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 HEARING—INQUIRY INTO THE MAKING QUEENSLAND SAFER BILL 2024

TRANSCRIPT OF PROCEEDINGS

Monday, 2 December 2024

Brisbane

MONDAY, 2 DECEMBER 2024

The committee met at 11.30 am.

CHAIR: Good morning, everybody. I declare open this public hearing for the committee's inquiry into the Making Queensland Safer Bill 2024. My name is Marty Hunt. I am the 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 and present. 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. The Legislative Assembly and its committees recognise that matters awaiting or under adjudication in all courts exercising a criminal jurisdiction should not be referred to from the moment a charge is made against a person until the matter is resolved in the courts. All witnesses are therefore reminded not to refer to matters before the criminal courts in their evidence. As chair, I also ask members and witnesses to observe standing order 117 which restricts the naming of at-risk children. Importantly, evidence today should not readily identify a child who is subject to either the Child Protection Act 1999 or the Youth Justice Act 1992.

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. Participants must be aware you may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. Can I get everyone to ensure that their mobile phones are switched off or on silent mode.

Finally, the committee notes that today's hearing could be triggering for those who have been affected by crime. If any witnesses today require a break during proceedings please indicate. Please also approach the secretariat if today's proceedings raise any issues for you.

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

SAMMON, Ms Gemma, Service Delivery Manager (Recovery and Healing), VictimConnect

THOMPSON, Mr Brett, Chief Executive Officer, Queensland Homicide Victims' Support Group

CHAIR: Good morning to you all. Would you like to introduce yourselves and make a brief opening statement before we start our questions?

Mr Thompson: Good morning, everyone. Thanks very much for the time today. My name is Brett Thompson. I am the Chief Executive Officer with the Queensland Homicide Victims' Support Group. I need to make it very clear that our response and submissions will be purely in relation to charges relating to murder and manslaughter. That is our specialisation and we need to keep our remit in relation to that. QHVSG, as I will refer to it from this point onwards, was established in 1995 by people with lived experience. It was established because there was no support in Queensland, no direction for those families and very few rights, including financial support to support recovery. Since that time, we have expanded our support, education and advocacy for families across Queensland or, in fact, across the world if their loved one was killed in Queensland.

Our three programs are family support, which is case management from immediate response up to 2½ to three years, which is generally in line with the length of any criminal proceedings or hearings. That often then recommences when the perpetrators or the offenders, if they have been sentenced, are going through parole system. We support families through that. We will often see families returning to active support between 10 and 30 years down the track post homicide.

Our advocacy is always based on the feedback from those families whom we support. Sadly, since 1995 our organisation has responded to 1,498 homicides with over 9,000 individuals receiving some kind of consent-based support. These are only the people whom we have consent from. There are multiple thousands of people who receive support where they did not require ongoing service or require consent to continue.

We approach things in terms of individual concerns and advocacy. If we have interactions that we hear of from our members where they are not receiving updates from various stakeholders or not satisfied with the interaction with an individual, we are happy to provide support to address that issue. We are heavily involved with systemic change. If we identify that systems and processes that are in place are, in fact, making the journey more difficult for people than it needs to be then we have open-door policies with lots of stakeholders to have genuine, balanced conversations around how to make things better. It might be in relation to victims register expansions, which have been conversations in the past, it could be in relation to advocacy around the critical incident list. It again depends upon the voices of those whom we support.

The third thing we are involved with is legislative needs. Law changes are difficult. The organisation has been very strong in its advocacy for increasing sentences for murder in Queensland from 12 to 15 years and currently 20. We were involved in the first victim impact statements being provided in Queensland courts. We were involved in parole legislative changes, where submissions were then allowed to be provided by the families impacted by homicide, legislative changes about funding through the VOCA program back in 1995. The organisation has a history of interacting with governments to try to support change for better rights for victims.

These responses are specifically in relation to homicide. I will leave it to other colleagues and specialists to respond in relation to those areas. Because we are member based, what we decided to do last week when this came up was approach our members. We conducted a poll of our many members and asked them to submit. We had over 300 written submission through 130 respondents. On average, when there is a homicide 13.6 people are actually impacted directly by that within the family and their extended family. Even though we had 130 respondents, which may not seem a lot, it is actually a great deal of data in a short period of time. The questions were not specifically around the technical aspects of the legislation because we really are not at a point where we can understand all the implications, but we wanted to get a gauge of where people sat as members in relation to sentencing in general.

We asked the first question around murder sentencing of an adult offender. We had 50 per cent of respondents who said that they were not satisfied that that was enough for their expectations. We had 47 per cent who said that it was enough. We then filtered that through to specifically ask the 20 per cent of people who identified as being impacted by youth homicide and they felt, 72 per cent, it was actually appropriate for that. I think if we dug down into that it is probably to do with the fact that at the moment this cohort of our members do not feel that the sentencing is appropriate and so I guess they look at 20 years as probably where we need to aim.

The manslaughter sentencing in Queensland at the moment has already been shown by the Queensland Sentencing Advisory Council to not meet community expectation. The head sentence of eight years with a one-third prospect for parole eligibility was found in 2019 to not meet community expectations. Our response from over the last few days was that 85 per cent of our members agreed with that, that manslaughter did not meet the expectation of our specific community who had firsthand experience of loss. Six per cent said they did meet the expectation and when filtered to those impacted by youth homicide we had 86 per cent of the cohort who stated that they did not feel that the sentencing for manslaughter was appropriate. When we broke that down and asked specifically about where this inquiry is heading, which is the murder by youth currently a maximum of 10 years and that is those shown to be particularly heinous in nature, 71 per cent of respondents felt that did not meet expectations. Twenty per cent said that it did, but when we again filtered down to those with real lived experience where they lost someone through the actions of a youth, 86 per cent of those felt that it did not meet expectations.

Our final question was around should children aged seven to 17 be sentenced for homicide the same as the adult. Six per cent of our cohort responded as agreeing to the statement, 11 per cent said no. There was a large percentage, the remaining, who said it was too complicated for a yes or no answer, which is certainly understandable. When we looked at the specific youth-impacted families, 68 per cent believe that the sentencing was appropriate.

I need to point out very clearly that when we are talking about murder we are talking about a proven intent to kill in a court of law. These are people who have been legally proven to have gone out to kill someone with intent. Those are the people we are focusing on. There are certain individuals in

our community who should not be walking amongst us and that is who we are referring to. We will stand by that and the beliefs of our members that we support adult sentencing for those who are sentenced for murder where there is intent.

In cases of manslaughter, I am not sure how we get around that because when we look at the impact of the serious violent offender legislation, and we believe and it has been shown to be pushing down the head sentence for manslaughter, I am not sure how we actually increase that level if we are going to, because the adult crime is, in fact, eight years. At the moment, my understanding is manslaughter for children is around the four to six year range. All we are talking about there in reality is probably another couple of years added to that sentence. Whether that satisfies people in the community, according to our data the answer is no, but I am not quite sure how the legislation can change. It is a different question.

CHAIR: Mr Thompson, we are time constrained today. Have you got just a little bit more to go?

Mr Thompson: I will let Rhea go now.

CHAIR: Thank you. I just want to make sure we leave some time for questions.

Ms Mohenoa: Good morning and thank you for the opportunity to appear as witnesses before the committee today. I would like to begin by acknowledging the traditional custodians of the land that we are meeting on today, the Turrbal and Yagara people, and pay my respects to their elders past and present. I would also like to acknowledge victim survivors, their loved ones and communities that have also been impacted by violent crime. We are here today representing VictimConnect as the statewide support service for victims of violent crime. My name is Rhea Mohenoa. I am the director of client services for our recovery and healing programs, which includes VictimConnect. I am joined by Gemma Sammon, our service delivery manager.

Ms Sammon: Good morning. VictimConnect helps Queenslanders with information, referrals, specialist counselling and case management after experiencing a violent crime. We are a confidential service that operates 24/7 every day of the year. We work alongside other specialists, partners such as Queensland Homicide Victims' Support Group. Together with these partners we are united in supporting people to recover from violent crime. The committee will hear from a multitude of stakeholders throughout this hearing. We are here today to elevate the voices of victim-survivors. We are here to help provide insights about the experience of people after they have become a victim of crime. The underlying message VictimConnect hears from clients is the need to feel safe. They also tell us that they want faster police response, faster judicial systems and access to counselling and financial supports quicker and for longer. We are confident in saying that overwhelmingly our clients want a stop to violent crime and a stop to fear. However, the criminal justice system and the supports available to them are of critical importance to the people who call us.

Ms Mohenoa: While we do not have any clear statistics on the numbers of victims we work with who have been impacted by youth crime, we do know that it is the minority. Over 60 per cent of VictimConnect work comes from domestic and family violent crime. We also know that childhood experience of domestic and family violence can exacerbate a child or young person's actions and behaviours, some that have negative impacts on our communities. This tells us that focusing on domestic and family violence, family support interventions and general support for children and young people earlier will also address youth offending and likely have a more positive and greater impact than punitive measures.

We note that we would like greater detail of the bill for VictimConnect and the community, especially those who are impacted by crime, to provide the nuanced consideration and consultation necessary to satisfy all questions about how proposed changes can safely and effectively keep Queenslanders safe, which is the intention of our government. We encourage further dialogue and opportunities to work with the government, alongside victim-survivors and their families, on achieving reforms that meet community, human rights and victim-survivor expectations as well as obligations. We advocate for the voices of Aboriginal and Torres Strait Islander children, families and communities to be recognised as central to all policy and service delivery decisions. The youth justice system must be co-designed with Aboriginal and Torres Strait Islander leaders, ensuring that decisions reflect the priorities, knowledge and cultural practices of those most affected by the system.

Overall, we recognise that many of our callers express a desire to see people who have caused them harm to have clear and swift judicial responses. There are a few who express the view that the sentencing given was not appropriate for the crime they have experienced, regardless of the age of the offender. However, overwhelmingly, all want to see a focus on more supports for victims; and prompt, well-explained and victim-centric criminal justice processes that give those individuals and their communities the ability to move forward in their recovery journey as quickly as possible.

CHAIR: Thank you for your submission. Given the time constraints, I will direct a question to you, Mr Thompson. As you have correctly identified, this bill deals with the most serious offences. That is what we are talking about. We are not talking about first-time offenders who are young people. This bill deals with the most serious offenders and obviously the most serious offences are homicide and manslaughter. Could you make some comments in relation to the people you work with and the extended trauma caused by inadequate sentencing?

Mr Thompson: Yes. Initially, of course, there is the charge of murder and the expectation that that person may be getting the mandatory minimum, which is 20 years. That may change given the evidence and the different things that play out with a manslaughter sentencing. The reality might then be that they get 30 per cent and potentially almost walk out of the hearing so the recovery changes for those families. They lose faith in the system. They lose trust in government in general, including in the judicial system. It can fracture families in terms of relationships because of the divide. Within our organisation, from our survey we hear about everything from capital punishment through to no punishment. That is the spectrum of responses that we receive on a daily basis. Within families people will have different beliefs and that can fracture families given the outcomes. Essentially, we know that if there are poorer outcomes then the impact on families is harder.

We already know that the impact of homicide is an intergenerational issue and that the behaviours of trauma are effectively passed through to children from their parents and there are lots of different concerns. It has an impact on those families. The sad fact of the matter is that, no matter what the sentence is, the actual problem does not go away, which of course is the loss of a loved one.

Ms FARMER: I thank both organisations for the really great work that you do. Mr Thompson, that was very quick work to get out to your members. I know you are very much a membership-based organisation. Obviously, the matter of adult time for an adult crime when sentencing was very clearly canvassed in the lead-up to the election. This bill contains a number of other elements that were not canvassed. Both of you have made reference to the fact that there has not been sufficient time to look at the implications of unintended consequences. Mr Thompson, I have heard you say many times that victims need a range of options. Could I have a comment from both of you about concerns that you may have about the limited time to really canvass all of the unintended consequences?

Mr Thompson: Certainly we would like to know more detail because that is how we make an informed choice. Decision-making requires gathering information. Within our survey we provided the QCOSS document to say, 'Here is one point of view that you may want to consider as part of your decision-making.' We are open to lots of things without trying to guide people's responses.

More detail is always important. We do not know exactly how this will play out. There are a number of things here such as last resort. We have questions in relation to victims giving impact statements in court and whether or not they will be sworn in and then subject to cross-examination. It would be a major concern if that were to go through as legislation. I would hate to see a defence lawyer attack the grieving parent of a child about the quality and depth of their relationship. We do not need that playing out.

We support, for example, access for victims. The media is neither here nor there, but we want to make sure that the victims have a seat. If there are 25 media, only one seat and five family members, we want the family members to have the seat and not the media. Those are the sorts of protections and processes that we need in place so that the rights of the victims are put before the media. I guess there are some details where we ask, 'What does that exactly mean?', so a bit more time would be wonderful.

CHAIR: Thank you for that. We are running short of time and need to move on to the next submitter. We thank you for your submissions today. We appreciate you addressing the committee. I now call forward the representative from Fearless Towards Success.

WALTERS, Ms Selena, Chief Executive Officer, Fearless Towards Success

CHAIR: Selena, would you like to make an opening statement before we start?

Ms Walters: Thank you for the opportunity to be here this morning. Fearless Towards Success, or FTS as we are known, is a youth organisation that I founded 3½ years ago. We have been funded for only two of those years. I worked unpaid for the first year and again now since our funding ended at the end of May this year. I am still taking calls from kids in detention. I took two young people to the youth justice forum in September to have their voices heard as part of a discussion at that conference. I have recently taken a young former offender to Canberra, to the opening of Anne Holland's recent report, which was tabled in Canberra.

I started my plans for FTS after about six months of working for Education Queensland at the Youth Detention Centre in Wacol. In detention I saw another side of these kids. They really were not such bad kids when they had a roof over their head, food in their tummy, they were down from the drugs and away from some of the dysfunction that was happening in some of their families and communities. Essentially, all their needs were being met even if they were locked up. Suddenly I saw this revolving door happening though, with kids who were in and out, in and out constantly. They really did not engage with any support on the outside. I used to ask them about the organisations they engaged with. They did not engage with mainstream services. They basically said, 'We just look after ourselves out there.' They were couch surfing and, really, the support on the outside was not there.

One boy walked back in and I casually said, 'What are you doing back here?' He said, 'Miss, this is home.' Another young man, who was about to turn 18 before he got out, was so determined to do well because he did not want to go to adult jail. I came to work one morning and saw the bed state. He was back. I went up to his section and spoke to him. I said, 'What happened? What is going on?' He said, 'Selena, I was trying so hard. I wanted to get out of Ipswich. I wanted to go and stay with family on the Gold Coast. I couldn't get anybody to help me move my gear and to transport me down there so I stole a car and drove down there.' I did a quick calculation. At that point in time, which was about 2018, it was $1,500 a day to keep a kid in detention. I thought about the 20 grand that we had just spent, as he was there for two weeks, because there was no-one he could phone to get that support.

For me, there were three clear issues in detention. A lot of kids liked being there; it was safer than being at home. There was little support in transition on the outside. The economic cost to keep kids in there is insane compared to the cost invested in them when they leave. They walk out the door with the shirt on their back.

I became friends with Bernie Shakeshaft. Many of you may have heard of the BackTrack Youth Works program. It is an award-winning program in Armidale, New South Wales. I wrote a project proposal and took it to Bernie, to collaborate with him and BackTrack. FTS and BackTrack did a participatory work research project titled Keeping Young People Out of Lock-Up. From there I started a support centre in Ipswich in 2021.

Personally, I have spent six years alongside these kids, including 2½ years in detection, working with them in the classroom for hours and hours each day. During that time, I started working on a Youth Justice funded outreach program. I was doing night shift there. I would leave the detention centre at 3 o'clock and start work at 3.30, working through to 10.30 at night. I would work in the community as a frontline youth worker, working with these kids each night. I have spent all day with these kids sitting at court. I have been with FTS for over three years. I am not just the CEO and founder of FTS; I am a frontline worker as well. I have spent all day with these kids, sitting at court as a support person, attending restorative justice conferences, supporting them in police interviews, visiting them in watch houses, attending court and spending hours fishing through one of our programs or just sitting with them in the support centre doing activities.

It is a privilege to work with these kids. It has given me an incredibly comprehensive apprenticeship into the failings of this system at many levels, especially for that high-end cohort that we are labelling the serious repeat offenders. It has given me valuable insight, mostly from listening to the voices of these young people and seeing it with my own eyes. I am not some do-gooder, bleeding heart or, heaven forbid, woke as we seem to get called if we support these kids. I simply see the potential in people when they are given the right support and the opportunity.

We did eventually get funding for two years from the federal government. We had three full-time staff. We ran our programs, which included several First Nations mentors. I wanted to design a place where kids wanted to be and with people they wanted to be around, including lived mentors who had their own background in either juvenile detention or jail. They can relate to these people. They saw us as a safe place to be. We did lots of work with neuroeducation, fishing, culture and art. We trialled a work experience program that kept a young person on an interstate cattle farm for six months. It was

the longest he had ever not offended since he was 12. We created a driving program because these kids do not access the PCYC Braking the Cycle program. They have so many more complex needs and that is not somewhere they go. We needed to provide something else for them. We also did a social enterprise business model that looked at employing young people coming out of detection. None of those were picked up by government after we did those studies.

Our focus was on transition and the serious repeat offenders. Those youth were keen to engage with us. They were actively asking their case managers to refer them to FTS, which is unheard of for that cohort. They were really keen to engage. I think that is because they were front and centre of everything we did. Everything we did was co-designed around what they need and giving them a voice.

CHAIR: Thank you, Selena. I am mindful of giving everyone some time, but I want to ask about your understanding of what kids need post detention. I assume you would welcome a policy that would see a 12-month intensive program after detention.

Ms Walters: Absolutely. We were so pleased to hear about the $175 million post-release transition program for every young person because previously it was a 72-hour program that, quite frankly, was not worth the paper it was written on. I was involved in over a dozen 72-hour programs where these kids were timetabled into our centre. The multiagency collaborative panel was 50 metres down the road from me, in the same street, and never once was I invited to any of the panels that were meant to be there to talk about these kids and engage with non-government organisations that are involved. There would definitely be a lot of things to work out with that program.

You need to have the right people working with that high-end cohort—the right type of people; the right type of workers. That does not always happen in this space. There are a lot of organisations that are continuing to get funding and they may not be the best people to be working with the high-end cohort. A lot of people do go for the low-end cohort of kids because they do give them better outcomes, and it is hard work. It is hard working with these kids.

CHAIR: I have seen that myself.

Ms FARMER: Thank you, Ms Walters. We have obviously met and I acknowledge your huge heart for the work that you do. I noticed, in fact, that you had a visit from the now Premier during the election campaign and he was referring to your program as being a program that could attract funding. Can I ask, firstly, whether you have met with the government since the election and, secondly, whether you have been promised funding?

Ms Walters: No to either. No, I have not met with the government and, no, we have not been promised funding.

Ms FARMER: Thank you.

Ms MARR: Good morning. Thank you so much for your time. Just listening to what you said and looking at the bill before us today, considering that we are talking about the worst possible offenders, can I ask you then if you think that that young boy who said he did not want to go to adult jail—with the bill, we are talking about those offenders going to adult jail when they reach the age—will consider that fear of the consequence when he is doing these crimes? Also, if we have compulsory education in the detention centres and compulsory rehabilitation programs that have proven outcomes, do you think we would be on the right track to helping the worst of the worst that you have seen currently?

Ms Walters: I do because I do think a lot of kids in detention do fear going to adult jail. Unfortunately, because a lot of them have been involved in the system for so long and been in and out of juvie for three, four, five years, when they do go once to adult jail it is like it is game over—they will keep cycling through there as well. The fear has gone. I used to hear a lot of kids around 17, on the cusp of 18, who would have this light bulb moment and it was like, 'I really don't want to go to adult jail.' That is when we need to grab them and really work with those kids because, like I said, once they go once, it is very difficult. The second part of your question was?

Ms MARR: If we have compulsory education in detention centres but also 12 months compulsory rehabilitation. You have made it very clear that it is the rehabilitation that is important to keep these kids from going back. Do you agree with that as well?

Ms Walters: Whatever happens in terms of rehabilitation, these kids have to be involved in it. We cannot force them to go to boot camps or whatever it is like that. They need to be involved in their own rehabilitation. They need to be invested in it or it is not going to work. I think all of those initiatives are very good—the reason being that they are actually addressing every single touchpoint in the system along that spectrum—whereas at the moment there is always the talk about early intervention

and diversion. That is critical. It is really needed. There are a lot of kids that do fall through the cracks and then they start cycling in and out of detention. They are the kids at the other end of the spectrum that do not get the support that they need. They do not get the support and that hard-to-reach cohort need a specialised youth worker and specialised organisation working with them.

Mr BERKMAN: I really appreciate your time here, Selena. I expect you are aware that the bill, as addressed in the statement of compatibility, is incompatible with the human rights of children. There was also an observation that the bill will lead to sentences for children that are more punitive than necessary. I guess I will just put it very broadly: do you have any response to those two factors?

Ms Walters: I think it is unfortunate that we are even here talking about this and having to create policy around adult crime. It is the fear in the community that has driven this. I understand that. I am a realist. I do understand where people are coming from with that, but it has been the failures of the system that have let those kids continue doing that.

I see it all the time. They will get out of detention and a few weeks later they will reoffend and they will not even go back inside. For five years, our return-to-detention rate within 12 months has sat at around 90 per cent and no-one has done anything. Five years! The Queensland audit report in June said that 53 per cent of young people reoffend within the first two weeks and the majority of them is within the first 24 hours. That is where we have failed them. Instead of giving bail after bail after bail, after the first time of giving bail we should be there saying, 'What went wrong? How can we better support you so that this does not happen?'

The kids are the sacrificial lamb in this. I have had kids—I took kids to the Youth Justice Reform Select Committee who said, 'We kept getting a slap on the wrist all the time. If I hadn't have, I probably would've pulled up early.' In saying that, on the other hand, they also said detention does not work either. They have said all it is, to quote one of the kids, university for criminals.

It is very difficult. We all know detention does not work. I am sure even the LNP knows that detention does not work. There are a gazillion reports that say that, but, unfortunately, the 1.2 million people that voted for the government do not really care about that because they are living in fear and people's lives are being lost, and I understand that. It is a pretty sad situation really.

CHAIR: Thanks, Selena. To summarise what you have been saying: we are letting kids down in early intervention, we are letting kids down in detention and we are letting kids down post-detention, and that has created this youth crime crisis. Would that be a fair summary?

Ms Walters: It is, absolutely. I have heard former government representatives say that kids do not really like it in detention. It is not true; kids do like it in detention. There are all sorts of other issues to do with street cred. They are wanting to go into detention. I have sat in police stations where police have said, 'We can't send you to detention because we have to give you so many chances.' They will just keep offending until they get to go because they want to be cool like their older brother or their mates. There are so many other complex issues around this, not to mention the complex issues around kids that we all know about from the youth justice census—parental incarceration, domestic violence, substance abuse; all of those things that are layered over the top of these kids as well. It is very complex.

They do like being there. I spoke to a friend the other day who is still working in detention and a little boy came in and said to her, 'I really like it in here. This is so much better than home. I've never had sandwiches like this.' I have had kids who went into detention for the first time who were applying for bail ring me two days later and say, 'Selena, I'm not applying for bail today. I like it in here. I just had bacon and eggs for breakfast.' These are the complex things that we need to deal with.

CHAIR: So, if we can support them post-detention a lot better, we will remove that, in a way.

Ms FARMER: There has been quite a bit of discussion in this session about things that do not relate to the legislation. There has been quite a bit about the government's election commitments. Specifically about the legislation, which is what this hearing is about, do you believe that you have had sufficient time to really look at the legislation and consider all of the consequences? Can you make any comment on any of the elements of the legislation? Would you like to make a comment on those?

Ms Walters: Obviously, a lot of them were flagged before the election so we had a lot of time to have a look at that. We will be putting a submission in. Yes, there is not much time but we obviously knew that this was coming and that this was the legislation that would be changed should the LNP form government.

CHAIR: Thank you, Ms Walters. We might move to the next witnesses, if that is okay. Thank you very much for participating in the hearing today. It is very important.

Ms Walters: Thank you.

CHAIR: I now call to the table QATSICPP—The Queensland Aboriginal and Torres Strait Islander Child Protection Peak—Sisters Inside Inc. and the Aboriginal and Torres Strait Islander Legal Service. As the witnesses are approaching, due to time constraints, can I ask witnesses to keep opening statements to just two to three minutes for the benefit of all stakeholders. I note that the department's written brief is now published on the committee's webpage. The secretariat has copies on hand for those in the room today.

BENTON, Mr Murray, Deputy Chief Executive Officer, Queensland Aboriginal and Torres Strait Islander Child Protection Peak

GREENWOOD, Ms Kate, Senior Policy Lawyer, Closing the Gap, Aboriginal and Torres Strait Islander Legal Service

MABO, Ms Neta, State Manager, Youth Programs, Sisters Inside Inc.

MORGAN, Mr Garth, Chief Executive Officer, Queensland Aboriginal and Torres Strait Islander Child Protection Peak

SHARMA, Ms Pree, Legal Practitioner, Law Reform and Community Legal Education, Aboriginal and Torres Strait Islander Legal Service

WASIAK, Ms Zofia, Director, Programs, Sisters Inside Inc.

WHARTON, Ms Ruby, Community Development Officer, Sisters Inside Inc.

WRIGHT, Ms Helena, Deputy Chief Executive Officer, Policy and Strategy, Queensland Aboriginal and Torres Strait Islander Child Protection Peak

CHAIR: Welcome, everybody. Obviously, we do not have time for everybody to make an opening statement. I imagine you have organised yourselves to have spokespeople. If we could keep it to two to three minutes, that would be great, hitting on your most important points so that the committee can draw out the evidence that it needs to. As you present, please say your name for *Hansard*.

Mr Morgan: Thank you, Chair. My name is Garth Morgan. It will be slightly over three minutes—I have timed it. Good afternoon. My name is Garth Morgan and I am the chief executive of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, which is the peak body for child protection and youth justice in Queensland.

I would like to start by acknowledging the traditional owners of the land we are meeting today—the Yagara and Turrbal peoples—and I want to acknowledge elders past and present. I also want to thank the committee for the opportunity to speak to the Making Queensland Safer Bill.

As a broader voice for the youth justice sector, it would be remiss of me if I did not express our disappointment with the severely truncated timeframes required for the consideration of such a significant piece of legislation. These proposed laws will shift the state's approach to how we treat children and young people who offend in a non-trivial way, and we feel that legislative reform of this magnitude deserves proper consideration—consideration that we fear will not occur within the timeframes outlined in the House by the Premier.

Having said that, QATSICPP acknowledges that Queenslanders elected this government because they wanted a safer Queensland and they believe that these laws would help to achieve that. What we believe, and what the evidence shows, is that, sadly, the proposed laws are unlikely to create safety in the medium to longer term. At its foundation, the bill assumes that certainty of punishment and harsher penalties will effectively deter children and young people from offending. This assumption is fundamentally wrong.

A wide range of evidence shows that this is unlikely to be the case for at least three reasons. No. 1: children and young people have limited ability to assess the outcomes of their behaviour and they often overestimate the benefits and underestimate the costs. Children are also susceptible to peer influence and biological factors such as puberty which can increase risk-taking behaviours. No. 2: as children and young people engage more with the youth justice system, it becomes more familiar and normal to them, and we have heard that today. This decreases the deterrence value over time. No. 3: enhanced penalties and deterrents are unlikely to reduce youth offending behaviours if the root causes of offending are not also addressed.

We are concerned that the bill will lead to the overuse of detention for non-violent offending and we propose that the bill be amended to explicitly distinguish between violent offences and non-violent offences. We also worry that the bill will have an exponentially more significant impact on younger children. There is significant evidence that shows the younger a person comes into contact with the youth justice system and the harsher they are treated the more likely it is that they will become entrenched in the criminal justice system.

In other words, if very young people are caught up in the youth justice system, we will be creating adults who are more likely to offend, and this undermines the intent of the bill, which is to create a safer Queensland—something that we all want. For this reason, we are asking the government to consider amending the bill so that maximum penalties and the removal of detention as a last resort do not apply to children under 14 years old.

QATSICPP also believes that restorative justice orders serve an important function in facilitating rehabilitation as well as providing a sense of justice to victims of crime. Restorative justice processes deliver accountability for young people by putting them in front of the victims of their offending and working towards meaningful resolutions. Importantly, restorative justice delivers measurable benefits, with 77 per cent of children either reducing or altogether ceasing offending after participating in a restorative justice process. That is why QATSICPP is urging the government to consider ensuring that restorative justice orders remain an available option for non-violent offences under the Adult Crime, Adult Time category.

We do want to be clear: we do have a problem that needs to be addressed, but the reason that we have the problem is not because our laws are weak. We have the toughest laws in the country. Our problem is an investment problem. Not enough is being done to invest in a comprehensive youth support system. Much of the funding that has been announced over recent years has been funnelled into the public sector. We need to rectify this and we need to fund into local place-based community level services that actually know and can work effectively with young people both at the point when they are coming to the attention of the youth justice system and from conception all the way throughout their childhoods. Thank you.

Ms Wasiak: I would like to start by acknowledging the Turrbal and Yagara people, whose lands we are on today, and pay respects to elders past, present and future.

As representatives of Sisters Inside, we speak on behalf of an organisation that has been working with criminalised women and girls in Queensland for over 30 years; therefore, our submission is grounded in extensive experience working in the Queensland community at the front line of the justice space. We know what works; we know what harms; and we know what the community we serve needs to thrive. Sisters Inside vehemently objects to this legislation. We object to the racial, gendered violence this legislation will perpetrate and we object to the obliteration of children and young people's human rights and lives through the so-called Making Queensland Safer Bill. We object because these laws do not make all Queenslanders safe. They do not make children safer; in fact, they violate and trample over the human rights of children. They target Aboriginal and Torres Strait Islanders and they will not deliver community safety. We object to the way in which the government has rushed through this legislation, providing little time for consultation. We all know they have done this because given time to truly scrutinise the proposed amendments the broader community would see it for the evil that it is. These amendments will not only destroy children's lives but also diminish us as a community and a state.

When the LNP took office—elected off the back of a manufactured youth crime crisis that was repeatedly debunked by criminologists across the country—it had the opportunity to be smarter, not tougher. They took the lazy, coward's way out. They picked on those smaller than them: they picked on kids. They dredged up failed law and order policies that have been tested and rejected around the world. Now they want to impose those failed and violent policies on Queensland's children. Why do they want to do this when the evidence says these types of policies do not work? Because the LNP has a love affair with locking up kids—even more so, locking up Aboriginal kids. Shame!

It is our recommendation that this legislation be abandoned and we end the criminalisation and incarceration of children. Sisters Inside has been providing services and supports to criminalised women and girls in Queensland for more than 30 years. We have demonstrated that by establishing and strengthening social supports for families and communities and providing children, families and communities with the resources and care they require, as opposed to pathologising and criminalising them, families and children can thrive. If you really want to keep kids out of prison, fund us to do that work. Fund our organisation to keep delivering.

It is our position that if we as a community are not able to stop the passage of this legislation then we will need to rely on the global community to hold Queensland accountable for this breach of children's rights and ensure Australia remains committed to its international obligations to uphold justice, equity and dignity for all children. Sisters Inside will not stand by quietly and watch the LNP use imprisonment to solve a social problem created by racial capitalism and successive governments' failure to invest in social services. Sisters Inside will not stand by quietly and watch the blatant targeting of Aboriginal children. Sisters Inside will not stand by quietly and watch a government lock up kids and throw away the key. Queensland deserves better. Our children deserve better. These laws are not

about justice: they are about cruelty and control. If this legislation passes, Queensland will be sending the clear message that its government values punishment over community support and incarceration over care. We refuse to let this happen without a fight.

Ms Greenwood: The Aboriginal and Torres Strait Islander Legal Service is a community-based public benevolent organisation established to provide professional and culturally competent legal services across Queensland. We have 25 officers statewide. Our submissions and advocacy work are informed by over five decades of legal practice at the coalface of the justice arena and we provide our comment from a platform based on actual experience. Relevant to this committee, ATSILS provides legal assistance and legal representation in the courts in criminal law, family and civil law, and domestic violence and child protection matters. We work in the early intervention and prevention space, including community legal education. We help prisoners with parole applications, monitor Indigenous Australian deaths in custody and undertake related law reform activities. We provide prison through-care services for both adults and youth, assisting clients pre and post release with intensive case management. For the clients we can accept into the limited spaces available on the through-care program we assist prisoners or youth detainees with their transition back into the community and addressing their offending behaviour. In post-prison work we often work with other agencies—as assisting clients often requires a team effort—working through a network of partner organisations.

ATSILS is also a member of QATSIC, the Queensland and Torres Strait Islander Coalition, and a member of the Coalition of Peaks. Both coalitions perform work in partnership with all three levels of government under the National Agreement for Closing the Gap. ATSILS and its fellow members of QATSIC work together to identify the interplay between the justice system, the child safety system, skill suspension practices and the availability of health services and responses to family and domestic violence which contribute to the over-representation figures. I acknowledge Mr Garth Morgan, CEO of QATSICPP, here today and a fellow member of QATSIC. As the justice sector member of QATSIC, the Queensland and Torres Strait Islander Coalition is committed to a 10-year commitment to work in partnership with the government on these issues. There will be details in the written submission we put in tomorrow, so what follows is necessarily going to be a very broad-brush approach.

Our basic approach is to follow the science. Everybody has community safety as a shared goal and aspiration. It is a false dichotomy to say that that only exists in parts of the sector. One jurisdiction that should be of particular interest to this committee is Scotland. The Scottish justice reinvestment program looked at all points of failed intervention that led to a child committing a serious offence. For them, it was a youngster somewhere in the 13- to 15-year-old range who got involved in a street fight with a knife and fatally stabbed somebody. When they were looking at the problem they were really looking at the pointy end of the problem. They have done a lot of work looking at what can be done to avoid this. The answer from them is that it is a lot of upstream work.

We know from local knowledge and existing efforts in Queensland that it takes a village to raise a child. We should be very careful about what villages we are wrapping around errant children. Might I suggest that youth detention centres are not a great village for kids who are at the low or medium end of offending. The Townsville Magistrates Court created a special list for high-risk youth, and that greater focus on those high-risk kids has been reaping benefits. We also know from an April 2021 Queensland Treasury report into youth offending that there are basically three key cohorts: early peaking offenders less than 14 years old who desist after that are one-fifth of the cohort and commit 25 per cent of the crime with moderate rates of offending; late onset offenders who are over 16 years old until they desist represent two-thirds of the cohort, two-fifths of the crime and also commit moderate rates of offending before they desist; and chronic offenders, the 10 per cent of the cohort, who commit a third of the crime. One of our youth through-care workers who ran back to country programs had really high rates of success with the troublesome group, and his advice was that the secret is the mentoring of these kids. One of the best ways of keeping the community safe is to put wraparound supports around these kids—with proper cultural authorities in this example—but he also took on mentoring mainstream kids. Kids do not want to let down the key figures in their lives by reoffending. That is what it all boiled down to.

Tying this back to the inquiry, in summary our response is that community safety is better served by better access to residential, drug and alcohol rehabilitation services. Building more of these with a better capacity to accept clients with criminal histories would start to address root cause problems. It is a shocker down in this corner of the state. Ironically, it is easier up north to try to get clients into rehab. Many problems need to be tackled in partnership, as a multi-agency response is really needed to overcome siloed and fractured responses. We would urge greater use of the opportunities offered by the Closing the Gap process and multi-agency working groups as a way of filling in the gaps in areas such as the justice sector.

CHAIR: I would just remind you of the time. Do you have only have a little bit to go?

Ms Greenwood: Yes, and I will make these my last two points. Community safety is better served by putting more options on the table for judicial decision-makers, not taking them away. A well-crafted bail order will do more to protect the community than throwing an excessive number of kids into detention or watch houses because of presumptions against bail and a well-crafted sentencing order would do more to protect the community. The courts need more discretion. At the moment, a lot of the changes have been starving them of that. That is the first place. That is the engine room of coming up with solutions. Finally, community safety is better served by immediate increases in the number of kids doing rehabilitative programs, getting a proper education and increased access to medical services and supports, including culturally competent services.

CHAIR: Thank you for your submissions. I would encourage you to put more detail in your written submissions as you see fit.

Ms Wasiak, in relation to your frankly rather offensive comment, to be honest, that the 'LNP has a love affair with locking up Aboriginal kids', given that the LNP has not been in government for 30 of the last 35 years, do you have any evidence or research to back that comment up, or is it a personal opinion?

Ms Mabo: The Youth Justice Act and the Child Protection Act come from one piece of legislation: the 1865 Industrial and Reformatory Schools Act. There were about five sections in that act under which a child could be sentenced and criminalised, essentially. In this state there are 26 places where Aboriginal children alone have been since that time, so there is evidence to show how racist this system and this government have been, not necessarily just the LNP but in general.

CHAIR: That is what I was getting at: it is a systemic thing, rather than the LNP in its specifics. I move to the member for Bulimba.

Ms FARMER: Thank you to all of you for the significant amount of work you would have had to do in quite a short period of time. In the lead-up to this legislation being introduced, there has been quite consistent airing of the concept—I appreciate there were only a few words to it—of adult time for adult crime. However, we see the legislation and there are significantly more elements to the legislation than had been canvassed that people were aware of. I think all of you in your comments have been really clear that community safety is the paramount principle that you all adhere to. What process would you like to have seen in place to make sure that all of the unintended consequences—or a canvassing of some of the other elements of this legislation that you were not aware of. Do you feel you have had enough time to really canvass those and think about those consequences, or what process would you ideally like to see in place to make sure that the best possible options for community safety are available? I am happy for any of you to answer.

Mr Morgan: Clearly, it was an election commitment that the laws would be passed fairly quickly. Not discounting that—and I understand that—I believe that a piece of law that is this significant does require some time. I think Queenslanders are smart enough to come to the view that we are where we are because of a range of historical reasons, and it is not going to be something that can be fixed in six months or maybe even in a term of government. So I would like to have seen a significant consultation process prior to the bill being drafted—for the bill to be drafted, for an exposure draft to be circulated, maybe in confidence, to folk in the sector that are working with kids followed by a committee process that is longer than a week.

Having said that, I do need to say that we do support what the government is trying to achieve with this process. We do not necessarily agree with the timeframes. We do not necessarily agree with everything in the legislation. We think that Queenslanders are probably going to want more than what they are getting out of this legislation. It will be really important for us to see the detail about what those investments into early intervention and prevention look like, what the through-care support looks like and what the individual support program looks like. We are saying that we really want to partner closely with the government on the design of those programs because you need people who are local-level people to really inform how those investments are best spent. Our main concern is that we have a safer Queensland, and that also includes our children. Kids do not intend to do stupid things and hurt themselves and hurt others most of the time. We will be working as closely as we can, but clearly it is disappointing that we do not have the time to consider this in the way I would have anticipated for such a major bit of law.

Mr FIELD: Ms Wasiak, I see you are saying that the new laws might jeopardise the rights of children or child criminals. What about the rights of the victims? Where do you think that sits?

Ms Wharton: If I may, we do care entirely about the safety of everybody that exists within this community, and we do lead from an accountability action first and foremost. What we value in this space is: as prison abolitionists, we do not believe in impunity; we believe in community safety. We

challenge the notion of accountability in centres around punishment. That does not mean that the values and lives of other people who are victims do not matter. Everybody matters. We cannot answer any of these questions in a skewed, obsolete way. It must be intentional. It must consider the care of those who are languishing in prisons who are also the victims of crimes. It is a matter of when we meet these individuals. We must be meeting these individuals before they are ever engaged in courts. That means that we have to have more intervention on the ground. That means we have to have more resources to enact that intervention on the ground. Looking at punitive punishment like this kind of legislation will only lock us in to a society where we only have those options. We must have the courage as adults to move away from caste-rule methodologies and actually look at our own practices where we see the human for the human, not the perfect victim or not the imperfect victim. This is about community safety, and everybody matters.

Mr FIELD: That is exactly what I am saying. It is not only the rights of the children here; everybody is equal and it should also be for the rights of the victims.

Ms Wharton: Many of those children who are languishing in prison are also victims who have not had the opportunities to be a victim.

CHAIR: Thank you, everyone. Sorry, we have run out of time. I do encourage you in your submissions to cover the areas you might not have covered off today, particularly in relation to research. If you are providing research to the committee, I encourage you to provide systematic literature review or an analysis in the Australian context as evidence to the points are you making. We appreciate your time today and thank you for coming along.

MERLEHAN, Ms Natalie, Voice for Victims

SANDERS, Mr Chris, Voice for Victims

CHAIR: Good afternoon, Natalie and Chris. I invite you to make an opening statement, please, before we start asking questions and remind you to keep it to two or three minutes if that is possible.

Ms Merlehan: Good afternoon, committee. Thank you for having us here today. Chris and I are here on behalf of Voice for Victims and we are—

CHAIR: I really am sorry to pull you up there. I just had an indication that one of the members here wants to make a declaration of a possible perceived conflict of interest. Member for Capalaba?

Mr FIELD: Thank you, Chair. I would just like to place on the record that I have had previous engagements with Voice for Victims. I am also a member of their Facebook group, and I acknowledge that there is evidence that Natalie and I have connected over the accident that my son, his partner and my grandson were killed in. Thank you.

CHAIR: Thank you, Russell. Sorry, Natalie, if you could go on.

Ms Merlehan: No trouble. We are here today both representing Voice for Victims as a group and detailing my own and Chris's personal experiences with youth crime. We will be quick in our outlines to give you an overview of our experience and then the Voice for Victims stance on the range of changes as proposed under this bill.

Mr Sanders: My name is Chris. I am a victim of youth crime. I was stabbed in the back on 12 December last year. Six weeks earlier, I had had a spinal cord stimulator repaired in my back through the Defence Force. We called into the shopping centre to go and get some dinner. As we were leaving, there were a group of kids standing there. They have kicked and punched—

CHAIR: Excuse me, Chris. Sorry to pull you up, mate. Is this matter before the court still or has it been resolved?

Mr Sanders: It has not even gone through yet. Still waiting on—

CHAIR: Have there been charges laid?

Mr Sanders: They are charged, yes. I am waiting on the DPP to keep me informed.

CHAIR: There are rules around sub judice, it is called, and we are not permitted to hear evidence in relation to matters that are before the court. Just a moment while I get some advice. We can talk about this in a closed hearing. Given the importance of the matter to Voice for Victims and the currency of it, I ask everyone to leave the room, if you would, so we can close the hearing and hear from Chris. Thank you.

Proceedings suspended from 12.39 pm to 12.44 pm.

CHAIR: Natalie, I invite you to make your submission to the committee.

Ms Merlehan: My name is Natalie Merlehan. As some of you are aware—others may not be—I was involved in an incident in Alexandra Hills on 26 January 2021 which sadly took the lives of Matt Field, Kate Leadbetter and their unborn son, Miles. This day stripped me of various functions of my body and the ability to lead an otherwise normal life. I sit here today with a background in criminology and I have worked in that space for over 15 years. My comments and notes are from a criminological perspective and from my first firsthand experience of becoming a victim.

I have been a part of the Voice for Victims community for the past two years, and I am here today to assist with their submission. I wish to make it clear to the committee that Voice for Victims and I consider the following points and key areas should underpin the functioning justice system—youth justice included—and hope the committee will consider these in their examination of the Making Queensland Safer Bill. These focuses should be: the recognition of victims with current and ongoing support from both government and NGOs; community safety as an underpinning principle and focus; and significant intervention and rehabilitation opportunities for offenders, their families and support networks to assist in breaking the cycle of offending and supporting them through both custodial and non-custodial sentences and beyond.

The incident that I was involved in has continued to impact—and will always impact—my ability to be employable and my physical and mental health. I have permanent spinal, nerve and mental health concerns now due to this incident. The almost 18-year-old at the time of this crime is only serving six years of a 10-year sentence due to the offence, and none of the injuries which occurred to me have ever been considered or presented to the court on indictment. Had the laws as proposed by the LNP government already been in focus, I believe that this offence either would not have occurred or the

injuries to me and the impacts it has had on the Field and Leadbetter families would not have occurred. The extensive criminal history that this person had at the time of offending means they would have already been in custody—they would not have been out on bail and they would not have been continuously reoffending.

With respect to the proposed bill, Chris, Voice for Victims and I broadly support in principle the promotion and consideration of the impact of offending and the charter of youth justice principles when sentencing a child. We support the courts having primary regard for the impact of offending on victims and committing to imposing appropriate penalties to meet the community's expectations. As in my matter and in a number of other matters that VFV have assisted with, there has been a significant community outcry due to the lack of interventions and access to the courts. Ensuring a child's criminal history reflects their full history including cautions, restorative justice agreements and contraventions should be included. I believe this would assist greatly in understanding how a child has gotten to the point that they are, what interventions they have undertaken and what has worked and what has not. Seeing a decrease in offending by severity or by frequency shows that things are working, so how we focus on those rather than just locking up kids is imperative.

The concerns that I and VFV have in relation to the proposed bill are that, while there has been community outcry in relation to limited sentencing, this falls on the judiciary and the sentences they hand out. If children are going to be sentenced, we would like to see the time they spend on custodial or non-custodial orders used in an effective way that breaks the cycle, pulls them towards intervention and education to assist them. The only way we can make a change is by breaking those cycles and upskilling the kids and their family supports. Thank you.

CHAIR: Thank you, Natalie. Having spent the best part of the past 33 years of my policing career working in youth crime prevention, I understand that we do okay in regard to early intervention but we are talking about the most serious offences in respect of this bill such as the one that you witnessed that often result in a loss of life. In terms of Voice for Victims and the collective movement that followed some tragic events, what is the general feeling about the justice system or 'injustice' in terms of sentencing for those most serious offences?

Ms Merlehan: I am not sure if it centres specifically around sentencing so much as the ability for victims to understand the process and to be involved in the process—to have access. I know that other victims and I have not been afforded the opportunity to essentially be in the loop with what is going on when it comes to those court processes. In the matter that I was involved in, I am considered a complainant not a victim so I do not count in statistics. This means I have had no ability to be a part of the justice process, as it was, so I think the changes from the perspective of opening the courts and, as other submitters have stated, victims and people who support those victims getting those seats in the courts. I think being a part of that process gives you a greater understanding and it allows you to understand why sentences are being handed down the way they are.

Ms FARMER: I want to acknowledge both of you. Chris, I am loathe to comment on your situation. Please understand I am certainly not disregarding your experience. Natalie, you and I have spoken about your experience and I am so sorry for what you have been through.

You earlier referred to your support for restorative justice conferencing. We know, of course, that that is not only effective in reducing reoffending but also has high satisfaction levels for victims, too, which is so important. The Victims' Commissioner, who has not been called to appear in the public hearings, made quite a strong statement last week about the diversity of experiences and the needs of victims. She had concerns that there would not be sufficient time to look at the impacts on victims and opportunities, as well. We have heard concerns this morning, and I have heard it raised by some legal stakeholders, about the range of potential negative impacts for victims including that elements of the bill might open up victims for cross-examination from defence counsel. I do not know whether you saw the Victims' Commissioner's statement so I do not want to put you at a disadvantage, but she was very strong on making sure that—

CHAIR: Get to your question.

Ms FARMER:—there was proper time and a process for canvassing the impact on victims. What are your thoughts on that, and on any possible unintended consequences?

Ms Merlehan: I have not seen the statement, but as someone who is not even identified or recognised as a victim it is hard for me to make a comment on that because I have not ever been given that opportunity. I did request it but it was never afforded to me. I would be concerned. I do not think it is appropriate to cross-examine a witness if you are only there to give a victim impact statement. If you

are attending as a witness, I think there is an expectation that you may be cross-examined. Obviously, the DPP would need to canvass with the witness the suitability of them being able to be cross-examined.

Mr FIELD: Chris, I understand the process is still going through the courts, but, as far as support or updating you on the process, are you being supported all the way through or do you think there needs to be other supports?

Mr Sanders: The only support I have received is from Voice for Victims. They are the ones who have been trying to help get me through the pathway. I have had to sit there and ring the DPP to find out exactly what is going on. I have had no phone calls. I get emails after I have made a phone call. Voice for Victims started making their applications to government bodies and I still do not hear anything. Voice for Victims follow up again. It is a group that is actually trying to help us to get what we need and require.

Mr BERKMAN: Thank you both for taking the time to be here this morning. I think you were both here before when QATSICPP referred to some evidence about the impacts of detention of very young children on their likelihood of reoffending. I suspect you are well familiar with that evidence through your professional background, Natalie. Looking at the bill in isolation—separate from whatever other programs might be funded—do you have any concerns that the longer sentences and the removal of detention as a last resort could have opposite consequence such as increased rates of future offending and actually leave the community less safe?

Ms Merlehan: Yes, is the really short answer. It is deeply concerning that putting kids in detention or in custodial centres which we know are currently understaffed, and have been historically, and unable to meet minimum standards is of great concern, so adding pressure to that cannot be a good thing. There needs to be a review of how that will actually work on the ground. Like I said, they cannot actually adequately staff the centres as they are. We know there are a significant number of dark hours where children are kept in their cells so it would be remiss of me to think that, in isolation, legislation like this would make a positive impact because even coming out after 72 hours, a lot of those kids are not getting that or it is happening in the end portion of those three days. So, yes, it is of great concern.

Ms MARR: Thank you so much for your time today. The bill addresses early intervention, detention and rehabilitation. As a victim of crime, we are opening up the courts to allow the victims to see that and to opt out if you do not want that information. So, first of all, that will help you to be kept up-to-date. Do you believe that if we have detention with compulsory education and rehabilitation while they are in there will lead to a much better outcome than we have at the moment where they are just in detention centres doing what they will and coming out with 72 hours worth of rehabilitation? If there is a 12-month period—while they are there and after—to ensure the programs have the outcomes we need, do you think that will be more effective than what we are currently seeing?

Mr Sanders: They are going to be more beneficial than what is currently there. From firsthand experience, I know that for sure. The way I see it is if they are in there doing the time, they should be at least applying to better themselves as well and realising what they have actually done. They should at least leave with something and setting a better example for themselves when they do come out.

CHAIR: I think you both correctly identified that there are issues in early intervention, there are issues in detention and there are issues post detention and it all has to be done better. I acknowledge that we are talking about the most serious offences here. We are not talking about locking up all kids; we are talking about the most serious violent offences. What we do in detention is important. Would you agree with that?

Ms Merlehan: Definitely. It is extremely important, whether it is a circuit-breaker or a long-term solution because there is always going to be that cohort who are unwilling to engage, unable to engage or just do not care. It is the same with the adult cohort as well. I do not want to be derogatory towards children; it is across-the-board.

CHAIR: Are there any more questions from the opposition side of the table?

Ms FARMER: One of the earlier witnesses talked about victims of crime overall. Obviously this bill deals with youth crime, and the majority of crime is adult crime. I know the extent of the work that Voice for Victims does. I want to commend you on the number of hours that go into this from volunteers. What is your view on having an equal focus on adult victims of adult crime and also youth crime?

Ms Merlehan: I am a bit confused by the question.

CHAIR: Member, I would say that is outside the scope of the bill. You can ask another question if you like.

Ms FARMER: Thank you, Chair. Do you believe it would be useful to have police giving evidence and being involved in this public hearing as well?

CHAIR: Member, I think you are asking for an opinion. It is not relevant to their submission. I rule that question out of order. Thank you for coming along today—

Mr BERKMAN: Chair—

CHAIR: We do have a couple of minutes. I will go to the member for Maiwar.

Mr BERKMAN: Plenty of media reports and the explanatory notes to the bill make clear that the bill contravenes children's human rights and it is contrary to our obligations at international law. The statement of compatibility says explicitly that the bill will lead to sentences for children that are more punitive than necessary to achieve community safety. Do you have any reflections on that and, again, the risk of counterproductive outcomes here?

Ms Merlehan: It is definitely a concern. Any time when we suspend human rights, regardless of who that is intended for, it is of concern and that really needs to be weighed appropriately. I do not think there is enough time between the bill being introduced to parliament and the time the committee has to consider it appropriately. Sorry, what was the second part of the question?

Mr BERKMAN: Apologies, the statement of compatibility says in as many words—these are the views of the AG who introduced the bill—that the amendments will lead to sentences for children that are more punitive than necessary to achieve community safety. Do you have any response to that?

Ms Merlehan: It is difficult because if that is the way the vote is taken and it is carried, that is something that needs to be assessed. I would hope that if that is the case, there is a really strong focus put on education and rehabilitation during the time those children are in custodial centres or are on custodial orders. That is probably the only silver lining of an extended time in custody. I do not know whether I agree with that or not, but in a very generic sort of way that is the best way to use that time in a positive way, hoping that those children would come out as better functioning members of society and could contribute more positively in the future.

CHAIR: Voice for Victims famously marched on parliament a couple of times in large crowds and that movement grew quite quickly. Could you comment on the motivations of the movement? What is the underlying cause or underlying frustration that caused people to march on parliament?

Ms FARMER: Point of order, Chair. Looking at your previous rulings on questions, I am wondering if this is relevant to the examination of the bill.

CHAIR: I am mindful of time, so I will accept that and I will move to the member for Thuringowa because she has a question.

Ms MARR: You answered a question previously on human rights. I want to point out one other comment that was made in that report. It says, 'It will allow the courts to impose sentences that reflect the seriousness of offences and holding young offenders more accountable.' Do you think that is a consideration that we must take into account for a victim of crime when these juveniles are going to court? Do you think that that statement is correct when looking at what you have had to endure with the court case—or the non-court case? My question is: with regard to that statement, which is also in the document, do you agree that allowing courts to impose sentences that reflect the seriousness of offences and holding young offenders more accountable is a positive to this bill?

Ms FARMER: Point of order, Chair. I think it is important to clarify—and sorry, greatest respect to our witnesses here. You made an earlier ruling against a question that I asked stating that it asked for an opinion or a belief, and I believe the question from the member for Thuringowa falls into the same category. Could I ask for your ruling on that, please?

CHAIR: The member is asking the advocacy group if they agree with a statement in the explanatory notes.

Ms MARR: I am asking the question because the previous question from your side was about a comment made by the AG in the document. I am just giving further clarification to that human rights comment to say that it allows courts to impose sentences that reflect the seriousness of offences and holding young offenders more accountable. It is in relation to the previous question.

CHAIR: It is not relevant to my previous ruling when the member asked if they thought the police should be here. This is related to the bill and the explanatory notes and I find the question is relevant. Would you like to make a comment on that?

Mr RUSSO: Point of order, Chair. If a proposition is going to be put to a witness it should be put in its entirety. The statement of compatibility actually states openly that it is a breach of the Human Rights Act, so I am a bit confused when you—

CHAIR: There is no point of order. Member for Toohey, I disallow that question. The member is quoting from the explanatory notes and is asking the witnesses if they agree with that statement.

Mr RUSSO: Point of order. My point of order is if you are going to put a statement from the compatibility statement, you should put it in full and not take out selected parts that suit your argument.

Ms MARR: Point of order through the chair.

CHAIR: Let me rule on that point of order. Member for Toohey, it is not a point of order. The member for Bulimba was asking a question that was not relevant to the bill. This question is relevant to the bill and I ask that it be put.

Ms MARR: Sorry, to put you in an uncomfortable position. In considering that question regarding human rights that was asked previously by the opposition side, do you believe that allowing courts to impose sentences that reflect the seriousness of offences and holding young offenders more accountable is what our community is asking for?

Ms Merlehan: I believe the courts already have the ability to do that. It is at the discretion of the judge or magistrate whether they uphold that. It would be, I assume, similar in this instance where sentencing principles would override and case law would assist with that. That is probably as far as I could comment.

CHAIR: Thanks very much. I am mindful of time. We will need to move on. Thank you for presenting today. I call for Youth Advocacy Centre and QCOSS members to come forward.

HAYES, Ms Katherine, Chief Executive Officer, Youth Advocacy Centre

McVEIGH, Ms Aimee, Chief Executive Officer, Queensland Council of Social Service

CHAIR: Welcome. Would you like to make a brief opening statement before we start our questions?

Ms Hayes: As a starting point, I would like to acknowledge the tragedies that have occurred because of young offenders. There is nothing that can be done that will really compensate for those really serious tragedies that have occurred, and Youth Advocacy Centre is focused on making sure these kind of offences are minimised and are as unlikely to happen again as possible. The reason we are all here today is we want to reduce young offending. We want to make sure that young offenders are put on a trajectory that means they will not commit the crimes that have caused these tragedies we are focused on.

It is not a zero sum game, it is not victims' rights or children's rights; it is that victims' rights need to be upheld, victims need to be supported through the process, and victims need to be heard and listened to. At the same time, we need to look at exactly why young people are offending. That does not mean they are not held accountable; it is so we can prevent it from happening again in the future.

The debate is often polarised. If we look at those circumstances behind offending, we are seen to be excusing the offending. That is not the case. What we are doing is understanding how we got to that position and how we can stop it happening again. There is a clear mandate for this law, but it goes further than the mandate. Section 150A focuses on retribution and punishment rather than rehabilitation and reintegration. Retribution and punishment do not make the community safer; rehabilitation and reintegration do. There is no evidence to support that detention reduces this serious reoffending.

It is very important to note that there are no exceptional circumstances to allow for the third override of human rights of children—not bikies, not terrorists, but the most disadvantaged and vulnerable children in Queensland. They have been let down by child safety, they have been let down by their own parents, they have been let down by every adult around them. The parent becomes their guardian in many of the cases and we see them go from residential care and committing awful crimes. If they are not in child safety's guardianship many of these children should be. We see child safety as a big part of this picture in failing to make sure that young offenders can be put on a productive path and reintegrated into society.

The only exceptional circumstances are to make sure that these young people are put on a path to not offend. Domestic and family violence needs to be addressed. In the case of drug use, the parents are often absent in prison or the family is dysfunctional. There are mental health issues and many of these kids have fetal alcohol spectrum disorder. Until these are addressed, reoffending will continue regardless of whether punishment is increased.

There is no room in the broken system to put these kids. We estimated there are about 2,000 kids who committed these particular crimes and were sentenced in the last 12 months. There is nowhere to put those 2,000 kids. The detention centres are overflowing. The watch houses are disgraceful. At Cleveland Youth Detention Centre—and I note that Selena made a very powerful submission about kids in detention centres here in South-East Queensland, and we have kids who are our clients who prefer being in the detention centres but that does not apply to Cleveland—there are rooms where kids are held for long periods with no natural light, and they urinate and defecate in a hole in the floor. That is in Queensland in 2024. These laws will do nothing to ameliorate that. They will simply make it worse.

There is a mandate, but we need to note that the mandate has not been provided on an informed, honest debate. All of the statistics show that since the 1990s youth crime has been going down. There are always blips; there are always statistics that can be cherrypicked to show that particular situations arise, but if you take a step back and look at the big picture, youth crime and youth offending is going down. That is not to say there are not horrific accidents and horrific offences occurring and we need to stop those. We think that this legislation breaches the federal Racial Discrimination Act and that because of section 109 of the Constitution it is going to be void. I think the government needs to look into that before passing the bill.

Finally, there must be a review incorporated into the legislation. It seriously curtails human rights of disadvantaged kids. There must be a review period of 18 months to a year to have a look at whether it is actually working and its unintended consequences because this period has been too short for us to consider that.

CHAIR: Aimee, do you want to make an opening statement?

Ms McVeigh: Yes, thank you. Good afternoon, committee members. I am the CEO of the Queensland Council of Social Service. I would like to begin by acknowledging that we are on the land of the Turrbal and the Yagara people and I pay my respects to elders past, present and emerging. I would also like to pay my respects to all of the First Nations people who have joined us to give evidence today as well as the victims who have bravely shared their stories.

QCOSS is the peak body for community organisations in Queensland. We have hundreds of organisations delivering services for families and children connected to the youth justice system right across Queensland. Our members know what works to reduce youth crime, and that is to deal with the root causes of crime. QCOSS does not support the Making Queensland Safer Bill because it will not improve community safety. It will make community safety worse in the long term and, in the process of doing so, it will harm some of the most disadvantaged children in our community. In addition, it will increase pressure on our already overburdened youth detention centres, leading to an increasing cost to the taxpayer without delivering any return on our investment.

Making our youth justice system more punitive, including treating children as young as 10 as adults in the youth justice system, is nonsensical and contrary to all of the evidence of what works to reduce youth crime, so today I want to talk about what will work to reduce youth crime. This year the Queensland Audit Office produced a very sensible report which looked at reducing youth crime and of particular relevance to the community services sector the Audit Office looked at the ways that investment in community services could be improved, with the result being a reduction in youth crime through investing in early intervention, diversion and rehabilitation. Proper investment in services and supports will reduce youth crime in the long term by dealing with the root causes of crime.

Children committing crime in Queensland are likely to have been exposed to domestic and family violence, used drugs and have poor access to health, education and housing. Children interacting with the youth justice system have high levels of physical, cognitive and neurological disabilities, cognitive impairments, ADHD, autism spectrum disorder, traumatic brain injury, learning difficulties and mental health issues. All of these issues are connected to the behaviour which becomes problematic criminal behaviour. Adverse childhood experiences result in physical changes to the brain and interruptions to the brain's normal development.

Research shows that children who offend and reoffend are likely to have experienced early childhood trauma and adversity. Studies also show that children who have been exposed to domestic and family violence in many cases do not recognise that the behaviour they have been exposed to is inappropriate and would be considered criminal behaviour in public. Offending behaviours are often driven by impulsivity, hyperactivity, risk taking and emotional regulation which are symptoms of the underlying, possibly undiagnosed, neurological conditions and disabilities. Obviously speech and language issues can compromise a child's capacity to understand the consequences of their actions, so presuming that longer prison sentences will deter children from engaging in offending behaviour is flawed, particularly when we are talking about children whose decision-making is impacted by their age, their disability and their exposure to violence and trauma. Obviously these children need services and supports to deal with the problematic behaviour. Our members point to case management approaches, 24/7 safe accommodation options, disability and therapeutic support options, education supports and alternative education as elements of a response that will lead to improved community safety.

The Queensland Audit Office found that there has not been a systems-wide investment analysis to inform funding decisions related to youth justice services. Government should undertake a detailed needs assessment based on the data of youth crime across Queensland and develop an investment plan accordingly. We are pleased that the government has committed to gold standard early intervention, diversion and rehabilitation and we encourage the government to put their focus there rather than investing time and resources in the harmful measures that are contained in this bill. Thank you.

CHAIR: Thank you very much. Ms Hayes, in relation to your observation that 2,000 children have committed these particular offences as mentioned in the bill—

Ms Hayes: Sentenced.

CHAIR: Sentenced in relation to these offences as mentioned in the bill, would you concede that the bill does not require a judge to impose a custodial sentence on all 2,000 of those children?

Ms Hayes: It is not mandatory sentencing; is that what you mean?

CHAIR: I am saying would you concede that this bill does not require a judge to impose a sentence of detention in all 2,000 of those cases? Would you concede that?

Ms Hayes: No, I am not sure entirely of the question. What I would concede is that it is likely to increase sentencing to a custodial sentence for a large number of those over 2,000 kids.

CHAIR: Yes, okay, but your comment was that we do not have a place for those 2,000 kids—

Ms Hayes: Yes.

CHAIR:—so my question was it is not necessarily the case that those 2,000 kids would receive a custodial sentence.

Ms Hayes: Let us say it is 700. Where are you going to put them?

CHAIR: Okay. I am not going to argue the point; I just wanted you to concede that not all 2,000 of those kids would receive one and the bill does not require a judge to give those kids a custodial sentence except in relation to murder.

Ms Hayes: Yes, but the point is not that it is over 2,000 but it is likely to be vastly beyond the capacity of the system right now. That is the point.

CHAIR: Thank you for that clarification.

Ms FARMER: I thank you both for your very well-considered submissions, and I appreciate that you have had to do it in quite a short period of time. Ms Hayes, just on the question that the chair was referring to, there are the number of young people who were sentenced in the last year and, given the bill, there are likely to be even more sentenced. Would you have a concept of how many more that might be?

Ms Hayes: No. It is very difficult to say, but I think it is safe to say that there will be more than the system has capacity for at the moment. I think that is the main point. I do not know. I have not been able to look at the circumstances or understand the complete operation of the law, but I know that it says 'primary regard' to the victims which means that the sentencing principles have been completely up-ended.

Ms FARMER: So there could be significantly more young people—

Ms Hayes: I think so, yes.

Ms FARMER:—than the ones who have been sentenced under the previous system?

Ms Hayes: That is my view based on my investigation of the sentencing that has occurred in the last 12 months, yes.

CHAIR: I think you, Ms McVeigh, made some comments around detention and its effectiveness in reducing recidivism or reducing reoffending. Did you make some comments around that—that is, the effectiveness or otherwise of detention in reducing youth crime?

Ms McVeigh: My submission was that detention does not increase community safety and that the younger children are when they have contact with the justice system the more likely they are to go on to reoffend.

CHAIR: Do you have any information or research about recidivism rates for those who would receive 12 months post-release support compared to those who do not receive that support?

Ms McVeigh: That would be an interesting thing to evaluate, member. I would note that many of the programs that are implemented by government are not accompanied by an evaluation framework so it is often very difficult to measure the outcomes. We do know that we do welcome improved supports upon release from prison and we would encourage the government to work properly with the community controlled sector to make sure that those supports are culturally appropriate.

CHAIR: Thank you.

Mr BERKMAN: I am really grateful for both of you being here today. There seems to be an underlying assumption in this legislation that increasing the penalties will be an effective deterrent for the kind of behaviour that all of us want to see reducing. Are you aware of any evidence that just increasing penalties in this way is actually going to be an effective deterrent for young people?

Ms Hayes: The evidence on detention is that there is a very high reoffending rate, firstly, and when you talk to the young people themselves they say that detention is not a deterrent. What is going on in their lives is the incentive for the conduct, so that is the focus of what needs to happen. Detention is not a deterrent.

Ms McVeigh: Member, one of the things I found striking about the explanatory notes to this bill was the stated purpose of this legislation. Despite the name of the bill, the explanatory notes do not state community safety as the primary purpose of this legislation. One of the two purposes outlined primarily in the explanatory notes are, firstly, to deliver on an election commitment, which we do not

consider to be a legitimate purpose; and, secondly, to improve community confidence. There is no evidence that these measures will reduce crime. It is yet to be seen whether these measures will improve community confidence.

Mr BERKMAN: Thank you.

Ms MARR: Just in response to your comment that it was an election promise, I would like to point out that I doorknocked thousands of homes during this campaign and did markets every Sunday for nearly four years where the community have spoken very confidently that they wanted to have community safety. I am the member for Thuringowa. We have one of the highest rates of crime in this state, so I do believe that there has been consultation. What do you say to the victims of crime in Thuringowa—

Ms FARMER: I raise a point of order, Chair.

CHAIR: Let us hear the question before the point of order.

Ms MARR: What do you say to the victims of Thuringowa when you say that putting the worst of these young offenders off the streets is not going to keep them safe?

Ms FARMER: Point of order, Chair: the member for Thuringowa is asking witnesses to be interacting with her electorate on some of the views that she gathered. I do not believe it is fair to be asking witnesses a question like that. They have given evidence in good faith to the inquiry and I believe questions should be about their evidence rather than individual impacts in an electorate.

Ms MARR: I would like to understand—

CHAIR: Just let me rule on that, please. Member, keep the preamble to a minimum, but you are permitted to ask them if they would like to make a comment in relation to the evidence given by victims groups et cetera.

Ms McVeigh: I would like to answer the question, if that was possible—

CHAIR: Yes.

Ms McVeigh:—and I thank you for the question.

Ms MARR: Thank you.

Ms McVeigh: We also have conducted consultation in Townsville in relation to youth crime and I would agree with you that many people in Townsville do not feel safe and wanted more action on youth crime. That does not mean that they are authorising the government to implement policies and laws that are not based on evidence. The government has promised to be a mature government; a government that listens. That means the government should act on evidence of what works. Treating children as adults in the justice system, resulting in further detention for longer periods, is not based on evidence and will not keep the community safer in the long term.

Ms MARR: I just want to thank you for acknowledging my community and what they have been enduring. I do thank you for that.

Ms FARMER: I just say to the member for Thuringowa that I certainly mean no disrespect for your constituents. I acknowledge that youth crime is a huge concern; I am just more concerned about process. Obviously in the lead-up to the election the concept of adult time for adult crime was well canvassed in slogan form, so it is no surprise that the government is putting through this legislation. However, there are a number of elements to this bill that were not canvassed at all and in fact quite a surprise to a lot of people. Do you believe you have had sufficient time to examine these elements and to consider any unintended consequences?

Ms McVeigh: Thank you for the question, member, and of course more time to consider the bill would have been useful, but I would say this: our sector has been consulted ad nauseam in relation to what works in relation to youth crime and we come to these places again and again with the same message. The previous Youth Justice Strategy informed by the work of Bob Atkinson was a sound strategy. It was based on principles of community safety and community confidence with pillars related to intervening early, keeping kids out of court and out of prison and reducing offending. The Queensland Audit Office found that that strategy was not properly implemented and there was not a proper evaluation framework.

What needs to happen going forward is proper implementation of government strategies, proper evaluation and proper reporting. I would say that further work needs to be done to make sure that victims have a proper role in proceedings and that their voices are heard. We would like the government to empower the Victims' Commissioner to do a proper process to see how the system can be improved for victims.

CHAIR: Thank you for that and thank you for appearing before us today and giving us your submissions and answering questions.

BARTHOLOMEW, Mr Damian, Chair, Children's Law Committee, Queensland Law Society

DEE, Ms Genevieve, Deputy President, Queensland Law Society

HEYWORTH-SMITH KC, Ms Cate, Queensland Bar Association

HOARE KC, Mr Andrew, Queensland Bar Association

JASPER, Ms Julia, Member, Criminal Law Committee, Queensland Law Society

CHAIR: Welcome. Would you like to make a brief opening statement before we start our questions?

Ms Heyworth-Smith: We thank you for the opportunity to present today and to make comment on the bill. We also say at the outset that none of our commentary is intended to diminish the terrible effects of crime on the victims of those crimes. We note that short notice has been provided for our appearance today and for written submission and we understand the reasons for that shortness of time. This is of concern to the association because while the broad policy intention of adult time adult crime, the election commitment, was well known, its implementation was important to how the Bar Association would respond to it. The Bar Association's criminal barristers are subject matter experts on this topic and we have, we believe, important and useful submissions to make with respect to that. More time would have been of assistance, but we will manage because we wish to be a resource with respect to the law reform in this state.

The changes proposed here are profound, they fundamentally rewrite the sentencing of children in this state. They constitute a clear departure from the principles of the international Convention on the Rights of the Child, principles which underpinned the drafting of the Youth Justice Act 1992. Those principles reflect a body of evidence about child development and, in particular, about decision-making and consequential thinking and the important role that rehabilitative measures play in improving the life of the child and the community the child lives in.

This bill will place Queensland as an outlier in respect of our dealing with child offenders in comparison to all Australian jurisdictions. This is acknowledged in the explanatory memorandum, but it does place Queensland in a different and outward position compared to the other states. It also involves numerous provisions which are clearly, in the government's own assessment, incompatible with the Human Rights Act. The association has previously raised concerns in this place about the use of exceptional powers under the Human Rights Act to declare the amendments to the Bail Act and the Youth Justice Act to apply despite being incompatible with human rights. The statement of compatibility which accompanies this bill includes a passage concerning the sentences for children being more punitive than necessary to achieve community safety. That is of significant concern. It is also noted that it is likely, at least in the short-term, that the increase in custodial sentences will further strain capacity in youth detention centres in Queensland and may result in children being held in watch houses for extended periods of time.

There are three points that we will make in particular and then we will turn to another area which is unintended consequences—or we perceive were likely to have been unintended consequences. The first point is that the Bar Association will be generally supportive of evidence-based law reform. There is no evidential basis to suggest that the bill will fulfil its titular object of making Queensland safer. In the statement of compatibility with the Human Rights Act the purposes of the bill are said to be punishment and denunciation. Retribution does not have a corresponding positive effect on public safety. There is no evidence that the measures proposed in this bill will reduce crime rates in our community or make it safer. This creates the spectre of a new sentencing regime which will certainly achieve the aim of punishing children more harshly but has no relationship to its title or object.

The second point is that the association has, as I mentioned, consistently denounced the practice of holding children in watch houses. We maintain that position today. In 1911—I do not misspeak, I do not mean 2011—the State Children Act treated any time spent in a watch house as the last resort and was only acceptable if it was necessary for the safety of the child themselves. We are now over a century later and one of the noted effects will be that children will be placed in watch houses and kept there for longer.

The third point is that judicial discretion in sentencing is fundamental to the rule of law. The association supports the maintenance and protection of that discretion. It allows for a balancing process involving the objective seriousness of the offending and its impact on victims and the relative moral

culpability of the individual child, mitigating features of their presentation and their prospects of rehabilitation. The bill removes any such discretion in the sentencing of children convicted of murder. It will render children liable to mandatory life imprisonment for murder, including convictions under the extended definition of murder. That now includes reckless indifference and felony murder. Further, the parties provisions of the code will capture such children even though they do not do the act that causes the person's death—a lookout to a robbery that results in a death or a passenger in a stolen car that is involved in a fatal accident. To be clear, this means that children as young as 10 years old will be liable to life imprisonment with a mandatory minimum sentence of 20 years regardless of the extent of their involvement or culpability. A 10-year-old would be imprisoned for two times as long as that 10-year-old has even been alive. It is important to note that this change comes in the context of a trend already in sentencing of children for murder which has had an upward trajectory in recent years with sentences of 14 and 15 years imprisonment recently imposed by the Supreme Court on young people for murder.

Looking to unintended consequences, one presumably unintended consequence of these reforms is that any incentive for young people to enter pleas of guilty to serious offences is either completely removed in the case of murder or significantly reduced. It is the experience of our members that young people plead guilty to murder with greater frequency than their adult counterparts and this is due to the ability on sentencing for judges to reflect on their relative culpability and mitigating features in the length and nature of the sentence. The prospect of life imprisonment—it is expected—would reduce drastically the number of young people willing to enter pleas of guilty with the flow-on effects for all those involved, including the criminal justice system and the justice system more generally in terms of the use of court resources.

The removal of the principle of detention as a sentence of last resort is another key feature of this bill and one which will apply to all young people in this state. The association notes that this creates the perverse situation where the new section 150(1AA) makes the sentencing regime for youth offenders more punitive than the scheme that applies to adults. This can be contrasted with 9(2) of the Penalties and Sentences Act which preserves that sentencing principle for adults across a whole range of offences.

When the association provides feedback on proposed changes to the laws which impact our young people we draw on the experience of our members who defend and prosecute these matters. We are keenly aware of the dual challenges which our contemporary youth justice system faces to protect and maintain community safety while providing a joint response to young people and one which fosters their rehabilitation. In relation to the amendments which give primacy to the impact on victims in sentencing, this is another fundamental change to sentencing practice in this state. The impact on victims has always held a place in the consideration of the court. The consistent position of the association is that the balance struck by the act in its current form is appropriate and the primary principle of sentencing children should be rehabilitation. The emphasis on rehabilitation in the act as it stands serves both of those purposes: community safety and the help for young people to rehabilitate. Thank you, Chair. We are available to answer questions if it assists.

CHAIR: Would the Law Society like to make an opening statement?

Ms Dee: Thank you for inviting us this afternoon to speak and appear today. In opening, I respectfully acknowledge the traditional owners and custodians of the land on which we meet, the Yagara and Turrbal peoples, and I pay my deep respects to their elders past and present. Significantly for today, I also acknowledge the children and young people who hold in their hands our hopes of a reconciled future.

The Queensland Law Society is the peak professional body for the state's 14,000 solicitors. We are independent, apolitical and support cogent, data-driven, evidence-based policy and legislation that benefits the Queensland community. Our solicitors, their families and their clients live and work in this great state. Our solicitors, their families and their clients have also been deeply impacted by youth crime. As such, it is the society's firm desire that our community be safe and we support measures that reduce recidivism. We are deeply concerned that this bill will not reduce youth offending and will, in fact, escalate the activity of recidivist offenders while unfairly punishing children at their first point of contact with the youth justice system.

When considering systems reform, the youth justice system cannot be viewed in isolation. A child's access to education, housing and health care cannot be siloed from their right to be free from domestic and family violence, their safety within the child protection system and the impact of intergenerational trauma. It is a young person's interaction with these complex systems and the failure of those systems to meet the needs of a child that drive youth crime across our country. As a family lawyer, my colleagues and I see firsthand the impact of domestic and family violence on children and young people. It is a sad reality that the young people who are the subject of this bill are often victims

themselves, whether through child sexual abuse, domestic and family violence or, in fact, within the child protection system. These children have been rejected by their communities well before they were offenders. Rejecting them further will only entrench these children in the youth justice and criminal systems instead of offering them a chance at rehabilitation to then become valuable members of our community. What we do know and what the research supports is that addressing the root cause of crime makes our community safer. We welcome questions that the committee has.

CHAIR: Thank you for your submissions. Ms Heyworth-Smith, firstly acknowledging your comments around sentencing for murder and your comments in relation to parties to offences and how that might incorporate unintended consequences, that aside, would you concede that the provisions of this bill do not remove a judge's discretion to impose a whole range of sentencing options on a child in relation to those other offences?

Ms Heyworth-Smith: Putting aside the murder provisions, I would concede that with one caveat, which is that there is a principle of sentencing law that if the legislature indicates or signals an increase in maximum sentences for offences across the board, the court would take into account that increase and, therefore—if I could call it this—the downward discretion is eroded in favour of the upward discretion.

CHAIR: Taking, for example, the unlawful use of a motor vehicle, which is captured in those offences, would you concede that an adult first offender for the unlawful use of a motor vehicle would be unlikely to be sentenced to a custodial sentence?

Ms Heyworth-Smith: I would ask Mr Hoare to answer that as chair of the Criminal Law Committee.

Mr Hoare: It depends upon the nature of the offence. I understand the point of you asking that. I think the point as to why you are asking it is that we see great consequences and tragic consequences to the community from the escalation of dangerous operation offences or unlawful use offences. It is not a matter you could necessarily concede because I have seen the breadth of the sentences that are imposed and they depend upon such subjective features.

CHAIR: Trying to take the heat out the argument, would you concede that every child who commits one of those offences is going to jail is not necessarily the case at all?

Mr Hoare: Can I perhaps deal with it in this way: what is spoken of is not necessarily about jail. What is spoken of, and I think prior to the election, was a gold standard in intervention in respect of children so that they are not engaging in these offences that place them at risk of detention or at risk of jail or consequentially a risk to the community and everyone in the community. I do not think the focus should be on whether or not children will inevitably be placed in jail because of the commission of an arbitrary offence or some offences. It is about what will be done to divert children entirely from the criminal justice system and that is dealt with by an early intervention into those ultimately—I pause there and probably segue across to a point that it is almost inevitable, and I will not say 'all the time' but 'almost inevitable', that the children who engage with the criminal justice system engage after they have been failed—whether they have been failed by their parents or whether they have been failed by other systems we have in place and those interventions have not occurred. That is the means by which the community is kept safe, not by the end game when those other protective measures that ought to be in place in the community have not engaged.

CHAIR: I would agree with that. From my policing experience that is my observation as well. We are letting them down in those early interventions and we are letting them down post detention as well as in detention. Would you agree with that?

Mr Hoare: I think that it has to be the case. It has to be the case when you see children presenting with the types of histories that are aberrant and on the extremes, and no child should have to experience that in Queensland. However, the means by which that is addressed is not by a bill with arbitrary punishment or taking away comity which is the minimum period of time spent in custody. I understand why the election promise was made, but I am not here to speak to that promise. If you are speaking about community safety and your experience of, I think, 25 years on the force—or am I understating that—

CHAIR: Thirty-three years.

Mr Hoare:—or 33 years on the force, you would be fully aware of the type of children who become involved and that is not done at the end game.

Ms FARMER: Thank you to both organisations for the significant amount of work that you have had to do in quite a short period. Ms Heyworth-Smith, I refer to one of the things that you said earlier about consequences on the system. There has been a lot of discussion today about the consequences

of the number of young people in watch houses or youth detention centres. You were referring to consequences on the court system. We would all want to be sure that, if this legislation goes through, those consequences have been fully realised and resources have been put in place to mitigate those. You said, for instance, that there will be fewer pleas and that that could really impact court resources. Could you take us through the likely impacts on the court system that should be factored in when enacting this legislation?

Ms Heyworth-Smith: The central premise is that if you have a mandatory minimum sentence then there is not a lot of reason somebody would plead guilty to it. Why not toss your hat in the ring and see whether or not a jury acquits you? If you have a mandatory minimum sentence for murder then you are more likely to have a trial whereas if you have a judicial discretion as to what the sentence should be, as is currently the case with respect to a child, then submissions can be made with respect to the length of the sentence and the nature of the sentence that is imposed. If you translate that to these changes, the Bar Association thinks that it is likely that there will be fewer pleas of guilty to serious offences. That is not just where it is mandatory minimums. If you have a significantly increased maximum sentence with an upshifted discretionary range, it may also have the same effect that fewer children will enter pleas of guilty for offences because they will be facing that necessarily higher or mandatory lengthy sentence whereas if you give full voice to the judicial discretion, not just in terms of the length of the sentence but also how it is served and what measures can be put in place with respect to that sentence, then it is more likely that the child might actually plead guilty to it and, as it were, throw themselves on the discretion of the court. I have probably mixed some metaphors.

How that translates is that more judge time will be spent in criminal justice matters and, in particular, youth justice matters. That means that there is less judge time to be spent on the myriad civil matters that members of the community come to the courts to have their quarrels and their disputes heard and determined. It is not just that there will be delays and more time in the criminal justice system; there will be a flow-on effect to the civil justice system as well.

Ms FARMER: Just to clarify, in effect, to ensure there is balance there probably should be more judges and more courts opened?

Ms Heyworth-Smith: We seek that anyway.

Ms FARMER: To deal with that, one of the impacts will be that we will need more resources in the system and they should be planned for.

Ms Heyworth-Smith: We anticipate that that is so, but I will ask Andrew to give more specific details with respect to that, from his experience.

Mr Hoare: What you are speaking about is a significant taxing on resources so there will be more trials and more trials at every level, so not just in murder but in every level, because of the consequences and risk upon being convicted as opposed to the benefit for a plea of guilty. The courts are already working as hard as they can. There are already delays. The secondary matter that should not be overlooked is that if it goes to trial then victims have to, before a jury or perhaps a judge, relive that trauma again because effectively the mandatory legislation means that a child will inevitably make a decision to go to trial. It has that effect as well. The point between that trauma and then the result of that trauma will go for years and then be relived in court because the child's ability to meaningful plea and have that plea acknowledged has been taken away.

Ms FARMER: So adequate resourcing is imperative.

Ms Heyworth-Smith: Yes.

Ms MARR: My question is to Ms Heyworth-Smith and I say that with absolute respect to everybody here today. In your presentation you did mention human rights, which is a touchy subject for a lot of people as it relates to this bill and I understand that. You said that this is a departure from what underpinned the Youth Justice Act 1992. Can you understand the community expectation around the change in this bill where it affects human rights relates to crimes today being very different to what we were experiencing in 1992? A lot of people I spoke to talked about those rights for children. What better way is there for us to make sure that we are keeping up with community expectations in relation to crime now compared to 1992? I understand what you are saying about how it underpins that, but there have been a lot of changes to the criminal act and the ages as well.

Ms Heyworth-Smith: Thank you for the question. It is fundamentally at the heart of dealings with the criminal justice system. May I put it this way: there are essentially three parts to ultimately reducing crime levels and ensuring the safety of Queenslanders. Part A is stopping children from becoming criminals. Part B is figuring out what to do with them once they have become criminals. Part C is stopping them from becoming worse criminals. I do not mean it to sound as simplistic as that. This

bill deals with part B, what to do with them once they have committed a criminal act. It does not deal with part A and we have not seen how part C is going to be dealt with in terms of stopping them from recidivism—that rehabilitative effect.

With respect, I am uncertain in terms of how the crimes have changed because so much of the crime is not technology driven; it is quite simply the same type of violent criminal offence that has haunted humanity for many years. I am sorry that I cannot comment on that. In terms of the community expectation to be kept safe, I strongly believe that people want their loved ones safe today in the same manner as they wanted their loved ones safe in 1992.

Ms MARR: In effect, we will have to make sure that our early intervention and rehabilitation programs are working to make sure that we have the whole spectrum covered for the youth criminals we have at the moment, which is what we are trying to achieve here as well.

Ms Heyworth-Smith: Part of the issue, with the greatest of respect, if I might take that a step further in relation to the rehabilitation programs and what I think has been said in the media about the gold standard rehabilitation intervention, which happens once the child is in the criminal justice system, is that if a child is to be imprisoned for 20 years then it is difficult to see how rehabilitative intervention is going to work in those circumstances where, between the ages of 10 and 17, they might be in a youth detention centre but then will be moved on an adult facility. We do not have any detail around how that rehabilitation is going to be effective in those circumstances and with such young and potentially also impaired children.

Mr BERKMAN: I really appreciate your time, brief as it might be. The Bar Association observations about unintended consequences were very helpful. I want to throw to the QLS to see if you have identified any additional unintended consequences or have anything to add to the Bar Association's comments?

Mr Bartholomew: Thank you for the question. I think that we are yet to explore all of the unintended consequences because of the shortness of the period in consultation. Of particular alarm, in addition to what has already been said by my learned colleagues, is the unintended consequences, I am sure, from the admissibility of information in relation to cautions and restorative justice and diversions. The particular concern that the Law Society has is that there have been assurances that have been made by police to young people, by judges and magistrates and, indeed, by members of the profession telling young people that accepting that caution and accepting that restorative justice process would not be subsequently told to a court and yet now all of that information is going to be made admissible to the court. It is going to make all of those persons liars in the eyes of those young people. It is going to undermine the young people's confidence in the police, in the judicial systems—

CHAIR: Mr Bartholomew, if I could just interrupt there. My understanding of the bill is that it is not retrospective in that respect. It is only admissible for cautions from the date of ascension and the warning is to be given by police that this may be—

Mr Bartholomew: Should that be the case, it would ameliorate some of our concerns, but an unintended consequence in relation to the cautions and the restorative justice process is that currently it is a very effective mechanism for diverting young people from the court system. One of the reasons it is encouraged by the profession is that that information is not subsequently disclosable to a court. If all of that information is to be disclosed to a court, it is unlikely that the profession will be able to encourage young people to participate in that process.

In fact, if we have the many young people who are participating in cautions and restorative justice going to court, we are certainly going to see clogging of the system and the delay in the court system that has already been explained to the committee today. We are going to see a significant delay because, for all of those matters that are currently being diverted, there is no incentive for those young people to participate in that program because they do not have the benefit of the judicial oversight that they get if the matter goes to court but it will still be part of their criminal history.

CHAIR: Mr Bartholomew, with respect, wouldn't it be a desirable outcome to have a caution rather than going to court because a caution is disclosable to a judicial officer when considering what best sentence or program to send a young person to? Wouldn't you concede that that information being in the possession of a judicial officer would be helpful?

Mr Bartholomew: It is difficult, I think, for members to be able to recommend young people participate in a process where there is no judicial oversight if subsequently it is going to be considered by a member of the judiciary in sentencing them in relation to matters.

CHAIR: Thank you. We are out of time, unfortunately. I invite you in any written submissions to cover areas that you have not covered off. I call forward the Queensland Human Rights Commissioner and commissioners from the Queensland Family and Child Commission.

FULTON, Ms Sarah, Principal Lawyer, Queensland Human Rights Commission

LEWIS, Ms Natalie, Commissioner, Queensland Family and Child Commission

McDOUGALL, Mr Scott, Queensland Human Rights Commissioner, Queensland Human Rights Commission

TWYFORD, Mr Luke, Principal Commissioner and Chief Executive Officer, Queensland Family and Child Commission

CHAIR: I welcome the Queensland Human Rights Commissioner and commissioners from the Queensland Family and Child Commission. Would you like to each make a brief opening statement and introduce yourselves, please, for *Hansard* before making those statements?

Mr McDougall: Good afternoon, committee. My name is Scott McDougall. I am Queensland's Human Rights Commissioner. I am joined today by Sarah Fulton, Principal Lawyer from the Human Rights Commission. I begin by acknowledging the Turrbal and Yagara people. I want to thank the chair—and I congratulate you on your appointment—for the opportunity to provide evidence today on the Making Queensland Safer Bill.

As Queensland's Human Rights Commissioner, I care deeply about the rights of all Queenslanders. It is fundamentally important that we do all that we can to protect people from violence in their homes, in their communities and in state institutions. If we actually want to make the community safer and respond to the needs of victims of crime, this bill is the wrong way to go about it.

This committee has decades of research and evidence in front of it to show that punitive responses to youth crime will not make the community safer. You know deterrence through harsher punishment does not work. You know the vast majority of these children are only there because of the health, housing, education and social support systems that have failed them. You know it will disproportionately affect Aboriginal and Torres Strait Islander children and communities because of entrenched discrimination within the system. The government's own research shows that children and young people who have been through detention are only more likely to commit offences when they return to the community.

We have now reached the point where the Attorney-General accepts that this bill not only is more punitive than necessary, will disproportionately affect First Nations children and will create a system which better protects adults from arbitrary detention than children but also will likely result in children being subjected to cruel, inhuman or degrading treatment. We are forging ahead knowingly violating the UN convention against torture against children. In any other context that is called child abuse. Is this really what the public wants?

There are better ways. We know children have an immense capacity to change and we know what works—community-led programs of early intervention, diversion from the youth justice system to intensive wraparound support for children and families, properly directed and supported education, health and rehabilitation. Where detention is necessary, it should be in therapeutic, small-scale local centres that are not like prisons and maintain strong connections to culture, community and family. The government has committed to investing in some of these things—and I warmly welcome that investment—but every aspect of this bill will undermine that investment.

I urge you to recommend the reconsideration of this bill. I urge you to really take on board the concerns of the community—some of which you have heard today—and then move ahead with solutions that actually will make Queensland safer. The Human Rights Act provides a framework to ensure good decision-making in difficult areas like this. I urge you not to decide that the rights of some Queenslanders are dispensable when it is convenient and to instead use the Human Rights Act as a guide for the way forward. If you do not do that, I urge you to at least recommend a mechanism by which parliament can review the operation of these laws within a year so that we can take a step back and look at whether they have achieved what they are meant to achieve. Recent history and all the evidence suggests that they will not. Victims of crime, including those who are children at risk of being drawn into the criminal justice system as a result of these laws, deserve better than this.

CHAIR: I invite the Queensland Family and Child Commissioner to make an opening statement.

Mr Twyford: I will be very brief and pass my time to Commissioner Lewis. My name is Luke Twyford. I am the principal commissioner of the Queensland Family and Child Commission. Over the last year I have made seven submissions on youth justice laws, policies, procedures and practices both to this parliament and to the federal parliament.

There are six key themes that emerge from all the research, all the evidence and all the reviews. The first is that any change to the youth justice system must be designed and implemented strategically with a clear whole-of-system outcome. The second is that youth detention centres must be redesigned to be places of rehabilitation if they are to have any effect. I will further that and say Queensland's youth detention systems are the most expensive and ineffective way to deal with youth crime.

Thirdly, consequences are critical to shaping behaviour but only if they recognise the developmental and cognitive stages of the children and young people we are working with. Fourthly, all efforts must focus on addressing the root causes of offending. Fifthly, successful results come from relationship-based, community-based programs that work holistically with young people and their families. Finally, community leaders must take responsibility for the narrative regarding youth crime, and there must be a greater transparency and reporting across the youth justice system.

The Queensland Family and Child Commission has completed four recent reviews of the youth justice system. Our review *Understanding why young people are being held longer in Queensland watch houses* for longer periods of time found a single failure of accountability across government when no individual was responsible for that young person's wellbeing. Our review *Exiting youth detention* found that young people were leaving our youth justice system back to the same family and community circumstances that they left, and we recommended a dedicated 12-month post-detention transition program that incorporated in-home family interventions and effective engagement in education, training and employment.

Our analysis of the crossover cohort between Child Safety and the youth justice system revealed significant proportions of adverse childhood experiences in childhood maltreatment amongst the youth justice cohort, and it recommended that more be done to change the root causes of offending. The Queensland Child Death Review Board annual report last year highlighted in detail the significant failings in the life-long trajectory of several Indigenous boys—in particular, in Queensland—whose exposure to the youth detention system on multiple occasions did not address the criminogenic factors but ultimately made things worse. That report recommended that there be a clearer articulation of the purpose of youth detention and greater transparency in the youth justice system.

Ms Lewis: Good afternoon. My name is Natalie Lewis. I am a commissioner with the Queensland Family and Child Commission. I am a Gamilaraay yinar and, as a guest on country, I want to acknowledge the Yagara and the Turrbal people. I also want to acknowledge the long history of Aboriginal and Torres Strait Islander advocacy who continue to value the importance of truth and justice in this place and across Queensland. I will also just say that I unreservedly support the comments and concerns that were raised by our Human Rights Commissioner.

The disproportionate rates of First Nations children in youth justice statistics in terms of ages, arrests, remand, unsentenced detention, supervision and detention orders are not new statistics. While we have very different vantage points, we can all clearly see that this narrative is not changing. For every child that comprises that over-representation, there exists another side of that equation—one of under-representation in terms of equitable enjoyment of their rights; the lack of a safe and stable place to live; their access to a quality, inclusive education; their access to fundamental health services, disability and mental health diagnosis and support; experiences of discrimination; and a lack of access often to the material basics that all children need to survive, let alone thrive.

This is a common experience amongst many of the children and young people who have ended up on that list of serious repeat offenders. Early childhood trauma often feeds antisocial behaviour in adolescence. We know that young people involved in the system are several times more likely to have had traumatic experiences. Recent AIHW data indicates that the majority of young people who have had formal interactions with the child protection system across their childhood are victims of abuse and neglect and a systemic failure to effectively respond to their maltreatment. Yet at the moment what we see in this bill—and the only intention around accountability—is holding children accountable for this failure of systems across their life course.

Exposure to multiple types of trauma can impede children's healthy brain development, harm their ability to self-regulate and heighten the risks of offending behaviour. At the most basic level, if they are the underlying issues, if those are the dynamics and the conditions that are driving the rates of over-representation, then the strategy to address it must prioritise actions, investment and systemic accountability to address this inequity, not to reinforce it.

The goal and broad mandate to make Queensland's communities safer is absolutely not in dispute. The mandate that has been secured around this particular bill, in my opinion, has been informed by a public discourse that was based on fear, not evidence. However, the prioritisation of these reforms, as outlined in this bill, will not achieve community safety. Increasing custodial sanctions

will not achieve community safety. Incarcerating children undermines public safety, damages young people's physical and mental health and impedes their rehabilitative, educational and future career success. It often exposes them to further abuse.

It is important to note that the vast majority of young people in detention facilities are not violent offenders. However, the environments in which we are holding them are more likely to contribute to an escalation in the nature, frequency and seriousness of their offending into the future.

CHAIR: Thank you, all. Mr McDougall, Queensland has been operating under detention as a last resort as a principle in the Youth Justice Act for some time now—eight years or so. Yet Queensland, if we are to believe the submissions, has the highest rate of incarceration in Australia, or one of the highest; is that correct? Yet here we are. Does that point to a failure in what Luke was talking about as well in early intervention, recognising at-risk factors and intervening early with gold standard early intervention? Does that indicate a failure in that space?

Mr McDougall: Queensland has a rate of incarceration that is excessive when compared to other jurisdictions. New Zealand, for example, has a similar population size and we are imprisoning children at around about four times the rate. Yes, there are some big questions that need to be asked and have been asked about what we are doing here in Queensland.

I would go back to the Bob Atkinson report and the four-pillar strategy and make the observation that gains were being made. There was much more investment needed at the front end. We had the impacts of COVID and the huge disengagement of young people from the education system. Unfortunately, we have found ourselves in this death spiral of just going further and further down this punitive sinkhole. We are really plumbing the depths of it now and it is not working.

Reversing the presumption on bail drew more children into the criminal justice system who were then traumatised through exposure in watch houses that are overcrowded. All of these things incrementally have made the situation worse, and this is just another step in the wrong direction. It is a very major step to override the Human Rights Act. Discarding a foundational principle of the Convention on the Rights of the Child is a major step in the wrong direction.

CHAIR: What we do in detention is important when we talk about detention. Would you concede that? I think Luke made some comments in relation to that. Would you like to talk about that?

Mr Twyford: Absolutely. As far as I see the justice system, the deprivation of liberty is the punishment. What we do with someone when their liberty is deprived is the most important thing for that person at that time but particularly for young people, who are still forming their brain, their character, their identity, their hopes and dreams of who they want to be, ensuring that we work with them at that point in time to help them re-find their pathway. I deliberately say it that way. Good youth justice practice is about empowering a young person to change their behaviour. That is fundamental. A detention system that keeps children in concrete cells, limits their exercise, limits their educational activities, limits their connection to the community and limits family connection is one that does more harm—one that does nothing to rehabilitate or restore—and creates a future society where people do not feel as though they fit in, where people feel hurt and angry. Those are the conditions within which further harm occurs.

Ms FARMER: Thank you to both organisations for the significant work you have put in in quite a short period of time. On the matter of rehabilitation in youth detention centres, if a 10-year-old is sentenced to 20 years, which means they are in a youth detention centre and then in an adult prison, is there any evidence that shows a child in those circumstances will be rehabilitated when they are released? Would being in the justice system for 20 years make a difference to whether they commit crimes when they are released?

Mr McDougall: I would normally defer to my colleague on this, but I will just say that from my personal experience, having visited Queensland's detention centres, at the moment they are so overcrowded that staff will tell you that it is almost impossible to run rehabilitation programs because you cannot get children out of the rooms and into places where they could run those programs. The prospect of successfully rehabilitating children in an overcrowded detention centre environment is troubled.

Mr Twyford: There are a lot of elements to the question you have asked, and that goes to the complexities of what we are talking about in terms of complex social systems and individuals who interact with that system. I believe we have to detach the concepts of being sentenced to custody and being in detention. A prison-like setting is completely unacceptable for a child. Being referred into custody because of offending behaviour and that custody being a safe place for that child and the community where positive behaviour change programming can occur are two completely different

concepts. There are certainly detention-like systems in place in other countries or alternatives to detention models here in Australia that I would argue have more restorative and rehabilitative priorities than the current way that all Australian jurisdictions try to deliver youth detention.

In terms of understanding our purpose for detention and our purpose for custody, if it is for punishment we are running the wrong game. We will never win and make the community safer by using detention as a punishment. Using custody as a rehabilitative tool is where we need to be thinking if we want to change particularly young people's behaviour and young people's lives' trajectory. Thrown into that, your question proposes a 20-year timeframe. Obviously, 20 years in any institutional setting is going to lead to very significant and different life outcomes than for someone who does not experience that. I think there is limited evidence around that, but there would be the hallmarks of the institutionalisation of young people and the institutionalisation of adults when they re-emerge into society.

CHAIR: Ms Lewis, your comments in relation to trauma and the kids who wind up in detention invariably having trauma-based experiences in their lives, certainly that is my experience as well in terms of the children I dealt with as a police officer over 33 years. Do you see that detention or custody may provide an opportunity to address that trauma? Bearing in mind this bill deals with the most serious offences and recidivism at the more extreme levels, can you see there is an opportunity—if we do it right—for trauma intervention in that setting which they might not otherwise get if left in a traumatic situation?

Ms Lewis: I think that incarceration compounds trauma. It is an environment that it operates in. It would be highly problematic to continue to overestimate the rehabilitative prospects of our current detention centres, certainly with the very real likelihood that a large number of children will continue to spend longer and longer periods of time in watch houses. Even on the best day with the best of intentions, at the moment there are constraints around operational capacity which mean that goals around engagement in rehabilitative programming and education are absolutely deprioritised because of issues around staffing or additional young people doubling up in rooms or whatever it is. It just makes it impractical.

All of the goals around rehabilitation need to be focused around changing the conditions to which children return, changing their outlook in terms of them having some prospect of something other than a life of offending. Those things are contingent on relationships. The containment of children in custody compromises the ability to continue those relationships, restore those where they need to be rebuilt, or to build new relationships that can sustain change on the outside. I know there has been discussion around transition plans. I am not unsupportive of 12 months of intensive support and rehabilitation and transition. My point is that you do not need custody on the other side of that to make that effective.

CHAIR: Do you believe there is ever a case for a custody order?

Ms Lewis: There are certainly circumstances where detainment is warranted, but I think we have to reimagine what that is. Under the current circumstances, that delivers very little benefit in terms of rehabilitation. The likelihood of a young person being released from those circumstances and becoming a productive member of society and a law-abiding citizen is very, very small. Yes, in certain circumstances there is a place for confinement of some sort, but I think we have the capacity and the resources to reimagine what that is so it is helpful rather than harmful to all of us.

Mr BERKMAN: I am really grateful for your time today. I do not know if you were here earlier when a previous witness—I think it was the CEO of YAC—raised concerns that the bill could contravene the federal Racial Discrimination Act and potentially be unlawful on that basis. Is that something that either of your organisations have turned your mind to?

Ms Lewis: I might leave that for the lawyers to answer. As I have said many times, it is not an unintended consequence that this is going to disproportionately impact Aboriginal and Torres Strait Islander children.

Mr McDougall: I would just add to that by saying that the statement of compatibility is rather frank in its assessment of the discriminatory impact of the legislation. Whether or not there would be challenges under section 10 of the Racial Discrimination Act, for example, I am not in a position to comment on.

CHAIR: The bill still requires judges to take into consideration Aboriginal and Torres Strait Islander cultural aspects. You would leave that to the lawyers too?

Mr McDougall: Yes.

CHAIR: We still have a little bit more time.

Ms FARMER: I apologise that I do not recall which commissioner it was who said this, but there was a reference to the proposed legislation better protecting adults than children against arbitrary detention. Given that adults commit the majority of crime in the state, can you elaborate on that, please?

Mr McDougall: The reference there is the impact of incarcerating children in watch houses. As we know, sadly this has been going on since late 2018, early 2019. Children are subject to detention within watch houses in conditions that adults are not routinely subjected to. That is the reference to discrimination against children.

Ms Fulton: My understanding is that there is an additional direct aspect of discrimination in this. Under the Penalties and Sentences Act 1992, which is applicable to adults, detention is a last resort for nonviolent offending adults. This would remove that principle for children and essentially treat them worse.

CHAIR: Mr McDougall, would you concede that human rights are a careful balance between the rights of the young offender in this case and the rights of the victim? Is it your assertion that the balance has been tipped the wrong way? What would you say to victims in terms of that balance? Obviously Queenslanders have spoken strongly in relation to these matters. What would you say in relation to victims and how they see that balance being affected?

Mr McDougall: I would say that this should not be presented as a choice between the rights of victims and the rights of children. You can do both at the same time. When we create laws that ultimately lead to more children being dragged into the criminal justice system, for example, through extending cautions onto criminal histories, I am very concerned about the impact that that is going to have on the number of children who are dragged further and deeper into the criminal justice system. That ultimately is not in the interests of victims.

CHAIR: The fact that cautions can be brought before a judicial officer for them to consider the full history of the child, when you are talking about trauma, risks, behaviour of the past, so that they can make a more informed judgement in relation to the best thing for the child, would you concede that that information in those hands is not so problematic?

Mr McDougall: As a former criminal lawyer—and it has been a long time since I practised in criminal law—I can tell you about the impact of a criminal history on a sentencing judge. A sentencing judge will form certain views based on that criminal history. If they are presented with a history that does not show any history as a child, which is the case at the moment, then they will be given the benefit of the doubt. We know that sending young people, even 18-year-olds, to prison increases the likelihood of them coming out and doing more crime. Anything that is going to further criminalise children is not in the interests of victims.

CHAIR: Thanks, everyone. I appreciate your time. We have run out of time. I will close this hearing.

The committee adjourned at 2.31 pm.