Royes: No. We do, but they are not informed enough to provide here because it is a complex space to be able to appreciate how that is enacted in law. From our point of view, just being able to access supports is of highest importance, and being able to truly access those supports means that you have to be vulnerable and open; otherwise, the supports are not going to be effective for change.

Mr BERKMAN: As a broad proposition, though, from your previous answers, I take it that you are generally in favour of broader availability and accessibility for any convicted persons to those sorts of programs?

Ms Royes: Yes. We do have worries about admissions that are made and then not being able to act on them and the impact that has on other individuals as well as the person incarcerated or on remand. I think there are some times when you just have to see things play out to see whether they are going to be effective or not.

Mr BERKMAN: Hence the importance of review, as you have mentioned before. Thank you.

Mr SKELTON: In your view, do you believe that the bill goes far enough to deter the exploitation of children by persons in a position of authority? I think you mentioned that on consent and different age gaps and so forth?

Ms Mohenoa: Does it go far enough?

Ms Royes: We do like the structuring of this. We think it is a way that balances opportunities for 16- and 17-year-olds in particular to have control over their life and to make choices but also recognise that power over comes in many different ways. One of the greatest gaps we see is not so much in the law itself but the way it is practised and people responding to concerns that are raised at the police station, within the court process and in the community. This bill probably does go far enough, but there is a lot more work at this point to be done with the community and the judicial system to make sure they can hear and see and understand the way sexual abuse is perpetrated, the way it presents and the impacts that has on individuals.

Mr BENNETT: Because I am lost in the legal stuff, may I ask a question about understanding DVConnect a little bit more? I understand that your funding bases are fairly well established, but, with regard to more of the not-for-profit sectors that add value to the work you are doing in sexual violence and the protection of those most vulnerable, do you have a few other not-for-profit partners that you could alert the committee to?

Ms Royes: Yes. I think Michelle talked to our partnership with QSAN, which is the Queensland Sexual Assault Network, the peak body for sexual assault services in Queensland. We work alongside QDVSN, which is the domestic violence network. We work in partnership with a lot of our DV sister services and sexual assault sister services. We have forums where we gather monthly to connect and talk about presenting, and some are presentations and how we are working through it.

Mr BENNETT: To break it down, a lot of us are regionally based. For example in the Wide Bay, if you got a tragic call from somebody in distress, how would that be managed in essence of being able to provide the best service possible for those a little more disconnected from Brisbane perhaps? That is more what I was interested in.

Ms Royes: As a regional Queenslander—hence why I got so easily lost in Brisbane, despite living here for a while—I really do value, and we put a lot of emphasis on, making sure we are across rural and regional Queensland.

Mr BENNETT: We hear of your services, but—

Ms Royes: The Queensland Sexual Assault Network represents 23 individual sexual assault services that are right across Queensland, from the tip to the south and out west, and their website lists all of them. There are unique services in each region that respond to almost the fullness of each

region. Almost every geographic area is covered by a localised sexual assault service that is really well connected to that community, and almost all of them are just local services, not part of bigger not-for-profits. That is something we really value: the ability to give localised responses, local community committees et cetera.

Ms Mohenoa: The regional services that do not have people available to get out to remote areas do have phone-based support services for people within their communities.

Ms Royes: There are also culturally and linguistically diverse responses as well as First Nations specialised responses as well as responses for women with disabilities.

Mr RUSSO: I understand from your submission that you were stressing the point that the expert panels should have an understanding of gendered violence and continued focus on the maintaining of autonomy in their decision. Is there anything that you think is missing from the bill that could be done to further protect victim-survivor wellbeing?

Ms Royes: We do like the idea of the panel and the panel having some provisions around its expertise. Sometimes we defer to experiences in domestic and family violence in the Family Law Court system, where there are experts who are called who perhaps do not have the strongest gender or domestic and family violence lens and therefore have a negative impact, from the experience of our people we work with, of that law system because an expert does not respond to a situation that we would think an expert would. We do not know how you structure the legislation to make sure that is clear. Again, it feels a bit beyond our scope. It seems appropriate, and hopefully the enacting of it speaks to that.

CHAIR: Thank you. With that, our time is up. I would like to thank you both for coming in and providing evidence to the committee today.

HOARE, Mr Andrew KC, Chair, Criminal Law Committee, Bar Association of Queensland

SMITH, Ms Charlotte, Member, Criminal Law Committee, Bar Association of Queensland

CHAIR: Welcome. I invite you to make an opening statement before we start questions.

Mr Hoare: Thank you. Firstly, there has been a consideration of the bill and a draft response was created. Unfortunately, our president was unable to settle that response. I can say, for the benefit of the committee, that it largely replicates the response which was provided by Legal Aid Queensland, with some small differences which I can perhaps speak to. However, we are more than prepared, if the committee is in a position to receive it, to send our response. It is, I think, five pages in length, but we understand the time constraints in respect of this committee's work. We say, as an umbrella statement, that a number of the changes which are proposed are inconsistent with longstanding principles of justice and the adversarial system. Such changes should be done hesitatingly and with a great deal of reflection and should not be done merely to deal with specific and individualised cases and perceptions of injustice in individualised cases. In saying that, we appreciate the legislative inertia in these changes so, rather than having some oppositional position, so far as we are able to comment we shall do so.

I will speak about the matters which are of considerable importance to our members, and this involves some proposed changes to the means by which evidence is led in sexual offences, the provision for experts to provide some information to court, and also the restraint or proposed restraint upon allocation of questioning as between counsel. There are some minor matters that we would like to speak to which will take very little time, and then may I go into the substantive ones?

CHAIR: Certainly.

Mr Hoare: In respect of the inclusion of section 210A, the association generally supports any codification of a crime which will prevent the exploitation of children or people in a position of an imbalance of power. Our concern with the section is that it is an inclusive definition. That is, there may be a position where other types of relationships are captured. Our concern is that we believe that those types of relations are capable of definition, as has been done in the inclusive sense, and when you have the criminalisation of relationships there is a benefit to the community that there is some certainty as to that which can be dealt with by education, by example, as to what relationships are prohibited. They are then defined as a class and criminalised, should it exist. We appreciate, of course, that there is a defence contained within the section itself that the jury is entitled to consider whether it is exploitation in all of the circumstances, but if one of the goals of the criminalisation of this conduct is to prevent people committing it then it should be defined in that way.

In respect of the expansion of the directions hearings, our members' experiences are that the court processes are controlled. On the one hand, fairness to the accused and unfairness to complainant expressly lies within the provision of the trial judge to ensure those proceedings are conducted in such a way that is fair to both the accused and the complainant. We always adopt mechanisms which will ensure a complainant's version of events is given in a way which is least intrusive, does not add to the trauma of a complainant in recounting their version and supports them so that irrelevant considerations are not brought in before the tribunal of fact. We think the existing protocols and the way in which the courts are conducted are entirely consistent with that, and we have a concern that the changes that are proposed are based upon anecdotal rather than true experiences.

There is, within the ambit of that expansion of the directions hearing, this proposed allocation of questions between representatives, and that is inconsistent with your right to counsel in your case. By example, it is difficult to understand how in practice, if there are three or four barristers at the bar table of varying experiences and with different instructions, such allocation is going to occur. In practice, it would be expected—and it is certainly my experience and so the members' experience—that if there are multiple defendants with multiple representatives asking multiple questions the court will have an oversight to prevent redundancy and to prevent the repetition of questions which have been asked and answered. Firstly, barristers are obliged to maintain their own case and maintain their own instructions and there cannot be disclosure of those instructions to other counsel. Secondly, we are assuming competent counsel and competent representatives for the Crown as well as a diligent oversight by a judicial officer, and we do not think it is necessary to create such a direction because the evil that you are trying to prevent is already prevented in the processes of the court.

I now move to the expert evidence in respect of sexual offences. We find that essentially problematic, and there are a number of reasons for that. Firstly, the foundation for the need for expert evidence is an assertion that there is an atypical response to being the victim of a crime or a sexual offence. That being there is an atypical response is that there is no known typical response. It is difficult to see how an expert can assist the jury, except in generalities. There is presently what is described as the Cotic comment, which is a comment which says that there is no single way that a complainant may respond to sexual offences. That is given with an imprimatur from a judge saying that, in our experience, there is no typical way that a complainant may respond.

That being so, it is difficult to see, firstly, how an expert would be armed with the foundational facts to assist a tribunal of fact and, secondly, how that type of expertise can sit well with the foundational fact that there is no response that is typical, and we are concerned that it will create an area of dispute within a trial which will prolong the trial process when there will be arguments as to the use which can be made of the experts which will be proposed to be called either by the Crown or by the defence and the type of evidence which is proposed be given by these experts—I say that guardedly, because I am not certain they would fall within what we would call an expert as defined by Makita v Sprowles—and, secondly, how the expert would be able to give evidence based upon an agreed foundational fact. There will be an expert briefed for the Crown; the Crown case at its highest may simply not come up to proof, so we have a foundational opposition to that amendment.

In respect of the similar fact evidence—and we adopt what has been said by Legal Aid in that regard—relevant and probative evidence which falls within that character is frequently relied upon by the prosecution. It is, when the threshold is met, used to great effect in securing the conviction of persons to whom that evidence relates. Legal Aid has done a review of those cases. Perhaps Ms Smith can speak to that because she is fully aware of that point.

Ms Smith: This is really involving some referencing of the Legal Aid submission, which I know you have. There is a table which appears within that document at pages 16 and 17. It is a review of case law in the last four years, with only two examples there—both first-instance decisions in which propensity evidence, if you like, has been ruled inadmissible by a judge. Both of those were factually unique, involving juvenile defendants in which there was a really small disparity between the age of the alleged offender and the victim. The concern, I think, that arises is that it is easy to say, looking at what is written in law, that Queensland has the least restrictive rules, but when the actual end product is looked at in terms of what is actually happening in the courts and how our judges are applying the law, they are doing that consistently with how it is done in other states and territories. Propensity evidence is relied upon all the time and, as Andrew indicated, with great effect and to secure convictions in appropriate cases.

CHAIR: My apologies to cut off your opening statement, but we are running short of time. We have around about seven minutes.

Mr Hoare: I am sorry. I say before I leave the similar fact evidence question, or whatever it may become: if it is going to be altered, it should be altered in identical terms to the New South Wales legislation so we can have, as a source, that body of law. I apologise.

CHAIR: No. Thank you, Andrew.

Mr Hoare: I should have said that I was not meaning to launch into an opening statement like I did, so let me stop there.

CHAIR: We appreciate the evidence you have given. I need to note to you, Andrew, that late yesterday we did receive a submission from the Bar Association of Queensland and, under the parliamentary processes, we could not publish that until we had our meeting this morning. It has been published on the webpage. I just wanted to make that point.

Mr Hoare: I apologise. No-one informed me of that and I was in Cairns. I could have then probably not spoken so—

CHAIR: That is fine. We will have a couple of questions before your time allocation is up.

Mr RUSSO: In relation to the person of authority amendments to the Criminal Code, I note that there are other jurisdictions where this piece of legislation exists. I take on board you were talking about having categories of offences defined—

Mr Hoare: Categories of relationships defined.

Mr RUSSO: Sorry, categories of relationships defined. Are there any examples of that?

Mr Hoare: I will look at that and if I find it I will provide it to the committee.

Mr RUSSO: Is that a question that you need to take on notice?

Mr Hoare: Yes, I can deal with that. If there is equivalent legislation, we can find that and provide it.

Mr RUSSO: You did raise an important aspect.

Mr Hoare: If there is a failing that we can find in the cases, we will inform you that there has been an identification of issues with the legislation's operation. We can do that.

Mr BENNETT: There has been a bit of time spent on the changes to the Criminal Code, then the 210 amendment. Is it fair that we are talking about omitting the consent provisions? This parliament passed consent legislation a little while ago. I asked a similar question to DVConnect earlier that consenting young people at 16 and 17 is now legal, as I understand it. I am curious to know your thoughts. Are we omitting consent with that new clause of Criminal Code changes at 210?

Mr Hoare: No. There is that provision which provides for a consideration, whether it is exploitation or the circumstance which incorporates necessarily the agency of a young person, and it has some duplication in other persons who were deemed to be needing protection, such as persons with a mental impairment, by example. Aside from the point we made, it does strike the appropriate balance of giving young people agency but still affording them protection, if that is the question the member was asking.

Mr BERKMAN: I really appreciate your evidence so far. It is very helpful. I was very interested in the issues around expert evidence that you raised in the opening statement. Obviously, expert evidence is very widely used and is often very valuable, but it is an interesting point you make about what will oftentimes be an absence of any agreed factual basis for that evidence to be provided. I am curious to understand whether you think that dilemma—the absence of an agreed factual basis—is remediable. Can that be dealt with?

Mr Hoare: In all cases where expert evidence is led, there must be a foundational fact for which then to comment so that the exclusion that they exist in, that is—I will not go into that. However, there need to be foundational facts which are demonstrated to the tribunal of fact, either a judge or a jury, before they can act upon the expert evidence. That is something which is often remediable, but it becomes a point where there will need to be, because of the notice which is required by expert evidence provisions, during a trial, a contest with the expert during the trial for notice, because you may have an expert against them as well. There is also, I think, a funding issue. I do not think this was proposed to be dependent upon funding given to Legal Aid as well for experts to be called. I just do not think that has been put in place.

Ms Smith: I checked that and it does not presently exist. My understanding is that the taskforce recommendation was that this would not come into effect until there was funding available to Legal Aid Queensland to fund their own expert report, for example, on behalf of an accused person. I do not believe that that yet exists, so that is a worry. To answer your question very simply, it is to say that that cannot occur without significant delay in the criminal justice process. The fundamental concern with this sort of expert evidence is that it will unnecessary cause substantial delay in sexual offence cases or cases where coercive control or domestic violence is raised, and at the moment it is very adequately dealt with by a judicial comment which is consistent. It is very commonplace in trials for judges to comment to the jury, as Andrew said, with the imprimatur of the court that there is no normal way for a victim of domestic violence or coercive control to behave and for the jury to take that into account in their deliberations. That is a really effective way of dealing with it.

Mr Hoare: When you were speaking about foundational facts, for example, it is common that people who have been the victim of trauma will have different means of recalling traumatic events and of being able to recount those traumatic events. Before the jury can use expert evidence to that extent, they must be satisfied beyond reasonable doubt of the offence they are considering. It has inherent logical complexities by applying expert evidence which is going to a concluding fact where their use by a jury properly will be determined at a point when their role will be redundant because by the time the jury are considering that expert opinion they must have already decided that the defendant has committed the offence.

CHAIR: Does that answer your question, member for Maiwar?

Mr BERKMAN: It is complex.

Mr Hoare: I know. It is. I am content to take questions on notice as to a specific concern which we can then step out, because we are responding in respect of the other section as well. It just indicates the complexity, firstly, of people who have been victims of these offences and traumatic events and how they respond and an inability to coalesce those responses in terms of expert evidence which is more than just general.

Mr BERKMAN: Thank you. I appreciate that.

CHAIR: With that, our time has concluded. Before I wrap up, we did place a question on notice. Obviously the member for Maiwar indicated that more information would be excellent, if possible.

Mr BERKMAN: Not necessarily. I do not expect you to go on a wild goose chase.

CHAIR: With the question on notice, if you are able to assist the committee, could you have a response back to us by 23 July? That will assist the committee to include it in our deliberations. I thank you both for attending today.

MITCHELL, Dr Dale, Lecturer in Law, University of the Sunshine Coast

MORITZ, Dr Dominique, Associate Dean (Learning and Teaching), University of the Sunshine Coast

CHAIR: Good morning. Would you like to make an opening statement before we have questions for you?

Dr Moritz: Thank you for the opportunity to provide a submission and appear before the committee to discuss the Queensland government's response to the Women's Safety and Justice Taskforce recommendations. Collectively, Dr Mitchell and I, and our fellow submission authors—Dr Ashley Pearson and Bricklyn Priebe—as representatives of the University of the Sunshine Coast Sexual Violence Research and Prevention Unit, have expertise relevant to this law reform around position of authority, sexual offences and criminal justice responses for women who offend.

Before continuing, we acknowledge the traditional owners of the land on which we meet today—the Turrbal and Yagara peoples—and pay respects to their elders past, present and emerging, and we acknowledge the important role First Nations people continue to play in this community.

We take this opportunity to commend the legislative changes proposed in the Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Bill 2024. Our submission and our appearance today is focused on the amendments to the Corrective Services Act and the Criminal Code.

In relation to the proposed changes to the Corrective Services Act, therapeutic interventions are important for individuals' rehabilitation while remanded. Making admissions inadmissible while on remand is a beneficial amendment. We also encourage broader protections for women in custody that enable their full participation in therapeutic programs including removing the barriers to accessing these programs where participants have not admitted guilt, making admissions inadmissible about offences for which an individual has not been charged and ensuring high-risk admissions are still included in the inadmissibility provisions.

The Criminal Code amendments provide an important protective function for children over the age of consent to sexual intercourse. In recent research we conducted, we explored community views in relation to sexual assault and rape sentencing. Importantly, the community perceive a criminal act to be more serious where a relationship of trust and confidence exists between the perpetrator and victim-survivor. For position of authority interactions, children need more rigorous protection even when they are older and have reached the age of consent to sexual intercourse. These proposed provisions generally align with the community views of sentencing sexual assault and rape offences.

In our study the community were particularly critical of people who offend in a position of authority offence involving a child over the age of consent. Specifically, the community found such behaviour to be more serious than many other non-sexual offences including burglary, for example. We recommend the committee considers the maximum penalty proposed for the indecent dealing sexual offence not involving penetration to be at least equal to or a higher maximum penalty than burglary to align better with community views in this area.

In addition, while we welcome the non-exhaustive definition of those who hold a position of care, supervision or authority, we would like to see legislative drafting for this provision strengthened by broadening the definition of 'spouse' to ensure it encompasses domestic partners whether or not there is cohabitation, as well as former partners; expanding 'school personnel' beyond teacher, principal or deputy principal roles currently captured, given many adults have access to children in a school environment; ensuring the health practitioner provision includes registered or unregistered health practitioners providing a health service and includes a former patient relationship; and removing the three-year age gap as being permissible, given a position of authority creates a power imbalance, and it is our view that the close age gap of the parties does not diminish a young person's vulnerability to duress within their relationship. Again, we thank you for the opportunity to engage with this law reform process and we welcome any questions you have.

CHAIR: Thank you. I will hand the first question to the deputy chair.

Mr BENNETT: I have been pursuing something to get my head around this this morning, so if I am repetitious I do apologise. I want to go to the Criminal Code changes to section 210 and this issue of consent. You have mentioned the three-year gap. I refer back to the consent legislation that has been passed in this parliament recently. Consent over 16 is still legal in Queensland, as I understand it. Why is that three-year provision and the recommendation on page 8 of your submission that it be removed something that should be considered?

Dr Moritz: The section 210 amendments that you refer to are designed to address the challenges of the power imbalance for young people. That power imbalance that we are talking about with these position of authority relationships exists regardless of the age gap. In our view, whether there is a one-year age gap, a three-year age gap or a 10-year age gap is irrelevant, because if there is a position of authority or a power imbalance—whether that is care, supervision or authority as drafted in the legislation—that power imbalance still exists. Our concern is that allowing a defence with up to a three-year age gap could perpetuate power imbalances.

Mr RUSSO: On page 4 of your submission you talk about a number of issues. The first issue is where an admission of guilt is a precondition to participation in programs, creating a missed opportunity for rehabilitation. Are you able to elaborate on that proposition?

Dr Moritz: Yes, absolutely. There are some programs within the corrective services space that require participants to admit guilt to be able to undertake that therapeutic process. While there might be reasons for that, the challenge for women in custody is that there are many reasons it might not be appropriate for them to admit guilt. They might not want to admit guilt, so preventing them from accessing these therapeutic programs is a significant barrier to their rehabilitation and then eventual reintegration in the community because they are prevented from being able to be rehabilitated.

Mr RUSSO: You also talk about there being insufficient programs available. Where are you relying on getting that information from?

Dr Mitchell: Recent studies which have been completed by our Sexual Violence Research and Prevention Unit have highlighted a demand by both practitioners and justice-involved women who are serving a sentence for child sexual assault for responsive programs which provide them with treatment and support.

Using data collected across three Australian jurisdictions, our colleagues Bricklyn Priebe, Dr Larissa Christensen, Dr Nadine McKillop and Dr Susan Rayment-McHugh undertook a study which explored the perceptions of correctional practitioners and justice-involved women who were currently serving a sentence for child sexual assault on the accessibility and demand for offence-specific correctional programs and the perceived benefits of such programs. The results indicate substantial support from practitioners at a rate of 90.7 per cent and justice-involved women at a rate of 100 per cent who were surveyed for the development of offence-specific interventions, despite there currently being few opportunities to access such interventions within correctional settings in Australia. I will provide one quote from a practitioner captured in that study. They state—

These women fit into a group that we don't really have a lot of options for. Really, we've got nothing.

Participants said that, despite having voiced their concerns about the lack of access to relevant programs, they felt that their concerns were often dismissed. Justice involved women identified that they felt desperate to be noticed and provided with more assistance, with some even having made active attempts to request support—

I've been asked to be part of a program. Every year I write a letter. This is supposed to be a rehabilitation centre. Why are they not rehabilitating us? It's like we're their dirty little secret and they just sweep us under the carpet until they let us out.

Another commented—

The majority [of sexual offenders] are men and therefore we make assumptions and just try and extrapolate and put the round peg in a square hole. They're different [that is, female sexual offenders here]. We need to understand them as different and we need to be unapologetic at doing that.

Essentially we have to ensure that these groups are heard and receive the treatment required so they can be active, healthy participants of our community.

Mr LISTER: Am I to take it that you are advocating an increase in the penalty for offences under section 210A? You have compared it to burglary, for instance. Are you aware of a significant number of cases where a judge has imposed the maximum penalty as it stands and therefore could be considered likely or possible to have been considering a greater penalty? I ask the question because increasing a maximum penalty only increases someone's incarceration if a judicial officer decides to do so.

Dr Moritz: Your comment really goes to the complexities of sentencing. Our view comes from our research in the community to gather community views. When we spoke to the community there was concern that sexual offending was more serious than non-sexual offending. It was very clear that sexual offending involving young people arising out of a position of authority where there was a power imbalance was significantly more serious than almost all other non-sexual offences.

While the maximum penalty is only one aspect of determining sentencing seriousness—and we acknowledge that—it does indicate to the community the seriousness of particular behaviour. That was one strategy which we proposed to address that, although we acknowledge that it is far from adequate to cover all of the complexities of sentencing.

Mr SKELTON: On page 6 of your submission you note that, as stated, the maximum penalties for non-consensual sexual acts are inconsistent with the serious nature of the offences. I understand you have done a lot of research. Community expectation would suggest that it is indeed seen as far more heinous than a crime against property, so I understand that. Do you have a view as to what an appropriate maximum penalty could be?

Dr Moritz: I do not think we are in a position to propose a specific maximum penalty. Our view is that the maximum penalty really should just ensure it is higher than some of the other non-sexual offences.

Mr BERKMAN: Turning to the proposed section 210 provisions, we have received submissions from QLS—whom we will hear from in a moment—that outright oppose this additional offence. To a lesser extent, the Bar Association said it should at the very least be limited or amended so that non-exhaustive list does in effect limit the application of the section. Do you have any reflections on that position generally?

Dr Mitchell: In general, the decision to proceed towards an inclusive list rather than an exhaustive list recognises the challenges of exhaustively defining all of those positions of care, supervision and authority. When it comes to the large-scale studies we have been undertaking in the past six months in relation to a separate subject for the Queensland Sentencing Advisory Council around community views of the seriousness of rape and sexual assault sentences, one of the general reflections is the complexity around this. It is very complex to exhaustively define situations where there is a relationship of trust, care or supervision. Our research would speak to support from the community in general to ensure this moves towards an inclusive list rather than an exhaustive list. I must recognise, as the Bar Association noted in their evidence prior—reflecting that we have not had the opportunity to read their written submission, of course—that if there was to be a more exhaustive list it could potentially provide more certainty. In general, in a broad sense we need to make sure there is a communication of the inappropriateness of some of the behaviours we can have out there in the community.

Dr Moritz: Being able to prescribe specific relationships whilst still having broad enough parameters to include relationships that are not explicitly listed really sets standards for behaviour. As Dr Mitchell stated, it provides more certainty to ensure those standards are very clear for community members.

CHAIR: There being no further questions, I thank you for being with us today. We appreciate you coming forward and giving evidence here today.

COOK, Ms Bridget, Senior Policy Solicitor, Queensland Law Society

QUINN, Mr Patrick, Deputy Chair, Criminal Law Committee, Queensland Law Society

CHAIR: Welcome. I invite you to make an opening statement. Then we will ask you some questions.

Ms Cook: Thank you for inviting the Queensland Law Society to appear today. I would like to respectfully recognise the traditional owners and custodians of the land on which we meet. As the committee may be aware, the Queensland Law Society is the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. We are an independent, apolitical representative body upon which government and parliament can rely to provide advice which provides good, evidence-based law and policy.

We understand the committee has been provided with a copy of our written submission, which highlights our concerns with certain aspects of the bill, including the insertion of new section 210A and the amendment of section 229B of the Criminal Code. We also take this further opportunity to emphasise our view that the aspects of the bill relating to tendency and coincidence evidence should not be enacted until a comprehensive review is undertaken by the Queensland Law Reform Commission.

I am joined today by Patrick Quinn, Deputy Chair of the Criminal Law Committee. I also convey the QLS president's apologies as she was not able to make it today. We are happy to take any questions from the committee.

Mr BENNETT: I pass on my personal thanks for your submission. It did not meet the deadline but we published it anyway. It is excellent and there is a lot of comprehensive information in here. Prior to your appearance we heard evidence about the role of Legal Aid and where that may leave some Queenslanders with regard to an expert panel and all of these experts now becoming part of this process. I am more interested in fleshing that out, because my assumption is that Legal will be requesting a lot of funding to effectively represent the people who may rely on them as opposed to other professional representation. I am just curious about your thoughts on that.

Mr Quinn: Deputy Chair, I did not hear the evidence from the Law Society.

Mr BENNETT: Could you comment on the role that Legal Aid and their representatives would play in relation to vulnerable Queenslanders and dealing with the expert panels that are proposed to be created under this bill?

Mr Quinn: It is not something I have turned my mind to for the purposes of today.

Mr BENNETT: On page 5 of your submission you say that expert evidence could result in a disproportionate impact on defendants. I thought those defendants would probably be represented by Legal Aid in the first instance. Is that a fair comment?

Ms Cook: My understanding is that the Queensland Law Society's submission with respect to expert evidence panels is more about the technical nuances of how that would operate in a trial setting in terms of the logistical complexities associated with calling experts of the particular kind contemplated by the bill and the likelihood that will give rise to a propensity for a contest of expert evidence in that space. We would defer to the Bar Association's comments with respect to that question. We appreciate that funding is an aspect of that. If the opportunity for additional expert evidence is afforded by the provisions of this bill and the establishment of an expert evidence panel, we would support the Bar Association's position that further funding is absolutely required in that space.

CHAIR: On page 4 of your submission you oppose the introduction of a requirement to videorecord special witnesses' evidence. Can you elaborate on that and the reasons why?

Mr Quinn: One of the big difficulties at the moment is the court's ability to do this in an appropriate way. If you are in Brisbane or a regional court, the facilities that are available are very different. If this were to be enacted there would need to be proper funding to ensure the equipment was up to scratch and there were trained IT professionals available to assist. Quite often there are delays caused by the videorecording of evidence. It is becoming more and more common for interpreters and the like to be in different locations, and the experience of our members is that it is problematic. It would need to be properly funded. On the whole, there is no opposition to the videorecording of evidence as long as there is the ability for there to be an objection taken to the evidence being used on a retrial, for example. The bill strikes the right balance at the moment in that regard, but that is a very important safeguard that needs to be in place.

CHAIR: I was about to ask a further question on that but you just answered it. We have given consideration to evidence that may have passed through the court in a retrial situation, the evidence being reintroduced and using a video from a prior time.

Mr Quinn: That is right; at present that exists. That just needs to be maintained if this is to be introduced.

Mr BERKMAN: I want to turn to proposed section 210A. I appreciate the QLS position is that you do not support the introduction of this section. Can you elaborate on your position and the risks you see it carries in light of the defence that sits within the provision itself?

Mr Quinn: Certainly. It is fair to say that the QLS position is that there is a qualified opposition to the proposed amendment. We understand the objective is to protect vulnerable children against abuse, and that is of course supported, but the new offence provision does not require the prosecution to prove the abuse of the position of authority, that the acts constituting the offence were done without consent—which is concerning—and instead presumes abuse by the existence of the relationship. There is a danger of particularising certain relationships as axiomatically abusive. In the QLS submission, the prosecution should be required to prove the existence of abuse. An example of why the amendment is problematic and the defence is not appropriate is that a lawful, informed and voluntary sexual act between a 17-year-old at a university college and a young 18- or 19-year-old tutor at a college would be captured by this provision and the defence would not apply, so there are going to be unintended consequences and unintended relationships will be captured by this amendment.

CHAIR: Does that answer your question, member for Maiwar?

Mr BERKMAN: I suppose I am interested in the assertion that the defence cannot apply in those circumstances. I had perhaps misunderstood there was scope—

Mr Quinn: If I can assist you with that, I can explain why it would not apply.

Mr BERKMAN: Yes, thank you.

Mr Quinn: The defence is in proposed section 210(4)(a) and (b), which states—

(b) that all of the following apply—

(i) the accused is a person other than a person referred to in subsection (3).

Proposed subsection 3(g) states—

(g) a person employed or providing services at a child accommodation service where the child lives.

for example, the university college. There are going to be examples like that captured by the amendment which would appear to be unintended. I do not know what the solution is to the defence to make sure unintended relationships are not captured, but as it currently stands there is a real risk that is going to happen.

Mr RUSSO: I would like to talk about similar fact and propensity evidence. In your submission you have made the suggestion that it be limited to sexual offences only and not to broader criminal offences. Could you expand on why that is?

Ms Cook: Please correct me, Patrick, but, given the time, our committee has not had the opportunity to consider those specific aspects of the bill in detail. I would be happy to take that question on notice so we may assist in providing some further details in respect of that submission.

Mr RUSSO: Perhaps we could approach it another way. From your experience in dealing with the common-law rules, are you able to expand on that? There are already rules in place in relation to how similar fact evidence and propensity evidence works in Queensland. On my understanding from what the Bar Association told us, those common-law rules seem to be effective. Does that help or do you still need to take it on notice?

Mr Quinn: I definitely agree with that position. As Bridget says, we have not had the time to deep-dive into it.

Mr RUSSO: Perhaps you can take it on notice, then. I understand that these amendments are to bring Queensland into line with other uniform evidence laws across Australia. I understand that in this space we are lagging behind the rest of Australia. It is an important aspect in relation to evidence and how evidence is presented to the courts in this similar fact and propensity area.

Ms Cook: Yes. We will take the question on notice. I appreciate the point about Queensland operating very much in a common-law jurisdiction compared to the rest of the country who have UEL in place and that to adopt the proposed statutory words in the bill regarding tendency and coincidence evidence would be in some way adopting a partial UEL approach in Queensland because it would replace the common-law principles that we otherwise are operating within at the moment. I appreciate that aspect of the question. I will provide a more fulsome response to that question on notice.

Mr BENNETT: The changes to section 210 of the Criminal Code have been prosecuted. Your submission talks about omitting consent. We have looked at an unintended consequence of something interfering with something else. I have asked the question plenty of times this morning about the consent laws that have just been passed in the Queensland parliament. Are you able to explain more about this to the committee from a non-lawyer's perspective? So it does omit consent and should we be concerned about those changes to the Criminal Code?

Mr Quinn: Yes. I think that is the easy answer. The omission of consent in the proposed amendment is problematic.

Mr BENNETT: Further to that, in terms of consenting young people, 16 is legal, and we have heard from the University of the Sunshine Coast about the three-year age gap. The consent laws were such an important way forward to try to establish a benchmark. You have answered my question. Thank you for that.

Mr BERKMAN: I am interested in your submission around the expert evidence provisions. Were you here for the Bar Association's evidence on those matters?

Mr Quinn: We were, and I would adopt in its entirety the evidence given by Mr Hoare KC in that regard.

Mr BERKMAN: Going specifically to your submission, there is a suggestion there that the introduction of expert evidence will create a risk around a contest of experts. Does the requirement for establishment of an expert panel in any way address that or lessen that risk?

Ms Cook: I am afraid I probably will not be able to provide a fulsome response. My understanding is that a steering committee has been established to assist in the establishment of the expert evidence panel. My understanding is that that is currently ongoing. That may in some way ultimately answer your question. I appreciate that that is not helpful right now.

On the current drafting of the bill in regard to the expert evidence panel, it is seeking to define in some ways the scope of the expert evidence that may be permitted on that panel. The proposed scope of that evidence that an expert may be able to provide in that space we do not support. We cannot really provide any further comment on that at this stage because the expert evidence panel, which came about as a result of the legislation passed earlier this year, is still in implementation phase.

Mr BERKMAN: In your submission you have also spoken of the potential disproportionate impact on defendants represented by the community legal sector. Can you elaborate on how that impacts on the provision of legal aid for defendants, specifically the expert evidence panel?

Ms Cook: Pending any comment from Pat, I think that ultimately comes down to a matter of resources and adequate funding.

Mr BERKMAN: Just to say the quiet bit out loud, the risk is that Legal Aid or other CLCs are not adequately funded to deal with the additional impost of expert evidence.

Ms Cook: Yes, that is right.

Mr BENNETT: That is what I was trying to get to. Thanks, Michael.

Mr RUSSO: Dealing with the inclusion of expert panels in relation to jury trials, does it occur in other states?

Ms Cook: I do not know the answer to that. I would have to take that on notice. We could look into it.

Mr RUSSO: It would be a new way of dealing with matters in the courts. I understand you basically oppose it. Can you see any benefits in jury trials being conducted in this manner?

Ms Cook: I am not in a position to answer that. Pat, do you have a view?

Mr Quinn: I am struggling to see—

Mr RUSSO: Any benefit.

Mr Quinn: Yes.

Ms Cook: I would have to look into it. In the criminal jurisdiction it also has some additional complexities associated with it. It is something that does operate in the civil jurisdiction, but I think the distinction between the two is a huge contributor as to how it effective it could be.

Mr BERKMAN: We have had quite different positions from the Bar Association and from USC about the proposed section 210 changes. The Bar Association has suggested that it should be at the very least confined to an exhaustive list of positions of authority, whereas the USC appeared to be on the other end of the spectrum. Do you have any reflections on the positions they have taken? My assumption is that you would more align with the Bar Association's position.

Mr Quinn: Yes. Even with the list that is currently in the bill, we can see unintended relationships being captured there. That will only get worse if it is non-exhaustive list.

CHAIR: Thank you for your attendance here today. There were two questions taken on notice. One was in relation to common-law rules availability. I think that was from the member for Toohey. The other one was about expert panels and juries in other states. To assist the committee to include those responses in our deliberations, please have your responses available to us by close of business on Tuesday, 23 July.

KIYINGI, Mr Kulumba, Senior Policy Officer, Queensland Indigenous Family Violence Legal Service

SCHWARTZ, Ms Thelma, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service

CHAIR: I welcome representatives from the Queensland Indigenous Family Violence Legal Service.

Ms Schwartz: Good morning, Chair and committee members. Thank you for this opportunity to speak to our submission on this relevant bill. We are very grateful to be here on the beautiful lands of the Turrbal and Yagara peoples. I acknowledge and pay my respect to their elders past, present and emerging. I acknowledge my own ancestry through the Torres Strait and the journey of my peoples through the Pacific, including my German ancestry and my Celtic ancestry. I acknowledge yours and your elders who have brought you here.

We are contemplating some significant reform. Both Kulumba and I have sat in the back of this committee hearing this morning listening to the submissions and the questions that have been put. We are a statewide practice representing Aboriginal and Torres victim-survivors of domestic and family and sexual violence—men, women and children—in over 90-plus Aboriginal and Torres Strait Islander communities. We have a lot to say on behalf of victim-survivors and ensuring system responses meet the needs of victim-survivors, as well as finding a balance for the needs of defendants in criminal trials.

This is what I believe this bill seeks to do. It seeks to build on the raft of reform and recommendations made by the Women's Safety and Justice Taskforce, which set up this pathway. We have had the benefit of reading the explanatory notes, which really give us clarity about the intent and purpose of this bill and how it seeks to strive to find that balance. There is a tension between the right of a defendant to a fair trial, to know the evidence that defendant will need to meet to defend the charge, but there is also a fundamental right to victim-survivors to feel safe, to be free and to be strong and healthy in their communities. That is what this bill is trying to achieve. I commend the committee and the parliament for moving it forward to this stage.

I think I have started quite broadly. I note the issues already that have gone before. I might turn to my colleague to see whether Mr Kiyingi has any further opening remarks to make before we jump into questions.

Mr Kiyingi: I would like to acknowledge Ms Schwartz as one of the taskforce members in the Women's Safety and Justice Taskforce and I would point to the second *Hear her voice* report. That was particularly important in recognising not only the significant overlap between victim-survivors of domestic and family violence and sexual violence offences but also the factors which lead to many victim-survivors finding themselves part of a growing number of incarcerated women and girls and defendants and accused persons in the criminal justice system.

Just to complement what Ms Schwartz mentioned, a really important aspect of the legislation is that it is necessary to have a whole-of-government and whole-of-community response—a holistic response. We look at how we can assist our clients really focus on holistic and cultural wraparound services. That is quite prominent, particularly where we look at alternative arrangements for special witnesses. We have a focus on ensuring there are holistic and culturally safe supports provided to special witnesses, particularly Aboriginal and Torres Strait Islander special witnesses, so they can be provided with comfort in giving their evidence to the court.

In relation to expert evidence, a key focus for us was looking at the requirement for cultural competence and capability. We feel that is particularly important. The reforms in relation to expert evidence are important to demystify and address rape myths and negative stereotypes in relation to sexual violence. Another factor we would add is that, from the standpoint of Aboriginal and Torres Strait Islander witnesses who appear before the court, the importance of cultural competence and cultural capability for expert evidence and expert witnesses is a necessity. That is something we have also highlighted in our submission.

Mr BENNETT: Thanks for being here all morning with us and the work you have done on *Hear her voice*. I congratulate you on that as well. You reference recommendation 77 of that body being in line with experts. How do we ensure equity for vulnerable Queenslanders in particular and a fair and equitable process for expert witnesses? I have already spoken about how Legal Aid is struggling. I suggest that resourcing is a problem across the sector from time to time. I would like to hear your thoughts about making sure the access and use of experts is an equitable, fair and reasonable process.

Ms Schwartz: There are two aspects of your question that I will speak to. Firstly, there is an absolute need to fund Legal Aid as the appropriate body to provide experts. We know that Legal Aid is currently struggling in relation to the other panel of experts it has to support in other courts and jurisdictions. We understand that the National Legal Assistance Partnership review has been finalised, with a report from Dr Mundy making significant recommendations around investment into the legal assistance sector. I believe the report was released in June. There are four legal assistance service providers in Australia: Legal Aid commissions, Aboriginal and Torres Strait Islander legal services, community legal centres and family violence prevention legal services, of which QIFVLS is a member. We receive funding primarily through the Commonwealth. As an FVPLS, QIFVLS' acronym currently sits outside NLAP, but your legal aids, particularly your community legal centres and ATSILSs, all sit within the National Legal Assistance Partnership funding model. That model is to cease on 30 June 2025. They are now renegotiating what the new funding model will be. They now have Dr Mundy's review into the efficacy of the model and his proposals to take it forward in terms of appropriately funding legal service assistance providers through that grant of Commonwealth funding then spreading into each state and territory for each service provider.

It would be my submission that if we were going down this path we certainly should be exploring discussions between the state and territory and a further expansion of moneys be made available to support disbursements for defendants coming into criminal law trials. I would go further and include family law trials, where we see the use of experts in Family Court matters. You are looking at fully funding a system and having appropriate resources available for experts. I do not speak for Legal Aid, but, having worked as a criminal defence lawyer for over nine years with the Aboriginal and Torres Strait Islander Legal Service in the area of domestic and family violence and sexual violence trials, one of the biggest issues was firstly being able to secure a grant of legal aid and then securing the expert and having the appropriate expert available. You then look at how much they are being paid for an expert report. You need to then measure what is a cost equivalent at Legal Aid rates to convince a private sector expert to want to do this report and be subject to being part of a panel. That is my first thing around funding and that bigger and broader discussion involving the Commonwealth as well in this space.

You have asked me about experts and their availability. I may have read this wrong, but I believe we would need to move into a system of tight case management of sexual violence trials. If we are going to a position of supporting the prerecording of complainants—we do it with children in affected child hearings; we are already prerecording the evidence of children—we are also relying on the usage of what is a proper question. What I am saying to you here is that I would be leaning into the use of appropriate case management within the court and the court taking control of this with defence and prosecution. We note that there needs to be notice provided that you want to use an expert. Okay, you give the appropriate notice before you call the expert. What are the questions the Crown and defence want to put in dispute? In order to get the full benefit of the expert, can we isolate the issues in dispute to be put to the expert? I have heard it expressed that the courts are going to be inundated with fights between experts. With respect, you can mitigate that through appropriate case management and planning, given that you need to give the other party notice of your desire to call an expert.

Mr RUSSO: The suggestion is that you have a panel of experts. I have a limited of understanding of how that works in the civil jurisdiction, but how do you foresee it working in the criminal jurisdiction?

Ms Schwartz: Correct me if I am wrong, but my understanding is that, like we do in the civil jurisdiction, we look at skill set and expertise. You would need to screen the skill set and expertise of the experts who are qualified to be on the panel. When you are building the guidelines as to who constitutes your panel, like lawyers and other professions, I would also make it a requirement that they maintain continuing professional development in their court practice area and show that accreditation in order to meet the standards set to be a member of that panel. That is how I would build the framework to maintain the integrity of who is qualified to be an expert on that panel to be available for use in criminal law trials. I hope that answers your question.

Mr RUSSO: I can identify with your frustration in relation to getting experts in criminal defence work. One of the biggest problems, which you highlighted, was the disparity between Legal Aid rates and what an expert can get. The pool, for want of a better word, of people available is very limited.

Ms Schwartz: That is correct.

Mr RUSSO: I am struggling to see how courts will be able to put these panels together for jury trials when the majority of the work done in the District and Supreme courts is Legal Aid.

Ms Schwartz: Yes, I understand that. We are using experts in criminal law trials. If these experts are being called for sexual violence matters, my understanding is that the experts would be called to support and dispel some of these rape myths, the domestic and family violence myths and some of the myths around culture allowing violence against women and their children. I struggle to see where there would be a dispute between experts around dispelling rape myths that it is appropriate to run a defence or somehow insinuate that 'she had it coming because she was out and about after nine o'clock in a miniskirt, stockings and high heels'. I know the Bar Association said you can have trial directions and directions by a judge. Yes, absolutely, but what if that trial direction is not appropriately given and it is not appropriately reinforced that the jury is not to give that particular commentary or line of questioning any thought or weight?

Mr RUSSO: That really comes out of your work with the Women's Safety and Justice Taskforce, that you do have an expert to dispel the myths that could be presented in a trial.

Ms Schwartz: That was my understanding. When we talk about what we see in our jury trials, what we see with our victim-survivors who have been victims of sexual violence and what we see around how they may present in court, we are seeing them present in court as someone who is going to avoid eye contact, who is going to be really uncomfortable talking about what has happened. You need people to say, 'You don't hold that against them.' You have to understand the impact of physical trauma. You also then need to understand the impact of violence on that particular individual. I do not see that as a confronting issue that is going to scatter and blow out a trial. You are talking about people who have the ability to say, because they have worked in this sector, 'This is what we have seen. This is what the research tells us and indicates.' We know from recent research that more and more Australian women and children have experienced sexual violence. We have to do something. You have to have that ability to present that so juries can properly come to a decision about how they see a victim. They might be in a protected room. They are still closed off and they have that stereotype: if you are closed off like that, maybe you are not so truthful. Maybe you are not so credible. Credibility is a live issue for a defendant running their trial.

Mr LISTER: If we turn to the question of special witnesses and rules of evidence and so forth that are intended to protect vulnerable witnesses, the Law Society—and I believe you were here and you heard them speak—favour not altering the law and leaving it in the hands of judicial officers in the way they run their court to safeguard the welfare of vulnerable witnesses. What is your view on that?

Ms Schwartz: I disagree with the Law Society's position, with all due respect. As I have already indicated to you, in relation to the evidence given by children in affected child hearings we have special witness provisions for children. Why is there a difference when it comes to adult victim-survivors giving their evidence, with respect? I am struggling to see where the gap is. You can still take cogent evidence from an affected victim in a special room.

What we have indicated in our submission, and I believe I have heard sitting here this morning, is that you would then look at the structures of each courtroom facility to take that evidence. Wherever it is, are there rooms specifically set up to take that evidence? Is there a separate room where you can do a prerecording of evidence, for example? In the prerecording of young children in sexual violence matters, the case conferencing that goes on is really working out what type of questions are permissible. You have that degree of case management with your judge and both parties. You can see that is in the best interests of not only the defendant, being able to know what questions he can put so he can properly run his case, but also the victim. One of the tensions I see in this space is that I have heard about the Crown and defendant, but where is the voice of the victim? They are not a party to proceedings, so how do you make these proceedings more trauma informed and ensure the defendant still has the right and ability to run, in effect, a fair trial? You can still get your evidence; it is about how you manage the process leading up to that without further harming the victim-survivor.

Mr BERKMAN: Thank you so much for your evidence already; it is really helpful. I want to try and flesh this out a bit more and give you an opportunity to respond to some of the Bar Association and QLS positions. I will start with expert evidence. I do not want to put words in their mouth, but my understanding of the Bar Association's evidence is that they contest whether traditional expert witness processes can operate in this space because there is a kind of circularity, almost an absence of a foundational, agreed evidence base on which they might prepare expert reports. Can you respond to that?

Ms Schwartz: With respect to the Bar Association of Queensland, I struggled with that. We know from the explanatory notes that through the operation of the bill you will need to give notice of your desire to call an expert. I would then move to what are the issues in dispute if you are calling expert evidence. This is probably around case conferencing in relation to the running of sexual

violence matters involving a judge and the parties. I know the defence will say, 'We don't want to disclose our hand. We'd like the ability to run that.' With respect, we are now moving to try and harmonise the system so victim-survivors have a safe space to come and give their evidence. We are then talking about experts. What is your issue with an expert? What is the evidence you want to lead? If you know that in advance, that can only lead to fairness for an accused as well as a prosecutor being able to say, 'This is our case. This is what we're running.' The onus is always going to be on the Crown to establish the guilt of that defendant beyond reasonable doubt. I am really struggling to see where the tension is and where the evidence to support that tension exists. I do not want to sound disrespectful, but I am looking for an evidence base to back up the resistance to the reform.

Mr BERKMAN: I have a similar question more specifically in the context of expanded directions hearing processes. The Bar Association's suggestion was that a tighter allocation of opportunities for questioning fundamentally limits the defendant's right to counsel. Do you have any specific or general response to that?

Ms Schwartz: I am struggling with that remark as well, with respect to the Bar Association of Queensland. I do not understand what the barrier with appropriate case conferencing will be. I did case conferencing when I was in practice in criminal law in the Magistrates Court with the police when I was in a defence capacity role. You would have the QP9, you would have your evidence, and you would work out whether the matter is proceeding to hearing. You would still have a case conferencing call with the magistrate to work out what issues are in dispute, whether we can narrow the issues so that when we ultimately get to a hearing we know what this is about. That is a cost saving to the court; it is also a cost saving to the defendant.

If you are appropriately case managing and case conferencing in advance, are we then going to save the necessity to go to trial? If the evidence that comes out is so very clear, the Crown has an undeniable case beyond reasonable doubt and they have disclosed it under those case conferencing mechanisms, what is the issue, defence? Are you now in a position to negotiate a plea to a lesser charge? Are you going to plead guilty? Can you take the benefit of an early plea to other things? There is nothing preventing this interaction. I think it is working in a way, and probably the tension here is that we are moving away from the purely adversarial ideology we have around how we go to criminal court. The *Law and Order* stereotype is that this is what goes on. The reality of the matter is that in my time in practice a lot was around looking succinctly at that evidence, remembering my duty to my client as well, to say, 'Hang on a minute. I'm not your mere mouthpiece. I can see that the evidence is so strongly against you. If you go down this path it's going to be worse for you. It's my duty as your lawyer to now inform you that these are your options. This is the best-case scenario; this is the worst-case scenario. What roll of the dice do you want to take?' There is a bit of front-end loading we are requiring them to do here to invest in case conferencing and case managing. It happens already in summary courts. I do not see why we have a difference in wanting to adopt a case conferencing model in our more superior courts.

Mr BENNETT: Do you see any issues within the bill that may help to deal with the issue of the incarceration of First Nations people?

Ms Schwartz: I might just see if Mr Kiyingi has anything to say.

Mr BENNETT: I am outside the scope of bill. I was just more interested in some of these things. We always identify high incarceration rates and problems within the legal system. I was just curious whether there was anything you observed within the bill. If there is not, that is fine.

Ms Schwartz: The talk about higher maximum penalties always concerns me when I look at the over-incarceration of Aboriginal and Torres Strait Islander peoples within the justice system and the Queensland government's agreement to reduce justice targets 10 and 11 under the National Partnership Agreement on Closing the Gap. We have to find the balance with respect to ensuring the safety and wellbeing of victim-survivors, where they are seen and how they are heard in the criminal courts, and the ability then to mete out a sentence that imposes—if it is going to impose a jail term—real accountability for behaviours and changing behaviours so people do not cycle back in again and again. I think that is the only thing I can really say to that more broadly. Absolutely, trying to find that balance is hard. We are going to hit tensions and walls, but I would rather be living in a society where we are courageous to question and listen to what our community is saying, to have these discussions and to start working on reforms that are reflective of where we are right now in 2024. Mr Kiyingi, do you have anything further to add?

Mr Kiyingi: No, there is nothing further I could add. Just broadly, looking at some of the different potential amendments—for example, arrangements for special witnesses—that may, from the front perspective, assist with the way evidence can be given and I think that can have benefits.

We may not necessarily see it directly in terms of how it may affect incarceration, but I think it may assist in terms of overall community trust. Another aspect is communities being able to have trust in the system.

CHAIR: With that, our time is up. The committee thanks you for your evidence here today. That concludes today's hearing. I thank everybody who has participated. Thank you to the Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course.

The committee adjourned at 10.54 am.