



LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:

Mr PS Russo MP—Chair

Mrs LJ Gerber MP

Ms SL Bolton MP

Ms JM Bush MP

Mr JE Hunt MP

Mr JM Krause MP (virtual and in person)

Staff present:

Mrs K O'Sullivan—Committee Secretary

Mr B Smith—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE SUPPORT PROVIDED FOR VICTIMS OF CRIME

TRANSCRIPT OF PROCEEDINGS

Monday, 17 April 2023

Brisbane

MONDAY, 17 APRIL 2023

The committee met at 8.35 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into support provided for victims of crime. My name is Peter Russo. I am the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all share.

With me here today are: Laura Gerber, the member for Currumbin and deputy chair; Sandy Bolton, the member for Noosa; Jonty Bush, the member for Cooper; Jason Hunt, the member for Caloundra; and Jon Krause, the member for Scenic Rim, who is on the phone at the moment. The hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask that you turn mobile phones either off or to silent mode.

LYNCH, Ms Angela, Secretariat, Queensland Sexual Assault Network (via teleconference)

CHAIR: Good morning, Angela. Thank you for being here. I ask you to make an opening statement of up to five minutes after which committee members will have some questions for you.

Ms Lynch: Thank you, Chair. I also would like to respectfully acknowledge the traditional owners of the land, the Yagara and Turrbal people, and all Aboriginal and Torres Strait Islander people who may be here today and participating in this inquiry. The Queensland Sexual Assault Network is the peak body for sexual violence prevention and support organisations in Queensland. We have 23 members, including specialist services for Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, women with intellectual disability and young women, and we support men and children. Our membership is located throughout Queensland, including in rural and regional locations.

The provision of our specialist services is more than trauma informed; we are actually trauma specialists. According to the Royal Commission into Institutional Responses to Child Sexual Abuse, trauma specialists are those with specialist skills in the provision of services involved in the impacts and effects of trauma and assist them to recover. While many agencies are required to be trauma informed, trauma specialists are both trauma informed and deliver trauma-specific interventions or therapeutic treatments.

There continues to be a lack of trauma informed responses across the criminal justice system and in relation to interactions with victims of sexual violence in Queensland. It is important to note that just because an agency states they are trauma informed and victim centred does not mean that they are in practice. Although there is much talk about the need for trauma informed responses and this is important, some communication is really at a very basic level and is no more than engaging with victims in little more than a courteous communication and engagement. Courteous interactions should be an expected standard of practice with government agencies and do not require specialised training.

There continues to be a lack of police communication with victim-survivors in relation to investigations and through the criminal justice process. QSAN services question whether there could be a communication officer appointed who can keep victim-survivors updated, although that person does not necessarily have to be a detective. Some of these investigations take up to three years and victims are left in limbo during that period. In relation to waiting periods for court matters, QSAN

wonders whether a portal could be developed for victim-survivors to log into to see upcoming court dates and where things are up to. Again, they do not require interaction all the time with somebody because these things take years even in courts.

Communication between victim-survivors, the police and the Director of Public Prosecutions could be improved if QSAN services were adequately funded and able to provide systems, advocacy and support. We are not provided with specific funding to attend court events with victims of sexual violence and also report to police, although some QSAN services will do this because of their obligations and ethical duties to clients even though that is in an encumbered capacity.

The issue of court or legal or systems advocacy was considered by the Domestic and Family Violence Death Review and Advisory Board that undertook international research into the issue and found that it was a very effective way of supporting victims through the criminal justice system. That sort of advocacy is victim focused advocacy that aims to improve victim safety to ensure the legal system responds appropriately and sensitively to these sorts of cases. Evaluations of the research found positive results. Victims who received that advocacy experienced greater social support, better quality of life, reduced likelihood of further abuse and greater access to community resources. The review strongly stressed that the providers of the advocacy must be highly knowledgeable about the legal system in order to provide victims with the correct information and navigate them through it.

The current Charter of Victims' Rights does not give legal rights and is not enforceable and a breach is not grounds to have a government decision reviewed. It is the experience of QSAN services that it is commonly breached in Queensland with no real or practical impact or recourse for victims. The complaints process regarding the victims' charter is of little consequence and clearly does not act as a deterrent to the numerous breaches that occur. We would recommend and support the rights of victims of gendered violence to be specifically protected in Queensland under the Human Rights Act as this will elevate the rights of victims in the criminal justice system process. Currently, only the specific rights of defendants in the criminal justice system are protected under the Human Rights Act, which entrenches the traditional disadvantage of victims in the process.

In summary, the issue that will have the biggest impact on improving the quality of interaction between victims of sexual violence and the criminal justice system is increasing the operational core funding of specialist sexual violence services to undertake counselling response, case navigation and systems advocacy. Services have had substantively no increase in core operational funding for 27 years, which limits victims' access to timely, expert and quality responses. QSAN services are also facing a funding cut in December 2023 when federal NPA moneys finish. At this stage, there is no guarantee of an extension. The removal of that funding will have devastating impacts across Queensland in relation to victims' ability to access specialist sexual violence services. We already have up to 12-month waiting periods to get into some of our services, and there is little doubt that with the removal of that funding those waiting periods will blow out. Thank you. I am happy to take questions.

Mrs GERBER: Thank you, Angela, for your organisation's written submission and your oral testimony just now. In a response we received over the weekend to a question on notice, the minister advised that last year Victim Assist Queensland took an average of 12 months to provide victims of crime with the financial assistance they made an application for. I note in your submission you have said that that has an impact on victims. Can you tell the committee exactly what impact the delays in relation to the paying of financial assistance have on victims of crime?

Ms Lynch: It is our experience that they are very lengthy waits. It can be up to two years or more to get those payments. Those payments are important and can make a real difference to victims, not only financially but also emotionally. The payment represents perhaps the only official recognition that a crime has been committed and that they have been wronged. They are taking up to a very long time, which increases the stress and I suppose the mental load that victims are carrying as they are waiting. It is not only the financial stress of waiting. We know that victims of sexual violence are under quite a lot of financial stress. That was shown by ANROWS research just last year—that the financial stress of sexual violence victims was quite huge. About 30 to 40 per cent reported issues of financial stress, so obviously the ability to access those funds would alleviate that to some extent.

It is also the mental issue of being left in limbo, waiting, not knowing what is happening, the lack of communication, being unsure if the outcome is going to be positive or not. When this is the only acknowledgement that some victims of sexual violence are ever going to get, because it is one of the most under-reported crimes, obviously there is a huge mental load that goes with waiting around. Obviously, there are those emotional and mental impacts as well as financial impacts.

Mrs GERBER: In your experience, what would be an adequate period of time? What are the KPIs that should be applied to victims of crime being able to receive financial assistance? Can you tell us what that financial assistance is generally used for? It can be used for a number of things, can't it?

Ms Lynch: We feel an appropriate period would be a three-month time period, but victims are waiting up to two years. That is the current average. It is obviously a lengthy period of time. Even though the application process itself is not necessarily a difficult process, many victims of sexual violence find it very difficult to undertake that process and fill out those forms without assistance. Many of them find it emotionally triggering, so they need that support to do it—just the ability to pull together the evidence in a logical sequence and things of that nature. Because of the trauma they have experienced, it is quite a difficult process. Even though it looks to the outside that it may not be, it is for victims of violence because of the trauma that they have suffered.

Mrs GERBER: We heard reports over the weekend that victims of crime are having to prove that they have been impacted by the crime, or prove a nexus with the crime, which is retraumatising them. I am interested in your organisation's perspective on that.

Ms Lynch: Yes, they would have to prove that they have suffered the crime to be able to access the payment. As I said, the whole process is retraumatising, just because they are going through a process where they are talking about the issue again and they are being questioned in relation to what has happened. That could be assisted if they had assistance—like a sexual violence worker to go through and help them with that process. That is what many sexual violence workers do, but, again, these services are critically underfunded, and putting all of these other things that they have to do on top of their day-to-day activities makes it quite difficult, even though that is what the victims of violence need.

If you have not had a core operational increase in funding for 27 years but wages have gone up, electricity has gone up, air conditioning has gone up, leasing of buildings has gone up, running cars has gone up—everything about running a service has gone up—it means the available funds for assisting victims of sexual violence throughout Queensland have gone down over that period of time. You do not have to be Einstein to work that out. They are critically underfunded and they are under extreme amounts of pressure. They want to do this work and they know the importance of doing this work for victims of sexual violence, but it becomes more and more difficult in relation to the current funding environment.

Ms BOLTON: In your opening statement you spoke about the need for separately funded communications officers and a separate communication portal. Can you explain to the committee how you would see that working?

Ms Lynch: In relation to a separate communications officer, that would be with the police. At the moment, we are being told that it can take a very long time for these investigations to happen—up to three years—and there is not much communication between the police and the victims during that time. When the victim contacts the police, invariably they are trying to track down a detective. Over that time the case could have moved a number of times between detectives, and getting hold of the detective is very difficult because they work on 24-hour shifts. It is very difficult often to get them. They are under pressure and they have resourcing issues, no doubt. I would say they are not as bad as sexual violence services across Queensland, but they are still facing pressure and caseloads as well and I am not sure how much they value the communication with victims of sexual violence.

It is just that victims of sexual violence are left in limbo over long periods in relation to when these investigations take place. We were just wondering whether it is more economical to have someone who is not a detective, who knows where these cases are up to, who can communicate with victims from the police angle around where these things are up to, what is happening, what are the next steps et cetera.

In relation to the portal, it is just basic information that can show where your case is up to as it tracks through the court system. Again, the court system can take up to three years or more. It is really just a way for victims of sexual violence to see where their case is up to without actually ringing someone. It is something to consider. I think it might happen in other jurisdictions. It provides information. There is such a lack of information and a common point where victims of sexual violence can get that information. They really do get it from the sexual violence prevention services. They are the ones who bring things together and probably contact the detectives themselves so that is not put on to victims to try to get information for the victims.

Ms BOLTON: Is there an opportunity to maybe combine that role with the advocate?

Ms Lynch: No, not really because that communications officer would be within police. I imagine it may be a civilian with a different skill set to a detective. The advocate role really is a systems advocate. As that research said, they have to know how the system works and they have to know how to communicate with victims of sexual violence from having a knowledge in relation to trauma. It is really the counsellors and the workers within sexual violence services.

If you are providing counselling and assistance to a victim of sexual violence, it makes sense that you stay with that person in a consistent way throughout their whole process, so if the matter does go to court you are also the one who assists them through the navigation of that system and takes them all the way to court. So many matters do not go to court, but if it does they are the ones who provide the court support et cetera.

Those counsellors within those sexual violence services have a high degree of knowledge about how the process works because of their interactions with victims over many years and decades. They know the police processes, they know the hospital processes and they know the legal processes. It does not mean they are lawyers; they just know how the system works from the perspective of victims of sexual violence.

Ms BUSH: I have a couple of areas of interest. One of them is around recognition. We have seen in some of the submissions that part of what victims need from the experience is recognition of what has happened to them and the harm it has caused, particularly on behalf of the government. I appreciate that for your members that does not always occur, with low prosecution rates. I am interested in your views broadly on which government agency is responsible for that recognition, in what format and how well that is occurring at the moment.

Ms Lynch: I am having a bit of difficulty hearing. I suppose that the victims of crime process and the payment has a broader impact than just the financial impact, which obviously is a positive impact for victims of sexual violence. It is that institutional recognition that they have been harmed, that a wrong has occurred. Only 14 per cent of victims of sexual violence ever report to police so it is a very under-reported crime, and there are a range of complex reasons around that. This victims of crime payment and that recognition by the payment does have a positive impact for victims of sexual violence—that they have been wronged, that they are a victim of crime. For some, that is the only institutional recognition that does occur. Is that what you are talking about, Jonty?

Ms BUSH: It is. We have just moved the speaker so hopefully you can hear us better now.

Ms Lynch: It is better, thank you.

Ms BUSH: Just staying on that idea of recognition, yes, there is the recognition payment on behalf of the state but, even for those victims who may not be eligible for a range of reasons—and I do not want to put words in your mouth—would you agree that there is benefit for victims in having something in writing that recognises their experience and the pain that has potentially caused them and referring them to services that might support them?

Ms Lynch: I think so. For some victims of sexual violence, that would be a meaningful interaction, definitely.

Ms BUSH: Is that work happening at the moment in practice, from what you can see?

Ms Lynch: I am unaware. We were not able to do some things because this was done quite quickly. I think the Gold Coast Centre Against Sexual Violence is providing evidence at a later time and they are a service that may be able to answer that question more directly.

Ms BUSH: I guess where I am going with that is that it goes to this idea of how important it is to have trauma informed approaches embedded in all of the criminal justice services and agencies that are delivering that service. Is that something you would agree with? I think it is the basis of your submission.

Ms Lynch: Absolutely, and that they get external training from accredited providers like Blue Knot. We are not sure whether agencies like the Director of Public Prosecutions or the police get that external training around trauma informed practice, but we would obviously support that approach.

Ms BUSH: What would be the best practice in terms of the frequency of training like that—annual training, upon induction only? Is there a best practice around what that would look like in frequency?

Ms Lynch: I would say annual training and then it depends on the role that you have. I am not sure how they set things up, but if you are a prosecutor who is doing a lot of sexual violence work then I would think that training has to be more than just an hour on webinar. It would have to be a day's training—that more in-depth assistance depending on the level of interaction that you are having. I

would have thought every person basically in the police and in the Director of Public Prosecutions office should have some level of training and then a deeper dive for those who are interacting on a much more frequent basis.

Ms BUSH: I know that other people have questions so I will ask finally around court support services. You represent a very broad network. In terms of mapping out that court support network, who is delivering that and what does it look like? In the sexual assault response, who is delivering court support across the state?

Ms Lynch: Nobody. No-one is funded to and it is really ad hoc. It comes down to the resourcing and ability of sexual violence services themselves to provide that support. Obviously for children there is PACT but for adults there is no-one. There is absolutely no-one. It really comes down to sexual violence services themselves, which are unfunded to do it, making that decision. Obviously that is time intensive, but the services that do it see it as a critical role in providing support to victims. Quite frankly, it is very difficult for victims to go through this process anyway. You are going to just increase the percentage of people going through it if you can provide that support for them to do it. It increases the likelihood that they can be held in the system and can go all the way.

CHAIR: That brings to a conclusion this part of the hearing. Thank you, Angela, for your evidence today and for your written submission.

Ms Lynch: Thank you.

CUNLIFFE, Mr Ken, Chair, Voice of Victims—Toowoomba Advocacy

HUMPHREY, Mrs Janice, Committee Member, Voice of Victims—Toowoomba Advocacy

CHAIR: Good morning and thank you for being here. I invite you to make an opening statement of up to five minutes after which committee members will have some questions for you.

Mr Cunliffe: Mr Chair and all members of the Legal Affairs and Safety Committee, on behalf of Voices of Victims—Toowoomba Advocacy, I thank you for accepting our written submission and our oral submission to this inquiry. Normally I do not like speaking from paper, but there are points that I need to get across so please bear with me.

CHAIR: There is no issue with that, Ken.

Mr Cunliffe: Our focus is entirely on better outcomes for victims. Our group is a small snapshot of victims of crime in Toowoomba that has been growing on a daily basis. In our group, each of us has had encounters with youth crime in the past two years. Three of us are here today to answer your questions. Following the initial loss and trauma when one first becomes a victim of crime, acts of omission and commission throughout the investigation and justice process stack up and add to the loss and trauma that, far from aiding a victim's recovery, make the situation very much worse. I would like to highlight some key points from our written submission.

Firstly: the need for a transparent justice system. Victims are the unfortunate face of the public in the justice process. Youth justice is a particularly opaque scenario. Victims are seldom asked to even provide an impact statement much less to actively participate directly in the trial of those who offended against them. This must change. We have presented a workable alternative for early-career offenders. The public, especially victims, desperately need to believe in our justice system and have confidence in it. We need to know that offenders are denied the opportunity to reoffend and that they are being directed to rehabilitation that works.

Secondly: the need for psychological support for victims. Our collective experience is that the trauma inflicted on victims of crime, like home invasion, is significant and enduring. That trauma does not discriminate, but each individual experiences it differently—sometimes very differently. Many victims are so traumatised that they find it difficult to leave their home for any reason and it may affect their work life too. Free psychological support is critical to help traumatised victims cope and get their lives back on track quickly.

Thirdly: the need for measured financial support for victims. Some but not all victims have insurance. All victims suffer financial loss beyond their insured value. Janice is an example here. Some of their financial losses require immediate attention and therefore incur cost, like glass replacement, resecuring premises, vehicle and tool hire, and the list goes on and on. Significant delays or an inability to afford crime related loss and damages adds to the significant trauma already felt by victims. We call for a voucher system or other financial contribution to assist victims with immediate and out-of-pocket expenses. We also call for relief for victims from all government fees and taxes for crime related costs; for example, GST, stamp duty, driver's licence replacement and so on.

Fourthly: the need for clear and timely information through the investigation and justice processes. Victims need a clear pathway through the investigation and justice processes. This includes empathetic, timely and accurate information from police about all matters such as property recovery, investigation landmarks and the justice process. Some of these are reasonably captured in the Charter of Victims' Rights but do not apply unless violence is involved. We need that to change.

Thank you for your time. We are very happy to answer questions.

Mrs GERBER: Thank you, Ken and Janice, for all the work that you do in your community, for your oral submission just then and for your written submission, which is very comprehensive. I want to get your organisation's view on the financial and emotional support needed for victims of crime in relation to home invasions. I can see that you have outlined a number of victim stories that pertain to that. If the victims of crime assistance was expanded to include home invasion, can you talk us through what benefit that would provide to victims and the current limitations of the system so that people understand exactly how the financial assistance is limited right now in relation to home invasions?

Mr Cunliffe: Sure. I do not particularly want to get away from our main point of transparency in the justice system.

Mrs GERBER: I understand.

Mr Cunliffe: Nevertheless, on financial assistance, Janice was telling me this morning that she is \$40,000 out of pocket as a result of the crime against them and she was fully insured. We were nearly \$10,000 out of pocket ourselves and we were fully insured. The fact is that we had three different insurance companies related to our business, to our home and to our vehicles. We had excesses on all of them and all of them had different policies. It was very difficult to manage that. That adds to the trauma. The kinds of out-of-pocket expenses you are talking about are excesses. Even though the police will know who the offenders are, because they are in the youth justice system it is almost as though there is a no-fault claim—I think it is or something like that—that makes the victim liable for insurance excesses.

Mrs GERBER: What about the psychological support needed? I know as it currently stands if you are a victim of home invasion and there is no physical injury to you or you do not encounter the perpetrator, potentially you are not eligible for assistance through Victim Assist Queensland. What kind of psychological impact does that kind of crime have on a victim and what kind of support do they need?

Mrs Humphrey: At the point of my home invasion and two cars being stolen—I have a disabled husband—I was speaking to two different psychologists about the state I was in and my doctor was also calling me every other day to make sure I was okay because I had no comprehension of what was happening around me. The trauma of having these people in our house, us not knowing and them stealing two cars—I am a strong person but it was over the top for me. Without those psychologists and my GP, I do not know how I would have got through it.

Mrs GERBER: And you have to privately fund that; is that right?

Mrs Humphrey: Yes.

Mrs GERBER: You do not get any assistance in relation to Victim Assist Queensland to support you there?

Mrs Humphrey: None at all, no. My main psychologist: I had consults with her. She was also calling me to see how I was. They were very worried about my mental health at the time.

Mr Cunliffe: If I may add to that from my own experience, in the aftermath of the offence against us my wife and I did not sleep for three weeks. We run a business with 20 employees. We were completely disengaged from our business for that three-week period. Even now, 18 months after the event, I still do not sleep well at night. This is the level of trauma. I know that we are not unique. It is across the board. People are feeling the same level of trauma when their safe space has been invaded.

Ms BOLTON: In your opening submission you used the words ‘omission and commission’ and also talked about the need for transparency in the justice system. Can you expand on that for me, please?

Mr Cunliffe: Sure. We specifically requested inclusion in the justice process, particularly via the restorative justice process. We were not informed through that whole process. We were not told that our case was coming to trial. We knew that the offenders had been arrested, but that is basically where it started and ended. A year later I discovered that there were four individuals involved. They had been released not long after the offence. Today one of them is dead. He died in a car crash out in Oakey.

We needed to be involved in that. We needed to be given the opportunity to say what impact that crime had on us. We were never afforded that opportunity. That is the admission that I am talking about. We were called probably about five times to come and collect recovered property from the police station. We would turn up at the police station, the investigating officer was not there, nobody else knew anything about it and we left empty-handed. These sorts of things add to your trauma. You spend half an hour away from work trying to find parking and go along to the police station. You come back empty-handed. These really do significantly add to your trauma.

Ms BOLTON: The previous witness from the Sexual Assault Network, within their submission and in their oral statement, spoke about the need for a separately funded communication officer. Do you believe that would have assisted in what you faced, as well as a portal so that information is readily available?

Mr Cunliffe: I think anything will help. I think a functional database simply saying that this is the crime record that it belongs to and the location and ability to recover property from anybody in the police station would be a good idea. I was going to say something else there as well. We recommended to the youth justice minister, the police minister and also to our local police Superintendent McDonald that victims be given a useful information sheet with their crime record number, the name of the investigating officer and a whole lot of other information useful with regard to, for instance, what you do about credit cards if they have gone missing, how to close bank accounts, how to secure your Brisbane

property if you have had broken glass and things like that. Your mind is in an absolute haze in the aftermath of a crime and you need this help. You need it in written form, not on some government website which is notoriously impossible to find.

Ms BOLTON: Why were you, as a victim, not able to give an impact statement?

Mr Cunliffe: We were never asked to, in spite of our asking to be involved in the justice process.

Mrs GERBER: Is that because they were youths? Is that as a result of the Youth Justice Act?

Mr Cunliffe: That was because they were youths, yes. We believe very much that it does not matter whether they are youths or adults; there needs to be transparency. I can appreciate the need for confidentiality for a first-time and maybe second-time offender, but the child in our case who died was 13 years old, I believe, and he had 11 pages of criminal history. Surely he has forfeited any right to that kind of confidentiality that he enjoys.

Ms BOLTON: Would you see that connected to restorative justice?

Mr Cunliffe: With the restorative justice process, victims come face to face with their offenders. Why can that not be for an offender who has a much lengthier criminal history than a first-time offender who can participate in restorative justice?

Ms BUSH: Thank you, Ken and Janice. I am really sorry for what has happened to you, and I appreciate you being here today and your written submission. Can you give me a sense of your membership in terms of the types of crimes that people you are working with have experienced? Are they more personal acts of violence or against property—crimes against the home and the car?

Mr Cunliffe: I think so far, touch wood, all of our members are only property crimes. Having said that, I do not believe that somebody coming into your home at two o'clock in the morning is going to come in unless they are prepared to defend themselves violently if they have to. I think there is always an element of violence involved in a home invasion.

Ms BUSH: Yes, and I am certainly not wanting to imply that there is not a degree of trauma there. I think the justice system does respond a little bit differently to victims whether they are victims of personal versus property crime. I am trying to wrap my head around that for your members. I was of the opinion or belief—and I will put it to you—that other states did fund a counselling service for all victims of crime, not necessarily just victims of personal crime but also those who had experienced property crime. Are you aware of that? I might be misinformed.

Mr Cunliffe: No, I certainly was not aware of it. You were not aware of it?

Mrs Humphrey: No.

Mr Cunliffe: These are the kinds of things that need to come to the fore in a printed information sheet that is given to victims at their first point of contact with the police.

Ms BUSH: Can you explain what that initial contact with police looked like? When you talk about things like securing your property and referrals with insurance, my understanding was that that was something the immediate police response ought to be delivering for all victims. Can you tell me about that?

Mrs Humphrey: Nothing. It does not.

Ms BUSH: Can you tell me what they did do?

Mrs Humphrey: When the crime was committed, they came and did forensic work for fingerprints. That was it.

Ms BUSH: They left you with a contact number or a contact person?

Mrs Humphrey: We had a police report number and we had, yes, a person and a phone number but nothing else. No, there was nothing.

Ms BUSH: Did that person give you an idea of the types of things you could call them for? If they have given you a name and number, did they say, 'These are the types of things that you can follow up with me about'?

Mrs Humphrey: That was mainly for an insurance claim that they gave me those details. I was emotionally in shock. It is very difficult to absorb all this when it is said verbally. I know I had a card. I do not know where that card is anymore. My daughter lives not far away; she kind of took over and gave me a list of everything that I needed to do. There was no assistance, no backup assistance. I did not even know a court date or anything.

Ms BUSH: Yes, and that is the theme I get from your submission—to have something that would have helped you understand the journey and what comes next and where you can have a say would have been beneficial. I want to come back to the question that you responded to around wanting to

speak to the court about the impact of the crime on you. You mentioned, Ken, that you were not able to do that because they were a young offender. I want to be really clear: is that something you know, is that something someone told you or is that just what you feel? My understanding is that under the Youth Justice Act victims still do have a right to make a statement.

Mr Cunliffe: We actually went and met with somebody in the youth justice department in Toowoomba and they basically said to us, 'No, you can't actually attend court'—not that 'you can't give a victim impact statement' but we were never asked of that.

Ms BUSH: You still wanted to provide a statement, but the opportunity lapsed because it sounds like the matter moved ahead and you were not informed of that and this was kind of done.

Mr Cunliffe: That is right. To be sure, I can absolutely appreciate that some victims do not want to front court. I think they should still be given the opportunity to provide a victim impact statement. I think the consequence when they do not is that the crime becomes a victimless crime, and that is when the judges and magistrates possibly tend to be lenient, if they cannot actually see any direct impact on the victims.

Ms BUSH: You mentioned that you were not eligible for the Charter of Victims' Rights because it was a property crime.

Mr Cunliffe: It was a property crime, yes.

Ms BUSH: That was told to you by police or by—

Mr Cunliffe: No, that is actually on the website. It specifies 'violent crime'.

Ms BUSH: For the charter as well?

Mr Cunliffe: Yes.

Ms BUSH: Thank you for what you have done.

Mrs GERBER: Ken, the Queensland Sexual Assault Network, in their written submission, have recommended that any restorative justice model should be developed at the same time as substantial changes to the criminal justice system. When we are talking about the changes that have been made to the Youth Justice Act and then applying restorative justice to that, can you talk us through what, in your view and the experience of your membership who have been victims of crime, would benefit them in relation to restorative justice, particularly around youths?

Mr Cunliffe: I would love Janice to answer that. She went through the process.

Mrs Humphrey: Can I give you my scenario quickly?

Mrs GERBER: Definitely.

Mrs Humphrey: We were invaded at four o'clock in the morning. My husband heard his vehicle start up—his pride and joy, a high-powered Jaguar of which there are only four in Australia, so that was his—

Mrs GERBER: Precious to him.

Mrs Humphrey: Yes. He worked all his life for that car. My car—we lost a daughter and her husband was going to sell her car to buy a new one. My husband and I bought Jodie's car from our son-in-law. That was my space with Jodie. We used to go shopping regularly. Both cars went.

Mrs GERBER: Were stolen?

Mrs Humphrey: Were stolen. My husband's was wrecked and I just could not cope with getting back into my daughter's car. The insurance company was very supportive of me. This is what also made my emotional status worse, I believe. I have kept that very short.

With regard to restorative care, we were approached by the justice system to see if we would be interested in talking to a person who was not actually an offender but came along later for the ride. My husband and I went, and it was an eye-opener—it really was—for the person and for us. The person told us their story. A phone had been stolen from them a few days before, and that person was very upset about the phone being stolen. Hello! Try cars. When we were able to give that person our story, they had no idea of the consequences and impact that had happened because of their joyride.

Mrs GERBER: That car was your connection to your deceased daughter?

Mrs Humphrey: Yes.

Mrs GERBER: And they took it from you?

Mrs Humphrey: Yes.

Mrs GERBER: And you were able to convey that to them?

Mrs Humphrey: Yes. The person was very understanding and I will say probably, hopefully, has gotten on the right track. Maybe that was because it was an early offence. That person had been brought up in a way that I had never imagined anybody could be brought up, not knowing some of their siblings, and has gone on for education. We have organised to be notified in six months as to how their journey is progressing, which is also good that we will hear something hopefully positive. The restorative program was very good because it gave them an eye-opener as to how we were, and it also gave us an eye-opener as to how most of them have been brought up.

CHAIR: Thank you. That brings to a conclusion this part of the hearing. Thank you for your attendance. Thank you for your written submission.

CHESTERMAN, Dr John, Public Advocate, Office of the Public Advocate

MARTELL, Ms Tracey, Manager, Office of the Public Advocate

MATSUYAMA, Mr Yuu, Legal Officer, Office of the Public Advocate

CHAIR: Good morning and thank you for being here. I invite you to make a five-minute introduction.

Dr Chesterman: Thank you for the opportunity to be here. I acknowledge that we are on the traditional lands of the Turrbal and Yagara people and I pay my respects to elders past, present and emerging.

As members of the committee know, as the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability. There are several conditions that may affect a person's decision-making ability. These include intellectual disability, acquired brain injury, mental illness, neurological disorders such as dementia, or alcohol and drug misuse.

I mentioned in my submission that adults with impaired decision-making ability who are victims of crimes face a number of barriers in having their experiences acknowledged and investigated and for crimes against them to result in prosecutions where this is appropriate. These barriers are in addition to barriers faced by people without impaired decision-making ability who are victims of crime.

I looked at three categories in my submission in this regard: crimes committed against adults with impaired decision-making ability in shared home environments; broad challenges when adults with impaired decision-making ability report crimes against them generally, regardless of the location; and the support provided to adults with impaired decision-making ability when crimes against them proceed through the justice system, which seems to happen relatively rarely based on the dearth of statistical information about prosecutions for crimes against this cohort of people. I will say something briefly about each of those topics.

On shared home environments, here I am particularly talking about situations where people with cognitive disability share their residence with other people who are not family members. I am of the view that violence in these settings can be akin to domestic and family violence, but these acts will often go unreported due to a variety of reasons or, if they are reported, they are often not treated in the same way as other situations of domestic or family violence.

On the matter of the broad challenges faced generally by adults with impaired decision-making ability when reporting crime, I mentioned in my submission the work currently being undertaken by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, which notes that many victims of crime who have disabilities fear they will not be believed and fear that they will be seen to lack credibility if they do report a crime. Women with impaired decision-making ability, particularly those who experience sexual violence, of course face additional hurdles.

The third category to which I referred in my submission was the support provided to adults with impaired decision-making ability when matters are taken through the justice system. As members of the committee would know, even where crimes against people with impaired decision-making ability reach court, further barriers exist in terms of people being supported to give credible evidence and so on.

In terms of potential reforms, I do mention in my submission several ideas worthy of consideration. One potential improvement concerns the provision of better support in police interviews to victims of crime who have impaired decision-making ability. I mention here the Victorian volunteer Independent Third Person Program as something that could be explored as a potential reform.

The intermediary scheme currently being trialled here in Queensland which seeks to facilitate the communication of information from vulnerable witnesses is also worth examining, in my view, for its potential to be expanded in a way that would see victims with impaired decision-making ability more generally supported to give evidence.

Another potential reform concerns the future appointment of a victims of crime commissioner, to which I know the government has agreed in principle. This could have important ramifications for adults with impaired decision-making ability who are victims of crime, whose rights and interests could potentially be promoted by such a commissioner. Finally, the broad concept of justice reinvestment is worthy of consideration.

I do note in closing that my office is just beginning a large project focusing on adults with impaired decision-making ability in the criminal justice system, be they victims, offenders and/or witnesses. This will result in the release of a discussion paper in the middle of the year to be followed by stakeholder consultations across Queensland towards the end of the year.

Thank you again for having us here. I have with me Tracey Martell, manager of the office, and Yuu Matsuyama, our legal officer. I invite your comments and questions.

Mrs GERBER: Thank you very much for making the time for us today. Thank you for your oral testimony, Dr Chesterman. Can you expand for the committee on the concept of justice reinvestment? I note that in your written submission you have said that you would be keen for the committee to further investigate concepts like justice reinvestment within this inquiry. Can you talk us through what that looks like and what you think would be the best outcomes in relation to justice reinvestment?

Dr Chesterman: In a general sense, the justice reinvestment idea sees government channelling funds into social, education and employment areas in order to stop people—namely, offenders but also, as a result, victims—from becoming involved in the criminal justice system in the first place. It is really at that level that I am adding my voice to the chorus of people who call for that reform.

Mrs GERBER: Just to be clear, you are not talking about defunding police or anything like that. You are talking about targeting funds into communities in order to prevent someone going down a life of crime in the first place?

Dr Chesterman: Very much so, and looking at those causal factors and contributing resources there in a way that we know can divert people from following a pathway that will lead to more victims of crime.

Mrs GERBER: Do you have a practical example of where we might be able to look as a committee where it has worked?

Dr Chesterman: Let's imagine a group home environment where you have four adults living with impaired decision-making ability. Look at channelling some funds into the appropriate behaviour that is expected of people towards their fellow citizens and in this case their co-residents. Disability-specific training on what respectful relationships look like is money well spent. The situation I am concerned about is that—I have not been assaulted in my own home—people with impaired decision-making ability, through no fault of their own, are in a situation where they are living with other people with impaired decision-making ability and it can become a weekly or even more frequent occurrence that they are assaulted. Often it is a minor assault but, nonetheless, it is a situation that no-one would say that person should have to put up with. That is what I am talking about—in those situations having education around how it is possible to manage behaviour of others in that home.

Mrs GERBER: Excellent.

Ms BOLTON: Our previous witnesses spoke of the difficulties faced from the very beginning after being a victim. With the role of the Public Advocate, when someone with impaired decision-making ability is confronted with that scenario—where their home is broken into—is an advocate from the Public Advocate supplied to assist them through the whole process? It is difficult enough if you have full capacity. Can you explain to the committee what assistance is given?

Dr Chesterman: My role is limited to systemic advocacy, so I am not able to provide individual advocacy, although of course if people call us we do try to identify an appropriate referral pathway. In that situation there is no formula for what happens next. People can seek the support of an advocacy agency—and we do have some excellent advocacy agencies here in Queensland. They are spread thin, as members would know, but we do have agencies that can potentially assist people.

Within Queensland police there is the vulnerable persons unit, which I think shows enormous promise. Again, it is on a small scale at the moment. Other than that, there is no formula for the support that will be given to people. My concern is that oftentimes things are not reported. Sometimes the person might not know that what has occurred to them is a crime and that they can do something about it. Even if they do, there is often not the support there to enable them to take that through the criminal justice process. I do not know if my colleagues have anything to add there.

Ms Martell: Unfortunately, what we find, particularly in shared group accommodations and even in residential aged-care facilities, is that often a crime that we would consider to be a crime is considered to be what they call a serious incident. That serious incident is not reported to police; it is reported to the NDIS Quality and Safeguards Commission or the Aged Care Quality and Safety Commission. There is that situation as well, where crimes are not reported due to the system that is associated with where these people live.

Ms BOLTON: In terms of everything that you have heard so far—and I do not know whether you heard the previous witness regarding restorative justice, having a communications information sheet, a portal et cetera—basically you would agree that they would all be vast improvements?

Dr Chesterman: Yes, indeed. I think there is enormous potential in that field. It was interesting to hear previous witnesses on that score. I think there is enormous potential. I think those processes need to be crafted specifically for people with impaired decision-making ability, obviously, but I think there is enormous potential.

Ms BUSH: Thank you, John and the team, for coming along this morning and for your submission. I have a couple of questions. One is around broadly impaired decision-making. I think there are a lot of assumptions made by people around what that looks like. Capacity can be quite a fluid thing sometimes. There are people who might have impaired capacity who are still living independently in the community versus those in group homes. Can you quickly explain that to the committee?

Dr Chesterman: Yes. One of the things we are constantly working to refute is the idea that there is a bright line between people who have capacity and people who do not have capacity. Capacity can be fluctuating. We talk about capacity being decision specific. Someone might have a small degree of impaired decision-making ability which inhibits them from making, for instance, complex financial decisions but they have the ability to live a meaningful life in the community on their own or with a partner. At the other extreme, we do have people with severely impaired decision-making ability who require support with everyday living matters and decisions about a whole range of fields. Yes, the broad spectrum of people with impaired decision-making ability means that it is a hard group to provide an overview of in terms of what their needs are because there are many disparate elements.

Ms BUSH: It is challenging for police, because a person might present to an office or a station and they may not even know that the person does not have capacity. What can we do to help bolster that police response to help them believe the victim and help them navigate that a little better?

Dr Chesterman: Thank you for that question. It is a very important matter. The immediate response is training for police. One of the stereotypical situations that can happen where a person with usually a significant degree of impaired decision-making ability presents is that the person will typically want to be agreeable and may then agree with every question that is put to them by police. It takes some degree of training for police to work out whether the person is answering the question in the way that the police officer expects them to or whether the person is simply trying to be agreeable. That is just one instance where there is a challenge in the police setting, so some degree of training is very important.

Ms BUSH: That is where the vulnerable persons unit can play a really important role. Can you explain what they do and the benefits of that and where you see that could be bolstered to help support vulnerable people?

Dr Chesterman: The challenge is to have the initiative rolled out so that it is not just a discrete unit; it is actually lived and breathed everywhere throughout the state. The vulnerable persons unit contains people with expertise. There is no better way of training than to have someone in-house who is the champion, if you like, and who can provide that information to others within the service. It is on a small scale at the moment but it does show promise.

Ms BUSH: Are you aware of how stations tap into that unit at the moment? Do they have to initiate a request to the VPU?

Dr Chesterman: I know that the head of the unit, Deborah Phillips, is leading a change strategy. I am not sure of the extent to which she is reactive. I am sure she is proactive as well as reactive to requests, but I am not sure how widespread that is at the moment.

Mr KRAUSE: Thank you for appearing before us this morning. I want to touch on the idea of the establishment of a victims of crime commissioner, which you indicate the government has accepted in principle. How would you see this working? Would that commissioner role be purely advisory to government or, more ideally, play an active role in the justice system like, for example, the public defender or Legal Aid to support victims through the process, or the DPP on the other side of the equation? How do you see that working?

Dr Chesterman: My response at first blush would be to say that I would see this initially as an advisory position to government. The victims of crime commissioner could lead reform around ensuring victims of crime are supported all the way through the justice system. I see particular potential for adults with impaired decision-making ability about whom I have statutory responsibility. I see culture change

potentially being led by that victims of crime commissioner in terms of victims of crime with impaired decision-making ability. My initial response would be to say that it would be an advisory position, but I am happy to give further thought to that as the idea develops further.

Mr KRAUSE: I ask the question only because I have listened to some of the past witnesses and they have indicated there is very little support for victims through the process. Some of the suggestions that have come to the committee are aimed at dealing with that, but having a more active player in the system may be of assistance. Thank you for your answer.

Ms BOLTON: Is there anything that you feel we have not covered that you would like to make a point on?

Dr Chesterman: It was not so much what I have heard. If I could just say that the support for people in police interviews is something that I feel very strongly about. That was from our own submission. I do not have anything in particular from anyone else, other than the committee is obviously hearing some extremely moving testimony that will obviously be taken into account in your deliberations. I do not know if my colleagues have anything to add.

Ms BUSH: Can you refresh me on the intermediary scheme? You have mentioned that could potentially be used and could be something that is expanded further.

Dr Chesterman: The intermediary scheme is an idea that developed in the UK, I am pretty sure, quite some time ago. It is something that is of interest to jurisdictions throughout the world. In short, it ensures that a person with some degree of impaired decision-making ability is supported in a court process by an intermediary who helps facilitate communication with the individual. It is particularly utilised for vulnerable witnesses. At the moment we have the trial underway where the alleged crime is a child sexual offence. I do see it as having potential for any witness/victim of crime who has impaired decision-making ability that would assist them to give evidence before a court that would be credible.

Ms BUSH: I could ask the department this, but when is that being evaluated and when will we know the results of that?

Mr Matsuyama: My understanding is that the pilot program began in July 2021 and it is supposed to go on for two years, after which it will be evaluated. I imagine the evaluation will be coming out later this year sometime in relation to that report.

Ms BUSH: My next question is a little bit out of the scope—it is around the shared home—but you raised it in your submission so I will ask a question on that. It is a challenge because, obviously, we have limited housing stock where people can go and people might want to live in that area because that is where their family is. Managing that placement matching for people living in the same home can be a real challenge, but victims also have the right to feel safe where they live. Is there any recommendation you can make around dealing with that which could be something we start turning our minds to as a committee?

Dr Chesterman: This is a nationwide challenge, particularly in relation to people who are National Disability Insurance Scheme participants and particularly people within that scheme, as you know, who are in what is called SDA, specialist disability accommodation. The challenge here is for the scheme, for the National Disability Insurance Agency and for the NDIS Quality and Safeguards Commission. The costs involved are considerable to enable people to be housed in specialist disability accommodation exactly according to what their choice would be. There are some restrictions where people are told they have to live in a shared environment. The reason I have raised this before, as you know, is that you can see people in their own home being subject to physical violence, albeit violence caused by a person with impaired decision-making ability themselves. That does not make it any fairer for the victim, of course, and that is why I wanted to bring it here.

As for my suggestion in terms of reform, there is currently an NDIS review underway which is very broadscale. I am hoping that will come up with some potential solutions about prioritising consumer choice but also the matching of residents to ensure situations of violence can be kept to zero or to a minimum.

CHAIR: In relation to victims who have a disability being able to give evidence, am I correct in assuming there is no provision in the Evidence Act to allow them to give their evidence by alternative sources that are available to other victims of, say, sexual offences?

Dr Chesterman: I will look to my legal officer and I will give him 30 seconds to think of the answer while I give my understanding. My understanding is that, yes, there is that potential but the challenge is how many people actually get to that stage where that process can be utilised. In a sense, the decisions often can be made earlier, or the view can be taken that 'this person is not going to be able to give particularly credible evidence' so that support is not offered. I believe that potential is there.

Mr Matsuyama: Broadly, a person with impaired decision-making ability could be classified as a special witness after making an application. Certain arrangements can be made under the Evidence Act for a special accommodation—

CHAIR: Sorry to interrupt. I can understand what you are saying, that someone makes a decision prior to the person getting to the point. I was interested in whether the facility is offered to the victim to give their evidence by recording. Is that available to them if the decision is made that there is a case to answer?

Dr Chesterman: I think that is a practice question. I am not sure if people are offered that. Certainly potentially they could be, but if in practice—

CHAIR: Yes, but going to what you said, Yuu, there has to be an application, but initially can the evidence be recorded so that it is in a form that could be presented if the application was granted by the court?

Mr Matsuyama: In terms of prerecorded, like a child witness, I do not believe you can prerecord.

Dr Chesterman: We can take that on notice and provide a response later today.

CHAIR: It is something I possibly should know.

Dr Chesterman: We should as well. We will take that on notice and provide an answer later today, if that is okay.

CHAIR: Thank you.

Mrs GERBER: I want to give you the opportunity to expand on the advocacy support that is available for people with disabilities in New South Wales and Victoria. I think your submission mentions that there is a set-up in New South Wales and Victoria, and I want to give you the opportunity to provide the committee with details about that and how that could be implemented in Queensland and if it would be beneficial for Queensland.

Dr Chesterman: The scheme I was talking about in my submission was the Independent Third Person program in Victoria. I have been in my role here in Queensland for about 18 months. Prior to that I was the Deputy Public Advocate in Victoria, and I know that scheme well because the Office of the Public Advocate oversees it. It is a volunteer program where people sit in on police interviews where the person being interviewed—they can be a victim, witness or alleged offender—has an apparent cognitive disability. The volunteers are not advocates for the people. They simply sit with the person to facilitate communication, make sure the person is not just being congenial, ensure the person has a break, ensure the person understands what is going on and make sure communication flows well. The police service in Victoria like the scheme because it ensures good, credible evidence is collected. It is widely utilised. It is a small cohort of people who are victims who are supported by Independent Third Person, but I did look at the last annual report and there were about 282 victims who were assisted in the last financial year through that scheme through the volunteers.

Mrs GERBER: You may not have the figures available, but do you know the cost to the system of that? If it were to be established, do you know what kinds of funds would be needed?

Dr Chesterman: I should know that off the top of my head but it is a volunteer scheme. The volunteers receive an honorarium. It is staffed at the back office by two or three staff members.

Mrs GERBER: Is it run through the Public Advocate?

Dr Chesterman: It is through the Office of the Public Advocate.

Mrs GERBER: Would the Public Advocate need some extra funding to be able to provide that?

Dr Chesterman: Yes, it is through the Victorian department of justice.

Mrs GERBER: Is there anything more that you would like to add in relation to the support that the Queensland government can provide for people with an impairment or a disability when they are having to go through the court process as a victim of crime themselves?

Dr Chesterman: I think I have covered generally the potential reform points I would like to make. I guess the challenge is right at the front end in terms of assisting people to realise that if they are victims of crime there are things that can be done to support them. In terms of more general reform, I would be talking about support for the advocacy agencies that are able to walk people through that process where there is no-one else around the person who can support them to do that.

Mrs GERBER: And that model in Victoria and New South Wales is a key player in that?

Dr Chesterman: Certainly the Independent Third Person program—just the Victorian one that I am familiar with—is something that I would encourage the committee to consider in its deliberations.

Mrs GERBER: That is very helpful.

CHAIR: In relation to the question you took on notice, is it possible to have the answer to the secretariat by the close of business on Monday, 24 April 2023 so that it can be included in our deliberations? If that date and time is an issue, could you communicate with the secretariat, who are very approachable and understanding of the time pressures?

Dr Chesterman: We will certainly do that.

Proceedings suspended from 9.57 am to 10.10 am.

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

CHAIR: Thank you for being here. I invite you to make an opening statement of up to five minutes after which committee members will have some questions for you.

Mr Thompson: I recognise the traditional owners of the land on which we are meeting and acknowledge the present and emerging leaders in the communities in which we live. I am not going to read out a statement. I would rather get the opportunity to answer lots of your questions. You have our submission. Our submission focuses on a very broad range of topics. It is very broad because we see the work of trauma informed practice relating to every single interaction with individuals. It is an interaction with the processes that exist and it is the interaction with the legislation. Unless those things are treated as the entire environment in which we operate, we really are going to miss something.

Our submission talks about the need in any type of crime for specialist support, particularly in homicide. We know that in Australia there are only two specialised homicide groups in Australia—ours and in New South Wales. In our case, we have been operating since 1995. The organisation was started by and is still led by people with lived experience. Our board of directors is led by the current founder of the organisation who is a trauma specialist in child trauma, having lost her own son at the age of 17. The information we come with comes from the lived experience voice. It is not something that someone learns at university; it is something that comes through conversation or, sadly, from people who have lived experience.

If we deviate and go into a one-size-fits-all model, which the majority of governments around Australia have done, I feel that there is going to be a lack of voice for victims of homicide. Even though we are looking at around 260 individuals a year who are killed—I think they are the 2019, 2020 and 2021 statistics—we have to remember that every single one of those people is an individual with a family, friends, work colleagues and school friends. The ripple effect from that is immeasurable. If we go to a situation where someone does not have an understanding of the processes and the journey of that homicide victim, there will be gaps.

We talk about referrals in our system, because there is confusion. The referral system we have is a very simple one; however, I think it can be simplified. We can talk about that later. There is a need for improved court support. There are approximately 20 to 30 homicide trials in Queensland each year. These relate to the loss of between 50 and 60 lives every year in Queensland. In Brisbane alone, there are 10 homicide trials each year. We are looking at about 170 days where direct support would be ideal. As an organisation, we have some funding to support that. As Angela said in relation to QSAN, the funding simply is not there to support what is one of the most traumatic experiences of their journey. It cannot be overlooked. It cannot be simply ticked and said, 'Well, there is some funding there; get on with it.' It should not be left to organisations such as ours, who have seven paid staff and a team of about 50, the majority of whom are volunteers. The volunteers are wonderful—we could not operate without them—but is it truly what we want to be doing, that we need to find people to volunteer in such a traumatic area? There is clearly risk associated with that in the first place.

In terms of timeliness, currently under the VoCAA there is a six-year period where you can use your funds. The average for manslaughter in Queensland is around eight years, and that is when the person is sentenced. They are coming out. There is no support for that at the moment. For murder, 20 years is the minimum in Queensland. After 20 years, that person is then applying for parole potentially—potentially coming out and potentially not. They could then go out for another 15 years, because it is a life sentence, and come back in again. This is a cycle that people are forced to go back into, but the legislation does not support the journey. We want a conversation around how we can better do that.

In terms of compulsory third party if there is the use of motor vehicles and vehicular homicide, there is no support at all from Victim Assist Queensland because they say, 'We are the last resort.' This is true. CTP comes in: 'We will support people to get to see a lawyer.' That is going to take a long time. In the meantime the question is: who is paying? Who is paying for the psychological support? Who is paying for the loss of income? Who is paying for the fact that the kids are not going to school anymore and you cannot go to work? There is a whole range of questions, and the same applies with workers compensation. Why can we not have a stopgap measure to be able to go, 'We know that the CTP will come through. Let's put some costs forward so that these people can get some support,' and then, once that claim has gone through, send them an invoice and get that money back to government? There has to be a solution for something like that.

The broadness in terms of our submission talking about the journey is why we talk about the discussions around parole and also deportation. For example, there is legislation that does not allow a victim to have any say in relation to a murderer going from a Queensland to a New South Wales facility. We know that they can get a better deal, because they can get date release if they are approved. You cannot do that in Queensland. Then if a person is going to be deported, you cannot get any information. They do not know where the offender is once they are taken into ABF. They do not know if they are coming back into the country. They do not know if they have even left. They do not necessarily need to know what gate they are leaving through at what time on Virgin, but what they would like to know is: are they going to be back in the community? Are they going to be back in Australia? Are they gone? Victoria cohealth talk about millions of dollars being spent on refuges, with people in safety, because they do not know if the perpetrator is in the community, because it goes to secrecy. I know that this is not a state issue; it is a federal issue. I have knocked my head against the door to try to get this changed, and it is just too hard. There must be a way.

CHAIR: Can we unpack that for one second? A person is subject to be deported, and then once they end up in—

Mr Thompson: Detention.

CHAIR: They go to a different facility while they are waiting for deportation. Once they are in the facility, the issue is that there is no way of your finding out, for example, if the person has been deported?

Mr Thompson: That is correct. It is complete lockdown. I can send you the letter. I think the letter from Minister Hawke is in my submission.

CHAIR: Yes, it is, thank you. I just want to unpack another couple of things you said. In relation to the third-party issues, can you—

Mr Thompson: Give an example?

CHAIR: Yes, that might be a good starting point.

Mr Thompson: I guess that was a bad thing to offer, because they are individual cases, and I do not want to—

CHAIR: As long as they have been resolved, because I do not want to breach sub judice.

Mr Thompson: I will talk generally. Let's say, for example, an individual has killed someone with a motor vehicle. It is going to come down to—

CHAIR: To what charge would they be subject?

Mr Thompson: In our case it is going to be homicide. If it is not homicide, it does not fall into our scope. It might be the case that that charge is later downgraded; we will still be supporting that family. We have seen cases—it is very common: if it is use of a motor vehicle, there are no funds available.

CHAIR: Is it the nominal defendant or is it compulsory third party?

Mr Thompson: Compulsory third party, CTP. We will refer them to legal advice to support them through that, because they will get a better outcome by using someone with a legal background.

CHAIR: That is a civil concept, that they have the ability to bring legal action against the insurer.

Mr Thompson: That is correct.

CHAIR: The other one you said was workers compensation.

Mr Thompson: If you were working at the time, Victim Assist Queensland will naturally go, 'We are the last line of defence. Therefore, if it is workers compensation, we will put you to that,' and WorkCover will hopefully cover something through that.

CHAIR: If I heard your evidence correctly, in the meantime victims are without support?

Mr Thompson: Financial support; that is correct. They have support from our agency.

CHAIR: I understand that. I am just trying to unpack what you said about that. In relation to workers compensation, the difficulty is that by the time that process goes through they are really not left with any support, pending the outcome of their case?

Mr Thompson: That is correct.

CHAIR: You are suggesting—I do not want to put words in your mouth, so correct me if I am wrong—that Victim Assist could assist in the meantime and there could be a reimbursement of that if that component were taken into account?

Mr Thompson: That seems logical to me, so that there is some financial support of some kind.

CHAIR: Sorry to interrupt. Please continue.

Mr Thompson: Each of the concerns raised in the submission comes with a solution, which is ideally what you want, isn't it? I would like to talk about media. We are talking about a trauma informed approach. I know that it is not part of the actual brief, but the fact of the matter is that the printed media is held to no account. For broadcasting media there is legislation. We are talking about a Charter of Victims' Rights, which at the moment is not in legislation; therefore, there is really no serious repercussion if someone is disadvantaged. It is the same with the media. I do not know how many times the people we represent and support are traumatised by a headline in the paper—disgraceful, abhorrent. I am wasting my time doing it each time, but if I write to that agency—it is self-regulated—quite often it comes back, 'That's in the public interest.' Until such time as there is legislation around print media, the trauma informed environment is always going to be—no matter whether we are all doing a good job. The media come in and they blast away with disgusting headlines such as referring to the person not by their name but by the mode of death. I am not going to mention those at the moment, because there may be some people here that that relates to. You know what I am talking about, I am sure. We have all seen the headlines, where you shake your head and go, 'How can they get away with that?'

Before I stop, I want to acknowledge that we have really good relationships with government. We have a great relationship with VAQ. They are open to discussion. We have discussions on a weekly basis, sometimes on a daily basis. We have worked on common projects; we still do. It is the same with the QPS. In terms of the processes in legislation, we are well and truly invited to submit. People traditionally might think that the Queensland Parole Board is an enemy of homicide victims because they let offenders out of jail. The reality is that we need to have good conversations with them to be able to make processes better so that people are not as impacted.

Mrs GERBER: Thank you, Brett, for your testimony and for the written submission. I want to go back to the question the chair asked. When you are talking about financial assistance being made available, what is your organisation's experience with the timeliness of the payout of that financial assistance? What would you consider to be an adequate time period for that financial assistance to be provided?

Mr Thompson: I think VAQ has been very open to say that it was too slow. We were experiencing delays of up to about two years ago. I know that a few years ago they did reviews. They have changed processes. For homicide, I know that they are now dedicating assessors to homicide cases. For us, that is a huge improvement. I am only talking about homicide support. For us, it is about expediting things—as soon as possible. I think Angela mentioned three months. I do not have the evidence to say what is best in terms of timeliness for that funding, but certainly we would want it within probably four to six weeks. That is when we know—evidence shows us—that getting into psychological support is most critical in that journey.

Mrs GERBER: Can you expand on the types of specialist support services that need to be implemented in Queensland to support victims of crime in relation to homicide?

Mr Thompson: Our model is based on evidence, which we have provided in the submission. We have two programs which operate. One is the case management. The case management is done by people with backgrounds in psychology, counselling and social work. As soon as we get a referral from the homicide unit, that operates until that support is not needed. Our average support goes for 2½ to three years, generally dependent upon the criminal justice matters being heard.

There is an understanding of what that journey is and what is coming up. There is a unique set of eyes from those case workers with experience, going, 'We know there are going to be mentions. We know there are going to be issues with media.' They know the intricacies of paperwork, the referrals which might occur, the repercussions for one family member for whom suddenly their relationships and friendships change—people do not want to know them anymore. This is a common conversation that we have. That understanding comes from simply working every single day with people who have lost someone. As I said, there is no one, single course out there that is going to teach you about how to work in the homicide space. What it takes is practical experience as well as knowledge of counselling and the skill of case management.

The other really critical aspect and which is well documented is peer support—and Victoria in their last RMIT report talk about the peer support—which is what the organisation was founded upon. It is based upon understanding because you have been there; you have been there and you are doing that and you can have a different conversation than a case worker would be able to. None of our case workers have lived experience of homicide; however, our peers all do. Our support starts with the

combination of both. We have case management, but we straightaway talk about, 'Would you like to speak to someone who has lost someone like this?' or they might say on the phone, 'Can I just speak to someone who gets it?' That is a voluntary service.

For those people who are providing that service, that is a place of solace—to be able to contribute back so the experience they had might be better for the next person. You cannot teach that. If we go to a model where it is non-specialised, where we have it done by clinicians only, you are not going to get that level of understanding. That is what I am talking about—their specialisation. One, they know the journey in terms of the practical sense right through and having an advocacy person that can go and talk to the Parole Board or go and talk to QPS or VAQ about joint projects and change, and they can talk about referrals to other agencies or provide some counselling, but then you also have the lived experience where you can go to a peer support group or get a phone call from someone who has an understanding of all things homicide. That is the specialisation.

Mrs GERBER: In your organisation's experience, what kind of red tape needs to be dealt with in relation to the financial assistance provided to victims of crime? We have heard reports over the weekend of family members having to prove that their trauma stems from the death of their loved one or the murder of their loved one in order to access support or financial assistance. What kind of red tape are we talking about that needs to be removed in that process so that those people are not retraumatised by having to prove that their trauma stems from the murder of their loved one?

Mr Thompson: They are conversations that we have had. I was interviewed for that, obviously. There is support immediately for victims of crime through VictimConnect; there is some counselling available there, between three and 12 sessions. We are talking about then going on to clinical support through a psychologist. We have had situations where the individual could not move away from the house and did not want to pick up the phone yet was required to explain herself. Because she had a pre-existing condition—'You have had depression before. How can you substantiate that the loss of this person in your life and this person in your life is actually the reason you need more support now?' The average person in the street would think, as I said in the paper, that it seems a little bit rough to ask that question.

There do need to be checks and balances—I understand that—but if we put in place barriers to support, it is actually making it worse. Health literacy is not something people naturally have and, in terms of social justice, the whole point is that to treat people equally you have to treat people differently, and this is as different as you are going to get in terms of the world of crime because of the severity of what has happened. Asking them to fill out more paperwork and explain themselves to a medical practitioner when they might not be able to get there or they cannot afford it does not quite match what we are talking about with being trauma informed.

Mrs GERBER: So it all comes back to the specialised services then, does it not?

Mr Thompson: Absolutely, yes, and we can set up those processes.

Mrs GERBER: With what you are talking about, we cannot have a broadbrush approach?

Mr Thompson: No, it certainly does not. The same applies to sexual assault and different types of crime—absolutely. We are talking about category 1 crimes here in homicide.

Ms BOLTON: In your submission, on page 3, you note that a key factor which increases survivor wellbeing is having a sense of control. You would have heard earlier witnesses who have identified a number of things, including having the information, which obviously you provide. That is a bit different there. They speak about restorative justice—there is a whole host of things that obviously assist with feeling that control. For homicide victims and their families, besides the things we have already heard about and assistance financially, what can assist there?

Mr Thompson: Recovery is such a personal thing for every person we talk to. We receive 99 per cent of homicide referrals across Queensland. We know that not everyone will want to take up the service for their own particular desire, and that is fine. It has to be about choice. When we are talking about individual needs, there is no one, single answer to the question you have just asked because every single person comes with their own background, their own set of circumstances, their own religious beliefs, their own personal beliefs and values. It is about unpacking what that person needs. That is the key to case management. What does that individual present with? What can we support them with to try to recover?

The worst thing we can do is create dependency and the worst thing we do is think, 'We want to look after these people for the rest of our lives.' It is not about us. We want them to be able to recover as best they can; therefore, nothing is off the table. We are providing funding through other sources for kids to get tuition in schools because they are disengaged. We are applying for funding for equine

therapy for individuals. It comes down to that particular person and what is assessed by our case managers, and that combination of, 'Can I have a chat to someone who gets it because I just want to tell you how bad this feels?' and that person can say, 'I actually understand.' I do not have lived experience of homicide, thankfully; therefore I do not understand, but I understand the practicalities of advocacy, process and social justice and the need for specialised support.

Ms BOLTON: For those impacted by murder within this sphere, obviously victim impact statements are a form of having a voice. We have heard about restorative justice, but is there a situation where they actually meet the perpetrator to be able to relay personally? Is that part of some of the undertakings?

Mr Thompson: It is rare. Terry O'Connell OAM is Australia's leading practitioner in restorative practice around homicide. There is a great documentary on *Australian Story* about a homicide where there is a process which takes place—developed processes around homicide support. We have investigated that and worked with Queensland Health and the director there, Michael Power. There is merit in that. It has not occurred at this stage. However, the great thing about that type of restorative practice is that if the perpetrator is not prepared to meet the family or the family does not want to meet the perpetrator they do not have to; there is a way for that process to take place. We have looked at that and it has merit in it, but it is not restorative justice. It is not related at all to a list of needs or, 'We are telling you to do it.' It is voluntary, it is bespoke and I would love the government to have a closer look at that. I wish Terry was here to talk about it because he is quite a person, yes.

Ms BUSH: Before I ask my question, for transparency I will disclose that I used to work in Brett's position at the Queensland Homicide Victims' Support Group, but certainly that does not stop me from fulfilling my obligations today. Brett, there is something that you have raised which few other submitters have raised so I will take the opportunity to ask you. It is around crime scene clean-up and how that is executed or how we deliver that in Queensland. Can you explain a bit about that and your organisation's role in that and whether that service that you offer with police is more broadly accessible by other victims?

Mr Thompson: I can talk about it because I have been doing it personally and arranging them. The reason I was doing that is that it is a relatively new project; it started in December 2012. It was a joint project between VAQ, QPS and QHVSG. It stemmed out of concern around timeliness of clean-up and the impact on the family or loved ones by having interaction even with the cleaning company, and also potentially produced with an invoice saying, 'There is a \$4,000 bill. Can you pay that within seven days, please?' It was pretty logical that something needed to be done. We have done eight. There is one happening today, as we speak.

The process in terms of logistics is: when we receive notification directly from the QPS, the referral on that form indicates whether or not a crime scene clean-up is required. It may be a biological clean-up or it may be as a result of the forensic investigation by the QPS. We simply contact some contractors and make sure they are aware of the extent of the task and then we manage the costs so they are not blowing out. For example, we will get some quotes in at \$3,000 or \$4,000 and another one will come in at \$12,000, so we need to manage that. That is going very well so far in terms of those costs out of what is obviously a horrible situation, but it is a necessary evil. We will continue to look at how that works, but we have kept families away from that process, and that was the intended outcome of that. At QHVSG, we get a small amount of brokerage for that, but the value is that the family is kept away. It is just one more thing.

Ms BUSH: You manage it. Who funds the clean-up?

Mr Thompson: If you want a wad of money, VAQ literally put \$30,000 into our account to keep that in the GL code for that expense. We will then utilise that fund to do it. The reason that occurred is that the legislation currently prevents the payment of that crime scene clean-up, unless the victim already has an assessment undertaken. The assessment, as we talked about, is taking a bit of time. We do not want to leave two years or nine months with a crime scene. We have bypassed that. We are paying for that. We are about to review—we just did a review this month—so we will then top that up. That expense will then, I understand, go against the money that sits in the victims' funding.

Ms BUSH: The applicant?

Mr Thompson: Correct. That is currently where that is coming from, yes. In the case of a forensic clean only, which does occur, that money is purely paid by QPS; it is not part of the victims' funding.

CHAIR: That concludes this part of the hearing. Thank you for your time and thank you for your written submission. In your evidence, Brett, when I was speaking to you, you said you may have a letter that you received from Border Force.

Mr Thompson: That was the then minister. There is a copy of the educational response from then minister Hawke which should have appeared in that document. If not, I will forward that to you.

CHAIR: Is it possible to have a copy of that letter sent to the secretariat by Monday, 24 April, so that it can be included in our deliberations?

Mr Thompson: I will flick it through today because I am about to go on leave.

CHAIR: Thank you once again.

Mr Thompson: I thank the committee for looking into this. It is a critical area for all victims of crime. I acknowledge Russ and Anthea here today as people with loss, and Jonty as well.

Ms BUSH: Thank you, Brett.

NEIL, Ms Rachel, Acting Principal Lawyer, knowmore

STRANGE, Mr Warren, Chief Executive Officer, knowmore

CHAIR: Good morning. Thank you for being here. I invite you to make an opening statement.

Mr Strange: Thank you to the committee for the opportunity to make a submission to the current inquiry and to appear today. I want to begin by acknowledging the traditional custodians of the land on which we are meeting and pay our respects to their elders.

The committee will be reasonably familiar with the work of our service, but I am aware of the interest in this inquiry and just want to spend a couple of minutes outlining what our legal service does and how we assist the clients we work with. We are a national community legal centre. We provide legal information, advice, representation and referral services for our clients who are victims and survivors of child sexual abuse. We also undertake community legal education and related work and systemic advocacy on behalf of our client group. Our client group also includes survivors of the stolen generation who were removed from the Australian territories. We assist them now with the Territories Stolen Generations Redress Scheme.

Our services are free to all. The majority of our clients would probably meet a Legal Aid type of means test but we do not means test at all. Our services are free to all victims and survivors. We use a multidisciplinary approach to provide trauma informed, client centred and culturally safe services for our clients. Over one-third of our clients identify as Aboriginal and Torres Strait Islander people. By 'client centred', we put the client at the centre of our services and we wrap our services around that client and identify what services they need to navigate the issues they present with and what support we can provide. We do that through lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisers, financial counsellors and other operational staff.

Turning to our submission and the terms of reference, we have addressed both of the terms of reference of the current inquiry. On the first one relating to the support of victims and survivors through the criminal justice system, obviously many of our clients have sought a criminal justice response for the harm perpetrated upon them. A common report or feedback around that experience is one of being marginalised and excluded from the process at many stages. Survivors often feel that their interests are given little consideration and the system is unfairly weighted in favour of the perpetrator.

There are certain areas that our clients report being particularly frustrated about: getting information as a police investigation unfolds, what is happening with the progress and not being consulted in a meaningful way about decisions about charging and particularly decisions to downgrade or withdraw or discontinue charges. They also have difficulties understanding some of the processes and reasons for decisions and feel, at times, that they have no or a very reduced voice in being able to raise questions and get meaningful responses or even possessing enough information to know the right questions to ask. Those perceptions can be compounded by the lack of dedicated support for victims and survivors to assist them to navigate the criminal justice process.

We have proposed in our submission and addressed in previous submissions that there needs to be a properly trauma informed approach embedded at all stages of the criminal justice system when it comes to dealing with victims and survivors and that victims need access to free, appropriate and accessible trauma informed legal services to provide them with assistance throughout their engagement with the criminal justice system.

Secondly, in relation to the Victims of Crime Assistance Act and its operation, we have addressed that as well in our submission and have particularly highlighted some barriers that exist. We acknowledge that Queensland's scheme in many respects compares favourably to comparable schemes throughout Australia, but there are still barriers that impact survivors. Our submission focuses on some ways to potentially reduce some of those barriers and provide people with more meaningful assistance and support when they are applying under that legislation.

Mr KRAUSE: I want to ask about your support for the victims commission, which is recommendation 18 of the Women's Safety and Justice Taskforce. In relation to that commission and the commissioner who would fall under it, what are some of the benefits that you see flowing from that set-up? Should the commission and the commissioner have an advisory role, an advocacy role only, or one that takes a more proactive role in the justice system through the court process especially?

Mr Strange: We are supportive of the establishment of a victims commissioner role. There are a number of benefits in that. It is a statement. If it is enacted as a legislative position, it is a statement by the legislature and a recognition of victims' rights. In terms of having an active role in advocating for victims, I think certainly there is an important systemic advocacy role. In terms of advocating in

particular court proceedings then that is best done through an independent legal representation arrangement. As we have submitted, we think victims should have access to a legal service to assist them at various stages of their interaction with the criminal justice system and also in relation to what I might broadly call redress rights. I would see the commissioner's role as potentially more systemic advocacy.

Mr KRAUSE: So advocating perhaps for more funding or more availability for that type of resource for victims rather than playing that role themselves?

Mr Strange: Changes to legislation, policy and practices—those sorts of reforms.

Mr KRAUSE: In relation to the Charter of Victims' Rights, which you just mentioned, what additional rights would you like to see for victims of crime in that charter?

Mr Strange: We have addressed a number in our submission. Did you want to talk about that, Rachel, as you have the reference there?

Mr KRAUSE: I see there are a few dot points set out there. Is there anything that you would like to add to that submission?

Ms Neil: No. I think we have covered them with those points.

Mr KRAUSE: That is from page 7 of your submission.

Mr Strange: We would like to see victims' rights recognised in the broader Human Rights Act.

Mr KRAUSE: Understood.

Mr Strange: That is something we have submitted before. There are a number of fundamental human rights there, but there is nothing that specifically relates to your rights as a victim of crime.

Mr KRAUSE: On a different matter, in relation to the operation of the Victims of Crime Assistance Act, could you talk about some of the barriers that you have seen to accessing assistance under that act, in particular the timing? I understand there is a limitation on the time within which people need to apply for that funding and that support. Do you have any insights in that respect?

Ms Neil: That is correct: there are time limitations for people to apply. We have noticed in practice, though, that with those limitations there is a discretion to extend those times and they have been extended with the clients that we have helped through that system.

Mr KRAUSE: Is there a better way than having to ask for an extension?

Ms Neil: Yes, I think there could be no time limitations, particularly for survivors of child sexual abuse, which is the way that it is done in some other jurisdictions. Was that all you were talking about, or the time that it takes to—

Mr KRAUSE: Any other barriers as well, but I want to speak particularly about timing because I know that knowmore obviously helps victims of child sexual abuse and other types of abuse in an institutional setting, which can sometimes be a very long time ago.

Ms Neil: That is right. We have a lot of historical child sexual abuse survivors. That abuse often happened a long time ago, as you say. There is a barrier also for victims who were abused before 2009 under the older legislation in that it has to have been reported to police and there are certain limitations with that. We have not in practice seen anyone be refused where they, say, do an online report to police when it was prior to 2009, but the legislation is quite complex on that matter. Actually explaining that to clients in an advice appointment is really difficult, even if you are writing it down.

That does not apply to victims of crime in other jurisdictions in legislation. In Victoria and New South Wales, for instance, for victims of child sexual abuse, a report to police is not a requirement. I think that is also a barrier for people in that it is just that extra step they need to take. It is a big step to take, particularly when we talk to a lot of clients who were sexually abused within their families. A police report is a really difficult step for them to take.

Mr KRAUSE: I understand.

Ms Neil: I guess the other barrier that we see is that the time it takes for these applications to be decided is one to two years, which is really unacceptable. We sit with our clients through the National Redress Scheme applications where it is taking 12 months or more. The time that it takes sitting there and waiting for a decision to be made is really difficult for people. While we can provide support through that, it is very traumatising for them to have to sit with that for such a long time. The same applies to these applications as well.

CHAIR: Are there two different schemes, Rachel?

Ms Neil: The National Redress Scheme came out of the Royal Commission into Institutional Responses to Child Sexual Abuse. That is a big part of the work that we do.

CHAIR: The applications are taking—

Ms Neil: Twelve to 18 months and sometimes two years, depending on a number of different reasons. A straightforward application to the National Redress Scheme is taking 12 months.

Ms BOLTON: You have mentioned the trauma informed approach and also wraparound support. Can you give a couple of tangible examples where that has not been happening and what it has resulted in?

Ms Neil: In our practice?

Ms BOLTON: Yes.

Ms Neil: We offer and we will always try to give that support. I think what happens is that victims will disengage if they do not have that support. Given the massive emotional toll that it can take on people to come forward and tell their story, if they do not have that wraparound service, and particularly for Aboriginal and Torres Strait Islander clients if they do not have that cultural support, they just will not engage with our service. Where our Aboriginal engagement advisers are involved with our clients, they are the first point of contact for that client. Sometimes they speak through their engagement adviser to their lawyer because they feel that it is more culturally safe for them to speak to their Aboriginal engagement adviser.

Ms BOLTON: From what I have heard, you would probably agree with previous witnesses about the importance of the need for more resources, information sheets, transparency and all of those things that would assist?

Ms Neil: Absolutely, yes—more resources.

CHAIR: In relation to free and independent trauma informed legal assistance and wraparound support—you may have put this in your submission so forgive me if you have—could that be supported by an organisation like yourselves or Legal Aid?

Mr Strange: There are a number of ways to do it, Chair. Legal Aid is difficult because of the fact that it funds the representation of perpetrators, so the actual conflict and the perception of conflict loom very large for victims and survivors. We would strongly submit that a standalone service is the appropriate model. It is not a trauma informed approach to simply give some money to the community legal sector and outpost half a dozen lawyers around the state to do work with victims of crime. That is not a properly trauma informed model. It does not have the cultural support that we were just talking about. It does not have social workers to help clients manage their engagement and understand the advice they are given. It does not have the capacity to do the appropriate referral options to other services for ongoing therapeutic support, for example. We think a standalone service that is free of conflict and brings together all of the disciplines is the appropriate model.

CHAIR: And that would deal with the issue in relation to the vastness of the state?

Mr Strange: You certainly would need to have statewide coverage. We know that a very common complaint from people is the lack of access to appropriate services the further you get away from South-East Queensland and, particularly for Aboriginal and Torres Strait Islander people, the lack of access to culturally appropriate healing services. We very much need to be a statewide service and one that provides services right across the state and its regions.

Ms BUSH: You mentioned in terms of the chair's question your preferred model would be a standalone service delivering that type of free responsive legal support and information. Would that be your preference over funding individual agencies to pick up a portion of that work for their own cohort? Rather than having one funded service, would you not break the funding up and give it to the multitude of services that are delivering support services, for example?

Mr Strange: I think there needs to be increased resourcing across what one might broadly call the victim support sector. I am talking specifically about a standalone legal service that is focused on those types of issues that I outlined in my opening statement, as well as a range of redress options under the victims of crime act and civil litigation options and other avenues such as redress schemes that may be available to them. I think there needs to be a broad funding injection but a standalone victims legal service that is recognisable as such to victims.

Ms BUSH: Something that is not really well understood is that defendants have their lawyer, or their legal team, and QPS and ODPP are largely there to represent the state, but who is actually the voice of the victim? The model that you are putting forward is not a legal officer who interferes in the prosecution but someone who can work with the victim to help identify and elevate the rights that they have; is that right?

Mr Strange: That is right. It would primarily be information and advice based. For example, we often engage with clients who speak to us about reporting to police. We can talk to them about what that will actually entail. We can support survivors to make that initial complaint and organise for them to connect with the right people within QPS so that they are not just fronting up to a counter on a Sunday afternoon and getting a less than trauma informed response.

There would be perhaps limited times when an advocate might seek to intervene in actual court hearings. I am picking up on what Mr Thompson was saying about media issues. If there was a decision to be made about the release of certain material, there is potentially an opportunity there for the victim to be represented to contribute to a decision about that, rather than just the prosecution and the defence and the media outlet being the relevant parties.

We know there are rights around seeking to protect counselling notes and those sorts of issues that may end up before the court. Behind that it would primarily be information and advice and helping people understand what questions they want to ask and what information they want to get from the prosecution and from the police.

Ms BUSH: Warren, you also had some good recommendations around the Charter of Victims' Rights. Just so I understand, are you talking about relocating the charter from VoCAA into the Human Rights Act? I know we have the commissioner here. Is that what you were saying—or replicating it in the Human Rights Act?

Mr Strange: Given the effect of legislation, we have supported the position of Women's Legal Service that the rights should be made into legally enforceable rights as part of the Human Rights Act.

Ms BUSH: We have seen in a submission that there are rights, but agencies have a range of duties and obligations that sit under that. Are you aware of whether the justice agencies have done that work in unpacking what those duties and obligations might look like for them?

Mr Strange: We see it from the victim-survivor perspective. Current rights talk about providing information. As I outlined, we get complaints about the timeliness of that. We get complaints about the fulsomeness of the information provided—the lack of what our clients regard as effective consultation about charging decisions. They may be given information at a particular time, but that might be in terms of, 'This decision has been made for these reasons' rather than, 'We are thinking about making this decision which will have this impact.'

Ms BUSH: Sure. It is one thing, I would suggest, to communicate an outcome or a decision that is about to be made; it is another thing to unpack the work of what a duty and obligation might look like which might be, in the absence of change as to the charging, just a general update to the victim on what is occurring, for example. I will put it to you another way. Has any justice agency come to you and said, 'Can you help us unpack what those duties and obligations might look like for us?'

Mr Strange: Not an actual justice agency. We have had some of those discussions with some institutions about their redress processes at times.

Ms Neil: Not that I know of.

Ms BUSH: That is okay. I am just interested in that.

CHAIR: Thank you for your written submission and thank you for being here today.

BRUNELLO, Mr Dominic, Chair, Criminal Law Committee, Queensland Law Society

FOGERTY, Ms Rebecca, Vice-President, Queensland Law Society

CHAIR: Good morning and thank you being here. I invite you to make an opening statement of up to five minutes after which committee members will have some questions for you.

Ms Fogerty: Thank for inviting the Queensland Law Society to appear today. In opening, we respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place. We recognise the country north and south of the Brisbane River as the home of both the Turrbal and Yagara nations and pay deep respects to all elders.

Support for victims and survivors of criminal offending should be an integral part of the criminal justice system. Restorative justice is a way of expanding justice options for victims and survivors. In some cases it may not be possible or appropriate; however, in other cases it can be powerful if the objectives align with those of the victim. This is an opportunity to expand and enhance restorative justice services and corresponding legislation in Queensland. We are happy to take any questions you may have.

Mrs GERBER: Thank you for your appearance today. I note that you have kept your written submission quite tight and relevant only to the restorative justice principles and your recommendations around restorative justice, so I will focus my questions on that. I want to touch on the part of your submission where you talk about the youth restorative justice programs. Your members identify that the primary barrier to the youth restorative justice programs being successful is the delay in the restorative justice taking place. Can you talk the committee through a little more of the details around that? It is on page 2 of your written submission.

Mr Brunello: Maybe I can provide some preliminary responses. I think it is pretty well recognised—and, from memory, it is embedded within the youth justice legislation—that a child's conception of time is different to that of an adult, and it is important to deal with them for their offending or their contact with the system in a timely way so that the intervention has the best, most effective impact. Accordingly, delay in a diversionary mechanism like conferencing is capable of making it less effective.

Mrs GERBER: What are the current delays that we are talking about? Are you able to give us an idea of a time frame so we have an indication of what is and is not working?

Ms Fogerty: In relation to youth justice specifically, I think we would have to take that on notice. Certainly the delays are also experienced in relation to the current adult restorative justice program. In that regard, delays of a minimum of six months are well known to the courts.

Mrs GERBER: I am specifically interested in the youth justice restorative justice program. The reason I ask these questions is that I was talking with the victims of crime advocates from Toowoomba and they were discussing the fact that significant delays impede how successful restorative justice is for both the victim and the child because the child forgets. It needs to happen contemporaneously in order for it to have the maximum impact, like you just said. Perhaps you could take it on notice and get back to me in relation to the delays and the time frames.

Mr Brunello: Sure. I think you can take it from our submission that it is taking more than a week—often considerably more, as I understand it. About youth justice, we will need to check with the youth law committee, who contributed that part of the submission.

Mrs GERBER: I note that the Queensland Sexual Assault Network in their written submission have made the following recommendation—

- That any restorative justice model should be developed at the same time as substantial changes to the criminal justice system itself otherwise the restorative justice model will become the “poor person's” method of justice. Or it will not be under-utilised because the chances of success at trial are so good there is no incentive to plead guilty and utilise the process.

That is their view and assessment of some of the changes. In terms of restorative justice as a whole, you recommend that there be a significant increase in the allocation of funding. Can you give us some specifics around what the QLS would like to see as the improvements or the legislative changes needed to the restorative justice program in order to have the impacts that both of those submitters are talking about?

Ms Fogerty: I will have to unpack that question in a number of ways. We are talking specifically here about adult justice conferencing, not youth justice—which is distinct for a number of important reasons. We actually think justice mediation is very much under-utilised, particularly in the context of sexual offences. There has previously been a significant reluctance to enable sexual offences to be

dealt with in that way, because of issues or concerns in relation to domestic violence or power differentials and so forth. We do not think that in and of itself should be a reason to exclude justice mediation. If anything, all of the debate and the discourse over the last three years or so has been in relation to how the criminal justice system best addresses the special and significant concerns that victims of sexual crimes experience, as well as ensuring there are no false convictions. What is clear is that there needs to be a more diverse range of options.

Mrs GERBER: What are those more diverse range of options?

Ms Fogerty: Options to mediate sexual offences—no prohibition on the nature of offence that can be mediated.

Mr Brunello: I think at the moment there is a lack of legislative clarity around the model. As I understand it, the dispute resolution act is what governs the process. It was a piece of legislation brought in for a broader and different purpose. There are no specific ARJC provisions in any piece of legislation. It has just been fit into powers and a regime that was pre-existing.

The consequence of that is that it has grown up through informal protocols and policies. The informal protocols have included a list of disqualified matters. We are talking about a scheme that really only operates in Brisbane and another couple of major areas. It is not available throughout the regions of Queensland. It is heavily subscribed in Brisbane. You have to remember that these matters are going there with everyone's consent: the prosecution agree it should be mediated, the defence and the prosecution consult with the victim and it is voluntary.

Everyone wants to go to mediation, but there is a limit that is applied pretty arbitrarily on what can be mediated. As we apprehend it, it does not have the resources to do the job that it is being called upon to do. That is why we have a six- to eight-month delay between the point of referral for mediation and a mediator picking up the file.

Mrs GERBER: Just to be clear, what we are talking about here is different to restorative justice. So you are talking about court mediation—

Mr Brunello: No, we are talking about adult restorative justice mediation, which is a private, confidential mediation conference between the complainant victim and the alleged offender. It is confidential and privileged where the party is assisted by an independent, accredited mediator employed by the department of justice to try to achieve an agreement about how the offending can be dealt with between them that is mutually acceptable, to obviate the need for a criminal prosecution.

Ms Fogerty: And it is explicitly on the basis of restorative justice principles. It is a form of restorative justice that is available. We say it is underfunded and therefore under-utilised. There is significant potential for it to be used, for instance, to inform sentencing. At the moment there is not a practice in Queensland for victims and offenders to meet unless it is done through private processes, but that is something that with more funding and legislative clarity could form part of the process in Queensland, and there is no reason it should not.

Ms BOLTON: Mr Brunello, you made a comment that everyone wants to go to mediation. Were you meaning, for example, the perpetrator and the victim or their representatives?

Mr Brunello: I mean the perpetrator and the victim. Before the matter will be referred, by and large, almost invariably, it is an entirely voluntary process. It requires the free consent of the parties, so if a victim does not want to participate in a mediation there is no adult restorative justice mediation.

Ms Fogerty: Theoretically, the prosecution is a party to that process and they could disagree. Even if a victim consents, there may be broader public policy reasons they may deem it inappropriate. In theory, a magistrate or the referring judicial officer could refuse to send it to mediation.

Mr Brunello: They can because the parties need the adjournment that mediation takes, so the court's input is a precondition. The referrals only end up with adult restorative justice mediation at the Attorney-General with everyone's consent, and there is a six- to nine-month delay at the moment.

Ms BOLTON: Do we have any statistics on the percentage that seek or agree to that restorative justice mediation?

Ms Fogerty: It is very difficult to get statistics because, firstly, it is only really in Brisbane. Sometimes you can try to get matters mediated from other areas and they have to be adjourned into Brisbane. I have a matter out in a regional area where the complainant very much wants to mediate, but justice mediation have rejected it because it does not arise from Brisbane. It is very difficult to give statistics because, as Mr Brunello indicated, there is this degree of arbitrariness into it.

CHAIR: It is also confidential, isn't it?

Ms Fogerty: It is also confidential. That is an excellent point.

Mr Brunello: It is not predicated on a plea of guilty. There is no plea needed or sought; it is the bringing together of the parties. What it is predicated on is an understanding by the defendant that they have caused harm and they have done some wrong. It does not need necessarily to be framed in terms of criminal responsibility. They have done some harm and wrong and they have to be ready to show up, listen to the victim, accept the impact and sincerely attempt to make amends. It is very meaningful when it works. It has been shown to be much more meaningful than the blunt instrument of a trial or a sentence.

Ms BOLTON: That conferencing program and resources is what is needed.

Mr Brunello: We say it really needs to be extended throughout Queensland and wrapped in some legislation that makes it clear for everyone exactly how it is working.

CHAIR: Rebecca, you mentioned that the restorative justice process would help in relation to sentencing, but that has to obviously be outside the current—

Ms Fogerty: That is right.

CHAIR: How would that work in practicality?

Ms Fogerty: It is something that I think more and more legal representatives are exploring, particularly with the huge rise in cases that involve a domestic violence element where the victim and the perpetrator still have a degree of ongoing relationship with each other. That has seen a rise in private mediations, where both parties are privately represented and privately fund a mediator to help work through issues arising from the offending. Because it is private, it does not have with it the protections of justice mediation, but we do see those agreements being tendered to the court to support mitigation, to support genuine remorse. There is evidence of insight and of a mature approach taken by both the parties. That is different from the idea that the charges will be dropped. Those sorts of mediations are very common, for instance, in New Zealand and should form part of a justice system that is able to respond robustly with a diverse array of options.

Ms BUSH: I am trying to think of how to formulate my question because it is a bit big.

Mr Brunello: Lawyers understand that feeling.

Ms BUSH: Dominic, you kind of nailed it for me that, at the moment, we are trying to fit this model into an act that maybe is not designed for what adult restorative justice would look like. Also, at the back of my mind I am trying to formulate what recommendations might be coming from us, recognising that it is a big shift forward. What you are proposing, which I am a fan of, is to progress and expand the adult restorative justice program. I am trying to think of where there is a good model that we can look to. Obviously, to go from where we are to where we want to be takes time, capacity building and lots of legislative work and also working to address what the barriers might be. For example, some victims might balk at the idea, that mediation might impact on sentencing. There is a lot of work in what you have said, which I get and support. Is there a model or a jurisdiction that has some of those pillars?

Mr Brunello: I must say I am not sure. Rebecca referred previously to New Zealand and there might be some learning from there, but I would need to take that on notice.

Ms Fogerty: That is a question we would need to take on notice.

Mr Brunello: The interstate regimes would be worth looking at as well, but it is not well settled or defined in Queensland yet.

Ms BUSH: I think the challenge for us at the moment is that it is not well understood, it is not well communicated and it can be difficult to access at a time that a victim might want to access it.

Mr Brunello: I think one of the problems is that it is not raised as an option with victims by investigative or prosecutorial authorities. The proposal normally emanates from the defendant and it normally emanates from defendants who are represented, and particular standards of representation more often think of it. There is not access at the moment. It is not known and it is not often communicated as a matter of course. If it were more often communicated, there could be a significant subset of complainants and victims who would want to be involved.

Ms BUSH: This is not in your submission, but I would like to put a question to you around the uplifting of victims' rights and some focus on giving that a bit more teeth, potentially. Some people I speak with might suggest that it is difficult to advance victims' rights without an amelioration of defendants' rights, which I do not agree with and I want to put that to you. Can both be obtained? Can we still uphold and maintain principles of justice for defendants in Queensland and raise the voice and rights of victims simultaneously?

Ms Fogerty: I think part of why this is a really vexed and complicated issue is that we are an adversarial system of justice; we are not an inquisitorial system, so it is the defendant against the state. The victim is a witness; they do not have ownership over what happened to them and then what the process is going to be. Adversarial involves conflict. It is a system that prioritises evidence, not the truth. Unless there is some sort of radical departure, I think that is a tension. It does not mean that processes cannot be put in place and it does not mean there cannot be movements towards more understanding, but the fundamental right is for an accused person to confront and question their accuser.

Ms BUSH: I do not know if you are agreeing or disagreeing with me in that response. I hear what you are saying.

Mr Brunello: I think when you start traversing fundamental rules of evidence then there is irreducible tension. However, when it is less to do with that and more to do with awareness, advocacy for the victim, proper liaison with them, keeping them informed, that can all be improved in a coexistent way.

Ms BUSH: Thank you, that helps me clarify. If I can put it to you like this: there is nothing in the current Charter of Victims' Rights that impacts in a negative way upon the defendant's right to a fair trial?

Ms Fogerty: I do not know if we could say that.

Ms BUSH: Well, I will say that. If, then, it is about giving greater strength to the existing rights, can that be achieved?

Ms Fogerty: Do you mean by giving that charter the status of legislation?

Ms BUSH: Yes.

Ms Fogerty: And do you mean standalone legislation or as part of the Human Rights Act?

Ms BUSH: I am not sure about that, but just something where there is a greater enforceability for clear examples where it has not been met.

Ms Fogerty: It is a fascinating idea and there is a lot to be said for it. We are happy to further develop this because I think it is interesting. An initial view is that it creates a lawyers picnic because, like all human rights, they clash; they do not always coexist with each other. That then creates all of these opportunities for legislation to clash and lawyers to litigate it and judges to decide it.

Mr KRAUSE: In relation to the discussion we have been having about the adult restorative justice proposals that have been going forward, you said it was not predicated on a guilty plea. If parties enter into this voluntarily, does it stop a criminal process and put it on hold?

Mr Brunello: It does, yes. It is an adjournment for the purpose of the conference in place. If the conference is successfully concluded, the mediator reports back to the prosecution.

Ms Fogerty: The prosecution has a discretion about discontinuing the charge. That is often the case but not always the case. That is often the case because that is the incentive.

Mr KRAUSE: Can it form part of a plea bargain process?

Ms Fogerty: The difficulty is creating the incentive for defendants to engage in justice mediation. If there is not the option of the charge being withdrawn—particularly in circumstances where it might be a charge of fraud but it really is a business dispute between two people. In those cases where the criminal conduct is kind of marginal or borderline, the fact of the charge being withdrawn is a really important incentive and a way to get cases moving.

Mr KRAUSE: Can I ask again: is it possible, though, or has it occurred that it is part of a plea bargain process?

Ms Fogerty: More so in relation to private mediations where it has gone through the private—

Mr KRAUSE: That is what I am talking about.

Ms Fogerty:—and not through the act.

Mr KRAUSE: My follow-up question to that, given that we have time constraints is: is the outcome of the mediation, in all sorts of cases, tendered to the court and made public, or is that all confined to the private process?

Ms Fogerty: It is confidential. In a private process, the mediation agreement can be provided to the court if that is part of the agreement and the parties consent. Under the act, that information is not provided to the court. It is secret.

Mr Brunello: In answer to your question, after a mediation is concluded, if it is successful—and what that means at the moment is that a written agreement is achieved between the complainant and the defendant—then the court and the prosecution are notified of the success. They are not given a copy of the agreement. That is secret under the dispute resolution. Everything that happens in mediation is a secret. The court and the prosecution are notified there has been a successful resolution and then the prosecution exercises its discretion as to what, if anything, to do as a result of that. Yes, it can result in a downgrade of charge—

Mr KRAUSE: Or a withdrawal?

Mr Brunello:—or a withdrawal or an acceptance at sentence that the defendant has shown insight, remorse and an acceptance of personal responsibility.

Mr KRAUSE: I understand. When we are talking about criminal actions, some of which would be at the higher level of infringements on people's property rights or personal body rights, shouldn't that sort of thing be done in the open?

Ms Fogerty: But then a defendant cannot go through the process, because any admission could be used against them if the mediation does not work out so it just falls at the very first hurdle. You could not properly ever advise a client to go through mediation because if it fails it can get used against them. It violates the principle of a right to silence.

Mr Brunello: It has to be secret or least (inaudible) principle.

CHAIR: Thank you for your evidence today. Thank you for your written submission. I understand two questions were taken on notice. The first one is about time frames for referrals to the youth restorative justice system. Again, if there are issues let the secretariat know, but please provide that answer by Monday, 24 April. The second question was about any information you can give us about other jurisdictions working in the adult restorative justice system. That would be helpful, again by 24 April. If the time constraint becomes problematic because of what we are seeking, please communicate with the secretariat, who are very understanding.

Mr Brunello: We will do.

CHAIR: Thank you for your time.

LEONG, Ms Rebekah, Principal Lawyer, Queensland Human Rights Commission

McDOUGALL, Mr Scott, Commissioner, Queensland Human Rights Commission

CHAIR: Good morning and thank you for being here. I invite you to make an opening statement of up to five minutes.

Mr McDougall: Thank you, Chair, and good morning, committee. The commission is not involved on a day-to-day basis with the criminal justice system; however, in our submission we have sought to assist the committee by providing an overview as to how victims' rights are protected in Queensland including through complaint mechanisms available to victims. We support the establishment of a dedicated victims commissioner whose functions include advancing systemic issues for victim-survivors and facilitating collaboration between relevant agencies. We also support the potential expansion of a pilot intermediary scheme to support vulnerable witnesses and victim-survivors of sexual violence.

The upcoming review of the Human Rights Act and the likely review of the victims' charter provide opportunities to consider the appropriate scope of victims' rights, whether greater clarity is needed about the application of the Human Rights Act to victims and to address concerns that I note have been raised today about the lack of enforceability of victims' rights. It is clear that more reform is needed to ensure that the rights of victims of crime are upheld by all participants in the system and that victims receive the support, empowerment and engagement they need for justice to be achieved. I am happy to take any questions.

Mrs GERBER: In relation to the dedicated victims commissioner, I can see from your submission that you envision it being an advisory role but in relation to systemic issues. Do you see the victims commissioner directly supporting victims of crime? Can you delve a bit deeper into that for the committee?

Mr McDougall: It is a good question. I accept that there would be many in the community who would want much more than just an advisory role from a victims commissioner; they would want a champion to take up their particular matter. I think there is a discussion that needs to happen about the resourcing of services. From listening to the evidence today, it has been great that that discussion is happening. As a former lawyer within the community legal sector service, I can tell you about the extent of wraparound service delivery that is available through that model that would not otherwise be available through a government provider. I think there is a bit of work to do in the development of the role of the victims commissioner, particularly around its functions, where it sits, what it actually does and what it cannot do. All of those things, I think, really need to be fully explored, including through a process like this.

Ms BOLTON: I was looking at page 11 of your submission and the fact that the right to a fair trial under the Human Rights Act only refers to the rights of the person charged with a criminal offence. It is said in here and by the Women's Safety and Justice Taskforce that the consideration given to the recognition of victims' rights or the Charter of Victims' Rights in the Victims of Crime Assistance Act 2009 should be expanded and incorporated into the Human Rights Act 2019. I note down below you said on its face that you support the level of clarity in victims' rights but suggest a full assessment. How long would that assessment take and what could it incorporate?

Mr McDougall: It should not hopefully take terribly long. I do think, as we said in our submission, that the review of the Human Rights Act, which is due after 1 July, is a good opportunity to look at victims' rights and whether they are adequately protected by the act. At the moment, arguably several victims' rights are protected both by the Anti-Discrimination Act and the Human Rights Act, but articulating that to victims is not obvious on the face of either acts that they are specifically addressing the rights of victims. I definitely think there is scope for improving it. I think there is opportunity for articulating in greater detail the nature of those rights. Whether that is done in the victims' charter or in the Human Rights Act itself I think is something that does need to be worked through.

There are two points I would like to make today. When we talk about the enforceability of victims' rights through the Human Rights Act, it is important to understand that there is a limited basis on which a victim can actually enforce their rights under the Human Rights Act as it presently stands. There is a provision in section 59 of the Human Rights Act that enables someone to raise a human rights issue if they have a standalone cause of action. That is not a direct cause of action created by the Human Rights Act. It is important that that is understood if you are looking at enforcing victims' rights through the Human Rights Act.

The other point I would make is that relying on complaint mechanisms to improve a system is inherently problematic. Particularly relying on victims who in many cases have experienced severe trauma to be the ones who carry the burden to improve the system through a complaint mechanism—there are real issues with that approach. However, having an enforceable complaint mechanism should have a deterrent effect, if you like, on the participants in the criminal justice process to actually ensure they lift their game. If they know that a complaint could be made and it could go all the way through to a determination by QCAT, for example, then they are going to be far more likely to work to improve their systems so that their systems work for victims.

Ms BOLTON: Would you say that they would be the two key improvements that you see need to be taken forward?

Mr McDougall: Yes. I think there is pretty widespread agreement, from what I can gather from today's evidence, that there is a need for enforceability when it comes to victims' rights. I think there is also a need for a clearer articulation of what those rights are and what they mean for the various participants in the criminal justice system.

CHAIR: Scott, if I understand your previous evidence, under the Human Rights Act it would be problematic in victims achieving that?

Mr McDougall: I should be very clear: a person in Queensland right now who feels that their rights have been unjustifiably limited, including victims, can make a complaint to the commission. That complaint will be dealt with in the following way. We will get the parties together and we will try to resolve it. If it cannot be resolved then the commission can publish a report which sets out recommendations as to how human rights can be better complied with in the future, but that is where the matter ends. It cannot keep going on to a tribunal for an actual determination. That is the limit of enforceability under the Human Rights Act as it presently stands. I certainly would not discourage anyone who felt that they had a genuine grievance from coming forward to the commission and it may be an appropriate vehicle for addressing their issue.

CHAIR: Dealing with the second limb of your submission, for someone to be able to take it to QCAT, how would you suggest that process be undertaken: through a standalone piece of legislation or incorporated into a piece of existing legislation?

Mr McDougall: That is something I would want to have more time to think through in terms of exactly how. I think the processes we have coming up, with the review of the Human Rights Act and also the victims' charter, do allow for that. Where it all lands and fits ultimately I would not want to take a position on right at this moment, but I think we all agree. I think there is widespread agreement about where we want to be; it is just how we get there.

Ms BUSH: Chair, you have probably picked up on the question that I was interested in. There seems to be broad agreement that the rights that are there now are good rights and principles to have, but the degree to which they are communicated, understood and then upheld is probably where we are looking at doing some work. I was trying to think how we would progress that, recognising there is a bigger piece of work coming in the work that you are doing. Would it be a matter of strengthening it within the Victims of Crime Assistance Act? I know the VoCA Act has some provisions that narrow the enforceability of the charter. Could it be something that could be dealt with in the VoCA Act? You have probably answered that already in saying that you do not want to have a position—

Mr McDougall: Look, it could well be. We really have not had time to sift through it and work through what the best option is.

Ms BUSH: Are you aware of any victims who have gone through the charter complaints process and then not been satisfied and have come to you to potentially look at taking it further under the Human Rights Act? Does that happen often? I had not turned my mind to the fact that they could actually do that.

Ms Leong: We have not been able to draw statistics from our database in terms of how many victims have made complaints to us, unfortunately. That is not how we record our systems, but I am aware we have received complaints from victims. I am not too sure about the details of those or whether they tried to use the complaint mechanisms under VoCAA first before coming to us.

Ms BUSH: We have heard in other submissions from the department that there has been such a small amount of complaints—around 20 complaints a year are made—which some might celebrate and say it is a good thing, but actually it is not. What it is demonstrating is that there might be a lack of understanding that victims can make a complaint. I wonder if part of the issue is that we just do not have a size big enough to analyse, potentially.

Ms Leong: To clarify one matter, before they can make a complaint to us and have it accepted by the commission, they actually do need to make an internal complaint to the agency they are complaining about. That would come under the processes that are provided by the Victims of Crime Assistance Act.

CHAIR: Dealing with the process that you were talking about in relation to the review of the victims of crime legislation and review of the human rights, is there a time line when that would be initiated or finalised, or is it still in the making?

Mr McDougall: I can only speak for the review of the Human Rights Act. My understanding is that there are discussions going on within the department about the procurement of an independent reviewer, and the act itself provides that the review must take place after 1 July 2023. That is as far as I can answer.

Mr KRAUSE: I refer to paragraph 21 of your submission, where it says that victims, as much as possible, should not be retraumatised by the criminal justice process and that failure to do that may amount to contravention of particular rights—equality, privacy, prohibition against torture et cetera. Given that some criminal matters require there to be adversarial pursuit of the facts in a matter, does that not raise a whole heap of ramifications for the right to a fair trial, which you have indicated in the paragraph above needs to be balanced against all of that? Assuming that there was a breach of those rights referred to previously against torture or privacy, what would be a consequence? We are talking hypothetically here about new rights being included in the Human Rights Act, but how do you balance that? If there was deemed to be a contravention of a victim's rights, what would be the consequence in that scenario?

Mr McDougall: Thank you for an excellent question. I heard the evidence of the Law Society. I should say that it is a long time since I called myself a criminal lawyer, but I would disagree to some extent with what the president was saying to this extent: there is scope within the adversarial system to accommodate the rights of victims. The Victorian Law Reform Commission far more eloquently stated it in their report, so they are not necessarily mutually exclusive.

The practical question you asked about what one would do in that instance—I should also say, from what I have seen of the role of the intermediaries, I think they have great potential to improve the practical day-to-day experiences of victims, because they are dealing with their issues right at the very front and the beginning rather than relying on a complaint mechanism at the end to try to drive change in the system. If there was an intermediary there, they may well go a long way to avoiding any of those problems arising, but if there was no intermediary and you were relying on the rights then it would be that the person could make a complaint to the commission and—

Mr KRAUSE: Against whom? The court?

Mr McDougall: As it currently stands, the DPP have obligations under the charter of rights, as do police and potentially the registry. If the court failed to provide, for example, an Auslan interpreter for a victim, that would be a complaint against the court. There is definitely scope for amplifying the rights of victims without derogating from the rights of the accused.

Mr KRAUSE: We just need to find that way and in a way that balances all the other rights as well. I do not mean to labour the point, but, in trying to balance all these particular rights, is it not possible—and feel free to not answer if you do not want to—that we could go through a criminal justice process where there is adversarial cross-examination, defendant found not guilty, then complaints brought about the process which could re-try similar matters in a different forum?

Mr McDougall: It is an interesting question, and that would no doubt be a risk, I imagine, if that did eventuate. The civil proceedings would always, as is the case at the moment, take a back seat to the criminal proceedings. There is no reason in theory why that would not be the case now as well.

CHAIR: Dealing with the last aspect of what you were talking about, Scott, all those decisions could be made by the judiciary. For example, if there were issues that were being raised in the civil matter that directly came from the criminal matter, that would be up to all parties, including the adjudicator, to make rulings on; it would not prevent the entirety of the complaint going ahead?

Mr McDougall: I could foresee a situation. When I was the principal lawyer at Caxton Legal Centre, I recall a criminal trial where a judge contacted Caxton Legal Centre and asked for representation of a victim in the hearing of a particular point about how the evidence would proceed. There is scope for that, definitely. I could foresee representation of a victim in criminal proceedings where on a particular point the judge hears from the victim's lawyers. As I said, it has been a while since I practised in the area, but I imagine that is happening; it is just not in a way where the victim's rights are clearly articulated and protected.

Ms BUSH: I know we have talked about it a little bit, but I think it is important to revisit—and I appreciate it is a bit beyond your submission. On this idea that victims' rights and defendants' rights are always conflicting, I would put to you that they are not; at times they might be, but at times they are completely separate issues. You have raised a couple of those points around when attending court, can the victim see and hear what is going on? Can they understand what is occurring? That is not taking away from a defendant's fair trial at all. I am hearing that there is a role for some kind of independent advocate, because it is one thing to make a complaint after everything has occurred but to have someone there in real time that can uphold those rights in real time would be beneficial.

Mr McDougall: I would certainly support resources being deployed to ensure that victims are able to get proper advice and advocacy where required.

Mrs GERBER: We heard from Queensland Law Society around the process of restorative justice and how that process is in secret and confidential. In the context of that, is there a way that government agencies might be able to balance the right of victims to information with confidentiality provisions? Do you see a way forward where we could balance that so that we are still making decisions open and transparent and that the rights of victims are there to be able to understand an outcome, not only in the mediation but also in the court process?

Ms Leong: I am not sure if I understand the question. Victims are part of the mediation restorative justice process, so they would not be ousted from understanding the process, which is obviously very important to victim recovery and understanding of the court process.

Mrs GERBER: I am talking about those decisions being made in secret, meaning that the outcome of that is not known. I understand that Queensland Law Society's submission is that you cannot have it both ways: if it is not confidential, then it could be used against the defendant in trial down the track. However, in terms of there being a plea bargain occurring in those situations, how do we balance the rights? If we are moving towards an adult restorative justice process and there arises a situation where the prosecution exercises their discretion and drops a charge but the public does not know and other victims of the same crime do not know why or what that outcome was because it is a secret process, how do we balance those rights? Is there a way forward there in terms of having an open and transparent process that delivers justice and the immediate benefits that restorative justice provides to the victim and the perpetrator?

Mr McDougall: I understand your point. It is a question we would want to take on notice and give some thought to. The Human Rights Act provides for proportionality and the mechanism for weighing up various rights with regard to the importance of public understanding what has happened versus the individual rights of a person to maintain confidentiality. I think it would possibly come in on a case-by-case assessment, but, yes, I think we would need to look at that in detail before giving you a meaningful response, I am sorry.

Ms Leong: To add to that, the commission processes are also confidential for the same reasons that we do not want that information to be admitted into a civil hearing or criminal hearing, and the way we use that information in the annual reporting that we do—we can publish human rights complaints without identifying people. This information can still be communicated to the community so that people can have improved understanding and statistics on outcomes, but they do not need to know individual details. There may be changes that could be made to the law where parties could agree not to be confidential so that the power is with the parties to decide whether these proceedings should be held confidentially or the outcomes at least should be confidential or not. There are options available.

Mr McDougall: To add to that, it could be a function of the victims commissioner themselves to work through those issues so that they meet that public interest of knowing what is happening.

CHAIR: Thank you for your evidence today. In relation to the question taken on notice, could you provide a response by Monday, 24 April? If that is too short a time, would you please communicate with the secretariat and they will extend you the courtesy. Thank you for your evidence and for your written submission.

That concludes the hearing. Thank you to everyone who has participated today and all those who have helped organise this hearing. Thank you to the Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 11.59 am.