JUSTICE, INTEGRITY AND COMMUNITY SAFETY COMMITTEE

Members present:
Mr MA Hunt MP—Chair
Mr PS Russo MP
Mr MC Berkman MP
Ms DE Farmer MP
Mr RD Field MP
Ms ND Marr MP

Staff present:
Dr A Cavill—Committee Secretary
Ms H Radunz—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE MAKING QUEENSLAND SAFER BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 2 December 2024

Brisbane

MONDAY, 2 DECEMBER 2024

The committee met at 2.46 pm.

CHAIR: Good afternoon, everyone. I declare open this public briefing for the committee's inquiry into the Making Queensland Safer Bill 2024. My name is Marty Hunt, member for Nicklin 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, present and emerging. With me here today are Peter Russo MP, member for Toohey and deputy chair; Michael Berkman MP, member for Maiwar; Russell Field MP, member for Capalaba; Natalie Marr MP, member for Thuringowa; and Di Farmer MP, member for Bulimba, who is substituting for Melissa McMahon MP, member for Macalister.

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 briefing 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 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. I take this moment to remind everyone to ensure your mobile phones are turned off or to silent mode.

BYRON, Ms Myrella-Jane, Principal Legal Officer, Strategic Policy and Legislation, Department of Justice

CONNORS, Ms Kate, Deputy Director-General, Justice Policy and Reform, Department of Justice

DRANE, Mr Michael, Deputy Director-General, Department of Youth Justice and Victim Support

GEE, Mr Robert, Director-General, Department of Youth Justice and Victim Support

McMAHON, Ms Kate, Director, Strategic Policy and Legislation, Department of Justice

ROBERTSON, Mrs Leanne, Assistant Director-General, Strategic Policy and Legislation, Department of Justice

CHAIR: I now welcome representatives from the Department of Justice and the Department of Youth Justice and Victim Support. Good afternoon, Ms Connors. Would you and your colleagues from the Department of Youth Justice and Victim Support like to introduce yourselves before making an opening statement?

Ms Connors: Thank you, Chair. My name is Kate Connors. I am the Deputy Director-General of Justice Policy and Reform at the Department of Justice. I, too, would like to acknowledge the traditional custodians of the land on which we meet today and pay my respects to elders past and present. I am joined at the table by colleagues from the Department of Justice and our Strategic Policy and Legislation team—Leanne Robertson, Kate McMahon and Myrella-Jane Byron.

I note that we have provided a detailed written briefing for amendments on the bill. The bill amends the Childrens Court Act 1992, the Criminal Code and the Youth Justice Act to deliver a number of key reforms. I will briefly outline aspects of the bill and then I will hand over to my colleague Mr Gee.

The bill introduces Adult Crime, Adult Time for 13 offences. For those offences, children will be liable to the same maximum, minimum and mandatory penalties that apply to adults. This includes mandatory life detention for murder. The bill removes detention as a last resort from the Youth Justice Act. The bill also removes the principle that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community. The bill provides that, in sentencing young offenders, primary regard must be given to the impact of offending on the victim.

Amendments are also made in the bill that relate to childhood criminal histories. The bill provides that cautions, restorative justice agreements and contraventions of supervised release orders will now appear on a child's criminal history. Under the bill, a child criminal history will be admissible when a person is sentenced as an adult. That child criminal history will be admissible for up to five years after the outcome of the last childhood offence, and the bill makes a related amendment with respect to dangerous operation of a vehicle to allow a relevant childhood finding of guilt to be relied on as a previous conviction.

The bill amends the Childrens Court Act so that exclusion orders made under section 20 can no longer be made by the court. This means the media and immediate family of a victim will be able to be present in court and cannot be subject to an exclusion order. It also means that a court can no longer exclude people on the basis that it is necessary to prevent prejudice to the proper administration of justice or the safety of any person. Other powers that the court has to exclude people for contempt and related special witnesses giving evidence or Mental Health Court proceedings will be unchanged by the bill. The bill also makes amendments dealing with defaulting to an opt-out requirement for victims on the eligible persons register and the transfer of 18-year-old inmates to adult prisons.

All of the amendments in the bill will commence on assent other than amendments to the Victim Eligible Persons Register and the amendments related to criminal histories. This is because there are implementation activities that need to be done before those amendments can commence. Those amendments will commence by proclamation at a later date. Thank you for the opportunity this afternoon to address the committee. We are happy to take any questions.

Mr Gee: Thanks, Chair and committee. I thank you for your deliberations and your work. I, too, acknowledge the traditional owners and, in particular, I thank and acknowledge all those who will make submissions to the committee. If the committee wishes, we are more than happy to provide further information around those submissions or anything else you want. Whilst I have the opportunity, I thank all of the officers who have worked incredibly hard to provide the parliament with a bill to consider. I will be very quick.

These new laws sit alongside a whole range of other commitments to early intervention which are critical. There will be a very significant investment in dollar terms by the current government in new programs. Moving forward, a panel of experts will be established to advise on future strategies of this scheme.

I do point out for the committee's consideration that this bill will be introduced at a time when there is existing entrenched growth and demand across the criminal justice system. For example, in the last two Januarys there have been 100 and 102 young people in watch houses in this state and, in all probability, we will see that occur again in January. I can also point out that victim participation in the youth justice system will now be recognised by default. There are already principles that children should be held to account and that victims should be given the opportunity to participate in processes, but the bill amends the youth justice principles to require that a child who commits an offence should be held accountable.

I close by saying that we at youth justice are used to responding quickly with agility to new policy positions. I would note the construction of a 76-bed Wacol remand facility which was to be finalised later this year will not be operational until at least April next year. I will close by saying that we are working with police, justice, corrections and a whole range of partners to make sure we can keep the community safe, but also that the staff and young people in our care will be given our utmost priority.

CHAIR: Thank you. I want to clear up something that was brought up by, I believe, the Human Rights Commission in the last submission. It related to cautions and related matters being presented in a history to a court. The assertion was that those previous cautions that had been done, say, prior to the assent of the law could be presented to the court. My understanding of the bill is that that is not the case. Can you clarify that?

Ms Connors: I will get Ms McMahon to answer that for us.

Ms McMahon: I can answer that. With the criminal history related amendments, the transitional approach, I think it is quite useful to think of these as two different sets of amendments. The set of amendments you are talking about is about adding cautions, restorative justice agreements and contravention of supervised release orders onto childhood criminal histories. The relevant point in time for that is when the basis of the entry for the criminal history entry occurred, so when the caution, the restorative justice agreement or the contravention of the supervised release order occurred. Then the transitional approach is that if that event occurred after commencement, that will be captured on the

criminal history. It does have, I suppose, a very slight retrospective operation because, regardless of when the offence was committed, it can still appear on the criminal history. However, the relevant point in time is when the caution or the restorative justice agreement or the contravention occurred, so whatever the event is that is the basis of the entry on the history.

There is then a different transitional approach with respect to the second set of amendments which is to do with making childhood criminal histories admissible in adult sentencing proceedings. The transitional approach for that is that the proceeding needs to have commenced post commencement. Again, regardless of when the offence occurred, it is about when the proceedings were started. Does that answer your question?

CHAIR: Just to simplify that in relation to the concern raised, if somebody was cautioned last year in relation to an offence and committed another offence post these laws, that caution would not be presented to a court; is that correct?

Ms McMahon: That is correct. If that caution was administered prior to the commencement date, it would not be captured by these amendments.

CHAIR: That was the concern expressed and I wanted to clarify that.

Ms McMahon: There is also now a requirement in the bill that a police officer who is administering a caution advise the child that it will appear on their criminal history. That approach has been taken for reasons of fairness to that child.

CHAIR: Thank you. Mr Gee, how will this bill reduce the number of victims of crime?

Mr Gee: It is a complex question, but I want to go directly to a couple of things first and foremost. You asked how it will reduce the number of victims of crime?

CHAIR: Victims of crime, yes.

Mr Gee: The bill holds young offenders to account who commit offences, particularly those prescribed offences, obviously—the serious offences—by ensuring that courts can have primary regard to the impact of youth offending on victims and can impose appropriate penalties that meet community expectations. As well as implementing a range of measures to deter young people from committing serious crimes in the community, the government has committed to reducing the number of victims who have been caused harm by these young offenders.

I just want to point out that the committee will hear a whole range of evidence and will have their own lived experience and experience in the system. From my end, there is a lot said about the reoffending rate of young people when they leave detention. What gets very little airplay is the level of violence and the change in behaviour of young people, particularly over the last few years. In general, it is very fair to say that the literature supports the notion that young people are still developing and can be reformed. The most recent data, though, does show a very upward trend in terms of the level of violence and harm that these young people are causing. However, there is also very clear literature—and I am more than happy to provide an example of it to the committee, whether we look at the United States or other common law countries—that essentially says a couple of things.

One example is in the University of Maryland's *Journal of Law & Economics*—a very well-regarded journal. I would not be wasting the committee's time if I was not using high-end literature. It sums up the point I am trying to make. The reference is volume 52, No. 4 pages 779 to 809, and I have a copy if the committee want it. That study looked at Washington state where there was no lack of crime and they specifically looked at juvenile justice systems. The results indicated that incarcerated individuals—juveniles—have lower propensity to be reconvicted of a crime. This deterrent effect is also observed in older, criminally experienced and/or violent youths.

In Queensland, our data is very clear: as a percentage the reoffending rate for young people when they leave detention has been in the high 90s for many years, most notably 95 and 93 per cent. However, if you look at the frequency and severity of young people offending post detention, and if you compare the 12 months before they move into detention with the 12 months afterwards, what we have seen up to 31 August 2023 is a 21 per cent decrease in the average number of offences per month. Over a year, the frequency of offending is essentially 15 fewer offences. In terms of the severity, there was a 21 per cent decrease in the average number of serious offences per month. Over a year, it is about one fewer serious offence per year.

This bill, supported by proactive, preventive and rehabilitative programs, faces squarely that sentencing principles are reformed. I do want to point out to the committee that it gets very little airplay. The general orthodoxy is to say that detention does not work. It would be my preference that we have no young people in detention in this state and there are no victims, but the question was: how do we

reduce the number of victims of crime? It is very clear that while young people are in detention there are far fewer victims of crime in the community. Also whilst those young people who leave detention may continue to reoffend, the evidence is clear in this state and in Washington and other places that the severity and frequency of that offending reduces.

CHAIR: Would the proposed reforms in terms of what we do in detention in relation to education seek to improve that again?

Mr Gee: That moves on from the bill. I think you are getting to the type of programs that we use in detention.

Ms FARMER: Chair, a point of order: that is beyond the scope of the bill.

CHAIR: Fair enough. I will move to questions from the opposition side.

Ms FARMER: Thank you, Mr Gee and Ms Connors. I acknowledge that this is a lot of work for public servants like yourselves to do in a short period. It is much appreciated. Mr Gee, can you tell us what modelling has been done; what was the impact of this legislation on reducing victim numbers; what data source will you be using to reference the reduction; and how often will you be reporting those results?

Mr Gee: I will break the question into parts if that is okay.

Ms FARMER: Yes. I appreciate there were many parts to the question.

Mr Gee: I will start at the back. I know that the government will announce how it intends to count the number of victims in the near future. That is a matter for whole-of-government consideration. Quite frankly, as you would understand being the former minister, the department of youth justice has moved to publishing results more often than it did in the past. The number of proven offences and the material in the current Youth Justice Strategy and the Service Delivery Statements, as you know, will continue to be published. They may be amended as the new government directs. Was the question in terms of victim numbers and modelling?

Ms FARMER: Yes. What modelling have you done to show a reduction in victim numbers and what were the results of that?

Mr Gee: I have already talked to some of the evidence around the reduction in severity and frequency of offending. As the member would understand, I cannot talk about any matter that may be the subject of the budget process or the Cabinet Budget Review Committee. I can, though, take you through a whole range of figures that talk about the things we know and will continue to look at in terms of offences and variables.

Ms FARMER: Thank you. With the greatest respect, are there figures on how many fewer victims there will be? Has any modelling been done on the impact of this legislation on victim numbers?

Mr Gee: Can I come back to the committee if I think of anything, Chair, in a further submission? From my end, we have had four weeks. I have talked about the clear link between some of the literature and our own experience. That data is actually a form of modelling—that 21 per cent I talked about—and it has been updated in the last four weeks. If my memory serves me correctly, I think I talked about it in front of a different form of this committee in its last iteration and it was 15 per cent and 18 per cent. To that extent, that is a form of modelling and that has been done.

Ms FARMER: I will not labour the point too much. However, there have been very clear statements made that this will reduce victim numbers, but we do not actually have any projections for that. Is that what you are saying?

CHAIR: Mr Gee, I think, answered that question in relation to what he presented earlier. Mr Gee, you indicated you have copies for the committee if we required. Would you be seeking to table that?

Mr Gee: Can I take that question on notice to give you the article I referred to and give you the exact figures with the assumptions and qualifiers on it so there is no mistake?

CHAIR: Thank you.

Ms MARR: Sorry, Mr Gee, you seem to be getting questions from everybody today. Thank you for talking about reoffending, which is obviously given a lot of consideration in this bill. Can you explain how programs will be delivered or changed while youth are in detention centres and after they leave to support the intent of the bill?

Mr Gee: Yes, I can. The government has a policy position that is very clearly spelt out around detention with purpose. Many of the bill's initiatives directly support these three pillars: compulsory education, young people must attend schools and programs whilst in detention; staff safety, violence against staff will not be tolerated; and behaviour management, clear consequences for actions.

While sentencing reform and streamlined provisions to transfer 18-year-olds to adult corrective services on the basis that they are adults—not children—and adults should not be detained with children will ensure that time spent in detention is focused on rehabilitation and education, we are also conducting further work to shift the detention operating framework. That is work that has occurred whilst I have been director-general. We want to better target cohort needs and remove negative peer influences. For example, education and program contact options are going to be expanded through realigned program timetabling to reflect community-based school expectations. We intend to expand homework clubs, weekend delivery options and the broader use of self-paced education packs.

Ms FARMER: Point of order, Chair—and with the greatest of respect, Mr Gee. There is quite a lot of detail here about programs. It does not relate directly to the bill and I think the hearing today is to examine the bill.

CHAIR: Member for Bulimba, that is not a point of order. I ask you to continue, Mr Gee.

Mr Gee: I will be very quick. For those young people who are subject to the impacts of this bill if it becomes legislation and are detained in detention centres, we will make sure that those policy positions are implemented to support the intent of this bill. Namely, consequences and privileges will be reviewed to ensure young people are held accountable for misbehaviour and supported to develop pro-social behaviour and supported rehabilitation, but I will stop there.

CHAIR: It is not necessary to stop. I think it is important that we cover those aspects of the bill because people are bringing concerns to the committee in relation to exactly that. It is fully relevant and if you have any more to contribute in relation to that, I would encourage you to continue.

Ms FARMER: With respect, Chair—

CHAIR: Do you have a point of order?

Ms FARMER: I do. These things are not actually mentioned in the bill.

CHAIR: The concerns of the community that have been brought to the committee are addressing these very issues and I encourage the director-general to continue with his evidence.

Mr Gee: In the former iteration of this committee and other committees, it has been clear that there has always been a need for improved case management. To that end, we will continue all of our efforts on case management. We intend, though, to use the government's announcement of its Staying on Track program, with an additional $175 million investment, to provide 12-month post-release support with the non-government sector. We hope to be tendering in the early stages of 2025 so we can have a doubling of the efforts by the NGO sector to work with our caseworkers. My clear expectation for the department is to deliver those services in conjunction with case management within the detention centre. There is a whole range of other matters—close to $300 million worth—in terms of expanding support within the community.

Ms FARMER: Thank you, Mr Gee. I am sorry that all the questions are coming to you. Can you tell the committee what modelling has been done to determine the impact of the likely increased number of young people in detention and the impact of the increased length of time that those young people will be in detention and how you will address issues around staffing? You mentioned staff safety earlier. How will the impact be dealt with in terms of increased staff numbers and the increased need for facilities? When you are talking about staffing projections, I acknowledge that the government's commitment to providing education in youth detention centres will require custodial officers to be in the school and the detention centres. Obviously projections for increased staffing numbers will need to include more staff from outside as well.

CHAIR: Could we restrict it to one question at a time? That is quite a lengthy preamble or statement. Be clear in your questioning, please.

Mr Gee: I will start with the modelling. I make it really clear that I do not intend to breach the cabinet handbook. I will not be talking about matters that may or may not be part of the budget process or the Cabinet Budget Review Committee. I want to be as helpful as I can for the member and the committee. If we look at those prescribed offences, the number of offences that are prescribed to 31 August 2024—I tried to get the most recent data I could—there were about 44,908 proven offences in the year ending 2024 by young people aged 10 to 17.

I am only talking about offences, not offenders. Of those 13 prescribed offences about 14,760—by my math, about a third of those offences—fall within the prescribed categories of offences. I hope that is helpful. That alone, though, does not tell us much more in terms of numbers. The point I am

trying to make is this bill, as I understand it, is about sentencing. I do not expect more young people to be charged. I do not expect that to occur at all. I cannot see how that is the intent nor any of the content of the bill. I thought that might be useful for the committee.

I think it is incredibly difficult for anyone to model how courts may respond. There have been progressive changes: 17-year-olds were moved into the youth justice system, bail laws were tightened—I think that is a good example off the top of my head—a number of times in the former parliament and the courts responded to the laws. There has been a significant increase in the refusal of bail after the change in those laws. The point I am trying to make there is I do expect longer sentences for young people in this state because the courts respond to the intent of the parliament. However, it is very difficult because sentencing is a matter that requires a court to look at individual circumstances, individual facts, and there are a range of variables that should be taken into account. I feel guilty that we did not predict, as a criminal justice system, the impact of methamphetamine nor the impact of social media quickly enough. There has been an increase in violent offending in this state over the last three to four years that I think you can directly correlate to disadvantage, drugs and social media. I am not sure I can help much further on the modelling.

Ms FARMER: Just to clarify my question, given that this bill will be enacted before Christmas, if there are more young people coming into the system—

CHAIR: Member, that is an extra question. I will come back to you in a moment.

Ms FARMER:—it is the same question—where are we going to put them and where are you going to get the staff to look after them?

CHAIR: We will come back to that question. That is a separate question. Member for Capalaba.

Mr FIELD: I have one question and it is probably for Kate Connors. What will be done by this bill that will actually support the victims?

Ms Connors: One of the key pieces in here is how the bill puts the rights of victims first so it becomes the primary sentencing consideration. We think that within the bill that will make a difference to the way that victims' voices are heard as part of the sentencing process. The amendments related to the Childrens Court also have a victim focus. Victims currently cannot be subject to an exclusion order but their representatives and sometimes their relatives can. This will allow those representatives and relatives to no longer be subject to an exclusion order in the court.

CHAIR: This question is to the panel. What has been the impact of the law change nine years ago and the insertion of detention as a last resort? What has been that impact?

Mr Gee: I am quite happy to try to assist the committee. I think in a previous iteration of this committee we used some figures. Detention as a last resort as a principle was removed—this is from memory—and the number of young people in detention went from something like 232 to about 240 and then back to 236, but I can give you those numbers out of session. I think there was a case—and we cannot talk about policy obviously but we can provide facts—in the Court of Appeal, MacDonald 2015, and I am sure the committee research officers can find it. That decision is instructive for the committee to look at in terms of detention as a last resort and how it was interpreted by the courts and, thus, the intent of the bill and the bill's reference in talking about sentencing in the community being preferable and also being removed. When I talked about the current orthodoxy and using literature that is old and not recognising a significant increase in violence by a very small number of young people, I would encourage the committee to take that into consideration. It is clear that there are fewer young people in the state in the system and that children are still developing—the science is clear about that—but there is a cohort whose violence and level of offending is causing significant harm.

CHAIR: Obviously Mr Gee and I have a level of experience in policing in terms of how offences have changed along the way and about increasing violence. I have noticed you cannot steal a car with a screwdriver anymore; you need the keys and that has seen an increase in offenders then needing to enter people's homes and so encounters between offenders and victims would probably increase. Do you have any comments to make around the changing environment in relation to an increase in violence in crime?

Mr Gee: I do not intend to offer a personal view, but I can provide statistics that I think are well known amongst practitioners. If you look at serious offending, violent offending—and it is all codified with a national system—the level of violent offending has increased by population rate significantly. In 2019—I am not going to talk about 2018 because that is when 17-year-olds came back into the system—the rate per 10,000 people of young people who had a proven violent offence was 50.7. That

was 50.7 young people out of 10,000 had a proven violent offence in the 12 months ending 31 August 2019. If you look at 2024, it is 54.9 and on my math that is roughly an 8.3 per cent increase. It was a bit higher in 2021. Something has happened post COVID: 2022 and 2023 were very high years for recorded crime, adult and youth crime but particularly youth crime in this state.

CHAIR: I will pass to the member for Maiwar.

Mr BERKMAN: Thank you for your time today. I am wondering whether anyone here can provide the committee with any evidence that increasing the penalties operates as an effective deterrent for young people.

Mr Gee: I think that question is for us. I think it is true to say that children are at different stages and the science is very clear that they develop over time. It is also true to say, though—and I am not going to repeat the facts I have just provided the committee—that, in relation to young people leaving detention, their severity and frequency of offending in this state diminishes. That is clearly evidence.

Mr BERKMAN: Sorry, but the question was about whether you have any evidence within the department that increasing penalties, as the bill does, has a deterrent effect on young people and modifies their behaviour.

Mr Gee: For me I suppose it is about a definition of deterrence and a definition of penalty. If you have a bill that is about sentencing principles and the bill's intent is to increase the length of sentence and therefore increase the penalty, I think you have something that is clearly about increasing penalties. If you have literature and our own evidence suggesting that detention as a penalty and people leaving detention with a reduction in the severity and frequency of offending, you have clear black-and-white evidence that something is happening while they are in there. Is it my preference or the community's preference that young people are in detention? Maybe, maybe not, but all I can do is provide the committee with the facts, and the facts are that the people who are working in the system supported by a whole range of partners are actually having an impact on people who are causing harm in the community.

Mr BERKMAN: Aside from the answer you have given now and those statistics you referred to earlier, you have referred to published literature—that one journal article based in Washington, as I understand it. Do you have any similarly published literature that demonstrates a link between harsher penalties and a deterrent effect on young people?

CHAIR: Member, I think that is the same question. We will move on.

Mr BERKMAN: I am asking about published evidence.

CHAIR: You have asked that question and Mr Gee has done his best to answer that question. I will move on to the member for Thuringowa.

Ms MARR: We clearly made a statement that we are going to include the victims of crime in the consideration of this bill, so I will bring you back to that if I may. The Kirwan Police Station in the seat of Thuringowa is one of the busiest in the region and they are continuing to pick up the same juveniles time and time again. Some of these repeat offenders are in the failed resi-care program. My question to whomever would like to answer today is: do you feel that if imposing sentences that reflect the seriousness of the crime for these offenders and if they receive rehabilitation and education while they are in detention, would it be safer for the offender in that environment and also for the community? How would that also alleviate the demand on the police in continuing to pick up these offenders?

Ms FARMER: Point of order, Chair: I think we are not asking witnesses how they feel. I think we are asking witnesses to give evidence.

Ms MARR: I did actually ask their opinion on whether it would take the demand away from the police and if it would be a safer environment for the repeat offender.

Ms FARMER: I do not think we ask public servants for their opinions.

CHAIR: Sorry, member for Thuringowa; I was otherwise distracted during that question. Could you ask it again, please?

Ms MARR: What I am asking is: if we are imposing sentences on the offender that reflect the seriousness of a crime and they receive the rehabilitation we spoke about while they are incarcerated, would that be a safer option for them and would this reduce the demand on the police in having to continually take the same reoffenders off the streets?

Mr RUSSO: Point of order, Mr Chair: that is seeking an opinion from the department and it is inappropriate.

CHAIR: That question is out of order. I will give you one more go at reframing it, but you cannot ask for an opinion.

Ms MARR: Is there evidence that if we take these serious offenders off the streets and put them in a much better environment that would decrease the demand of the police in continually picking up the same offenders?

Mr RUSSO: Sorry, Mr Chair—

Ms MARR: I have asked for evidence, not an opinion.

Mr RUSSO:—point of order: it still falls within the realm of asking for an opinion.

CHAIR: The member has reframed the question to ask if there is any evidence, so I will allow the question and allow a response if there is evidence of what the member has asked.

Mr Gee: It is a difficult question for me to answer. It is probably more appropriately answered by the Police Commissioner, but we work very closely in multiagency collaborative panels and across agencies. It is very fair to say that if recidivist offenders are charged and a court considers they should be refused bail or given a period of detention it is not uncommon for crime rates to drop markedly. In terms of broader demand, I would leave that for the Police Commissioner, but it does make sense that if you are not attending to those young people there would be an opportunity to do other work.

Ms FARMER: Mr Gee, I will ask that question again. Given it is the government's intention to pass this bill before Christmas, which means there will be more people in detention for longer periods of time, how are you preparing—

CHAIR: Member, you have made an assumption there I think.

Ms FARMER:—for possible increases in numbers in facilities and to ensure the legislated staff to young person ratio in detention centres is maintained?

Mr Gee: Irrespective of these laws, it is fair to say we most probably would have had the same situation we have had for the last two Januarys—irrespective of these laws—because the Wacol remand facility will not be finished by December; it will not be operational until April next year. We have had 100 in watch houses in January 2023 and January 2024. I hope I am wrong, but we have planned for that same number. To the member's question, we think that it will take time for these laws to be implemented and for the courts to make decisions around sentencing, so our expectation is that changes will be incremental over time. We do not expect, although we plan for every contingency, a dramatic increase in numbers that we will not be able to handle in the first few months.

As the member would know, we have been very agile since COVID, but there are a range of options and contingencies. The member would also know that we have strong business continuity plans within the department of youth justice, the Police Service and across the board. If I looked at Townsville in flooding, we used a women's correctional centre there for a short period to put young people. We used the Ipswich watch house and turned it into what was then referred to as a youth hub or a watch house for young people. Of course, we have been using the Caboolture watch house as a dedicated youth hub for over 12 months, if my memory is right. I know the member knows that well and truly, so we have planned with the police for a whole range of contingencies. In terms of the assets the government currently owns, I am confident—whether it was because of these laws or whether it was a natural disaster, a fire or some other event—that we can keep young people safe to the best of our ability and, most importantly, keep the community and staff safe.

CHAIR: Thank you, Mr Gee. I will move to the member for Capalaba.

Ms FARMER: Chair, could I ask for a clarification on that response because I want to pinpoint the answer?

CHAIR: What is your question?

Ms FARMER: You are speaking of the short-term impacts. My question was that we all know that detention facilities and remand facilities take a long time to plan and become operational and we all know how difficult it is to employ and onboard staff, so I am not talking about the first few months; I am asking what planning is in place to make sure that the additional—

CHAIR: Member, I think that is getting repetitive. I think the director-general has answered that as best he can at this point in time, so we are going to move on. There has been some confusion today through evidence on victims being in court and getting cross-examined. Can you explain and confirm the changes to opening the courts? People have been giving evidence that victims will have to be giving evidence to court and be cross-examined. Can you clarify the laws around that?

Ms Connors: Yes. Can I just clarify, because we were listening to some of the earlier evidence: is this around the fact that people will be present when victims are being cross-examined or about victim impact statements?

CHAIR: Yes, victim impact statements being subject to cross-examination.

Ms Connors: Nothing in the bill changes process relating to victim impact statements. Part 10B of the Penalties and Sentences Act governs those statements and the providing of information. Those statements are given for therapeutic benefit, they are not read under oath and they do not need to be read out but they can be by the person who wrote it, so this bill does not change anything around victim impact statements or any of those processes. For clarity, where there are also vulnerable victims who may be giving evidence in the court, the court still has the capacity to close the court for that purpose, so that does not change either, but there is no change around victim impact statements.

CHAIR: So those concerns are not valid?

Ms Connors: No. We will carefully read any submissions that have been made to the inquiry and we can respond to those, but, no, there is nothing in the bill to warrant those concerns.

CHAIR: In general terms, what will the increase in victims participation look like?

Ms Connors: Victims participation is really around being able to be present in court and to be supported by relatives and representatives in court in a way that they have not been. The main other impact of the bill is again about the primary nature of the impact on the victim being part of the sentencing process, so it makes that a primary consideration of the court in sentencing, so that is the other aspect. The victim's impact statement will have relevance for that, but they will not be cross-examined on that.

CHAIR: Thank you. I will move to the other side.

Mr BERKMAN: I think this would be a question for you, Ms Connors. There has been much discussion about the bill removing detention as a last resort for children whereas that will remain in the Penalties and Sentences Act for adult offenders. My question is this: is it the policy intent that children will be subject to more severe sentencing treatment than adults?

Ms Connors: I am not able to really make a comment on policy matters as part of this. I can only talk about—

Mr BERKMAN: Can I perhaps clarify then that that is, in fact, the case?

Ms Connors: Detention as a last resort has been removed in this act; it is not removed in the Penalties and Sentences Act.

Mr BERKMAN: Okay, so, as a matter of fact then, irrespective of the policy intent, children will be subject to more severe sentencing approaches than adults?

Ms Connors: I cannot comment on matters of government policy. Of course, remember the court is still bound to impose a proportionate, appropriate penalty, so the things that the court takes into account in sentencing are not changed other than the primacy of the victim in this case.

CHAIR: For clarity, in fact good judicial practice would take into account the age of an offender, the antecedents of an offender, and the trauma and risk factors of an offender.

Ms Connors: Those still exist in the Youth Justice Act; that is right.

Ms MARR: You did touch on it a little bit before and we did hear from a victim today who said how difficult it was for them to find out what was happening with their case. Can you please go through what currently happens for the victim to be able to attend court and find out what is happening as opposed to what we have in this bill?

Ms Connors: We might take that on notice. Those processes are not a feature of this bill, but we would be happy to give that information to the committee.

Ms MARR: Sorry, but I was talking about opening up the courts to the victims and the media.

Ms Connors: I see.

Ms MARR: I am sorry; I should have been clearer. I meant opening the courts to victims and media as opposed to what we have today. Can you explain what happens today and how the bill will affect that, which makes it a lot better for the victims?

Ms Connors: Yes, absolutely. At the moment criminal proceedings against children are open to the public where they are heard by a Childrens Court judgement on indictment, but where they are not heard on indictment, access to proceedings can be limited to the court. Prior to 30 August this year, a victim or a victim's representative could be present but they could be excluded by the court if, in the

court's opinion, their presence would have been prejudicial to the child. The media were always excluded from the courtroom unless their presence would not have been prejudicial to the interests of justice. That position was changed by the former government to the current position, which is that victims and relatives are entitled to be present, except for contempt or other closed court provisions, and victims and relatives cannot be excluded. These amendments go even further to open up the Childrens Court, so they remove the power of the court to make an exclusion order essentially, so this specifically allows relatives of victims to also be present during the proceedings.

We have removed the power to make exclusion orders, so what remains is that the court still has its contempt powers and then it can close the court for other reasons such as where a special witness is giving evidence. That could be the case of a victim of a sexual offence giving evidence or where there is a proceeding under the Mental Health Act, so this is substantially opening up the court for victims to be present.

Ms MARR: Thank you.

CHAIR: I will give the member for Capalaba a go.

Mr FIELD: Can you outline the change to the primary regard to the impact of the offending on the victim—that is, how is the current system different from the new system?

Ms Connors: Certainly. I might ask Ms McMahon to answer that for you, if that is okay.

Ms McMahon: Currently in section 150 of the Youth Justice Act, victim impact is one of many considerations that the court has to take into account when determining what an appropriate sentence is. The amendment in the bill lifts up that provision to its own standalone provision and says that the court must have primary regard to that factor, so it is already something that is considered by a court but it will have to have greater regard in the sentencing process under the amendments.

Mr FIELD: So that means what the victim says has more weight, to a degree, than what it has had?

Ms McMahon: I think it is a complex question in terms of how much weight will be given to various factors in any given case, but what we can say is that under the bill there is a requirement that that will have primary regard and no other factor in section 150 has that status.

Mr FIELD: Thank you.

Ms FARMER: Just for a change, Ms Connors, on that matter I think everyone is agreed that the primary consideration here has to be around community safety as well as impact on victims. Just going back to something you said before, Ms Connors, there has been some suggestion—I have heard legal people talk about this outside this hearing—that because the impact on victims has been made a primary consideration it may be highly likely that defence lawyers will then cross-examine or be much more assertive with victims than they otherwise may have been and obviously that would be deeply traumatic. In terms of the statement you made earlier that that will not happen, is that a possible consequence?

CHAIR: I do not know whether they can answer that.

Ms Connors: I can answer that in terms of, I suppose, a criminal procedure, and please jump in, Ms McMahon, if you need to, but there is a difference in the proceedings. With regard to the evidence that a victim gives about the offence that happens in the course of the proceedings where there is cross-examination, nothing in the bill changes that, and that is quite different to the victim impact statements. The impact on the victim is not part of the proceedings about whether the elements of the offence are being made out, so what the bill does is it gives primacy to the impact on the victim. That will not be what the victim is giving evidence about when they are being cross-examined; they will be giving evidence about the facts of what happened, for example, that evening or in that incident. There are two parts of the proceedings, so we do not believe that that will be an impact, but Ms McMahon, please jump in if you want to elaborate on that.

CHAIR: Nothing changes in relation to how victims give evidence in a court?

Ms Connors: Not in the way they give evidence.

CHAIR: I do not know what you were getting at there, member for Bulimba.

Ms FARMER: I think a number of legal stakeholders have raised it.

CHAIR: They raised the fact that it was more likely to go to trial and the impact that might have on a victim.

Ms FARMER: There was a separate issue.

CHAIR: There is nothing in this bill to suggest that legal proceedings will change in relation to evidence given by witnesses.

Ms Connors: Cross-examination of witnesses, no.

CHAIR: We are running very short on time. We have about one minute left. I put it to Mr Gee that nothing in this bill removes police discretion for cautions and current proper procedures in dealing with young people who are first-time offenders et cetera and that this bill is aimed at the most serious offences and the most serious offenders. Would you like to comment on that?

Ms FARMER: Point of order, Chair: you are asking the director-general of youth justice. I believe that your question was about police powers and responsibilities.

CHAIR: It was: does this bill change the procedures in relation to what is available in dealing with young first-time offenders et cetera? I think Mr Gee understood the question.

Mr Gee: The Youth Justice Act does prescribe the administration of whether it be cautions or charges before the court. Sixty-nine per cent of young people who are cautioned by a police officer—69 per cent—do not come back to the system. It is a wonderful success. We have worked with Legal Aid in the past. The first time I worked with then minister Farmer was to work with Legal Aid to make sure that the legal fraternity understood—and I am sure they do understand well—the power of diversion. There have been, as I understand it, concerns raised that there will be more young people not diverted. My experience of that is that if we do the same education—this bill plainly, to answer your question, is not focused on that. The prescribed offences are serious offences. They are not the types of offences at the bottom end; they are at the top end.

CHAIR: Thank you, Mr Gee and panel, for your time today. Thank you, members. I declare the briefing closed.

The committee adjourned at 3.46 pm.