LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mr JE Hunt MP (virtual)
Mr JM Krause MP

Staff present:
Dr J Dewar—Committee Secretary
Ms M Salisbury—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2023

TRANSCRIPT OF PROCEEDINGS

Monday, 10 July 2023

Brisbane

MONDAY, 10 JULY 2023

The committee met at 10.01 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Justice and Other Legislation Amendment Bill 2023. My name is Peter Russo, 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 people, whose lands, winds and waters we all share. With me today are: Laura Gerber, member for Currumbin and deputy chair; Sandy Bolton, member for Noosa, via videoconference; Jonty Bush, member for Cooper; Jason Hunt, member for Caloundra, via videoconference; and Jon Krause, member for Scenic Rim.

This hearing is a proceeding of the Queensland parliament and 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 on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone if they would be kind enough to either turn their mobile phones off or to silent mode.

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

DUNN, Mr Matt, General Manager—Advocacy, Guidance and Governance, Queensland Law Society

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

CHAIR: Good morning and thank you once again for being here with us. 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 you for inviting us to appear. In opening, I would like to respectfully acknowledge the traditional owners and custodians of the land on which we meet. The Justice and Other Legislation Amendment Bill is a large omnibus bill that significantly amends several pieces of legislation, many of which are unrelated. We note, and have noted previously, that omnibus bills are inappropriate. They have the potential to breach fundamental legislative principles because members are required to support or oppose the bill in its entirety, whereas several of the amendments proposed in the bill would be more appropriately addressed in specific standalone bills.

We wish to make the following supplementary comments to our written submission. In respect of the non-publication amendments, we object in principle to the reforms. This is because of their potential to impact upon a fair trial. In noting our objection, we of course acknowledge also that open justice is a fundamental principle that underpins our criminal justice system. We note that this bill has been introduced before the publication of the sexual violence media guideline. We support measures for responsible reporting of the criminal justice process by the media. The proposed changes will create a greater burden on the media and reporting agencies to report responsibly and accurately. We also note our concerns about the time period of only three days notice that must be given by an applicant seeking a non-publication order. This creates a number of hurdles for the defendant and complainants who may be affected by the publication of identifying information.

Regarding the legislation in respect of an unborn child, we have previously not opposed in principle the recognition of an unborn child being named on an indictment, and obviously we recognise that recognition can be very important to victims. Now that we have had an opportunity to review the bill, we are opposed to the naming of an unborn child on an indictment. An indictment is not the

appropriate place to name an unborn child if it is not going to form a separate circumstance of aggravation or a separate charge. The indictment, as a matter of law, should contain nothing more than the elements of the offence that the accused person must meet. We adopt the submissions of Legal Aid that the naming of an unborn child on the indictment will create uncertainty about causation and it operates in effect as a de facto circumstance of aggravation, contrary to the principle of the High Court in The Queen v De Simoni. Whilst we recognise the underlying intent to provide specific recognition of a fetus, we think appropriate recognition could be achieved without changes to the substantive law. We strongly support the proposed amendments to expand support to a deceased or grievously injured unborn child's family.

In relation to the amendments to the Legal Profession Act, we broadly welcome the proposal to increase the detailed cost disclosure amount. However, we have proposed some amendments to the bill to ensure that the legislative intention to reduce the regulatory burden for law practices is achieved. We do not want the changes to inadvertently deter practitioners from undertaking low bono and smaller matters.

We welcome the document destruction provisions of the bill and, to ensure clarity for practitioners and their clients, our submission outlines some suggested amendments. We note that the Department of Justice and Attorney-General has provided a detailed submission to the committee outlining its various responses to stakeholder submissions which indicates that some of our suggested amendments will be further considered, and we thank the department for their ongoing willingness to engage with us.

We welcome the amendments to the Oaths Act and the oaths regulation for electronic signing and witnessing. We also support the amendments to section 59 of the Civil Proceedings Act to clarify the entitlement to interest after a money order. I am joined here today by Mr Dominic Brunello and Mr Matt Dunn.

Mrs GERBER: Thank you for your appearance, your oral submission and your written submission. Thank you for making very clear the position you are taking in relation to publishing the identity of defendants in sexual offence proceedings before committal. I want to ask you a question in relation to recommendations 83 and 84 of report 2. You note that, in your view, recommendations 83 and 84 are meant to work together in that the proposal to remove the restriction on publication of the identity of an adult accused of a sexual offence before a committal hearing where it would not tend to identify or lead to the identification of a victim-survivor works in conjunction with recommendation 84, which involves the department developing a sexual violence media guide to support responsible reporting of sexual violence. Is it your position that the department should develop that material before implementing the reform that is happening in this omnibus bill, or is it your position that you object in principle to the reforms regardless?

Ms Fogerty: We object in principle to the reforms regardless. If they are going to go ahead then the recommendations in the report should be followed.

Mrs GERBER: Are you able to give the committee any further information around any consultation that has been done or whether the department has done anything in relation to developing the sexual violence media guide to support responsible reporting of sexual violence?

Ms Fogerty: We are not aware of the content of any guideline.

Mrs GERBER: I turn to a separate issue in the bill: the proposed amendments in relation to an unborn child. Has the Law Society had an opportunity to read Ms Sarah Milosevic's submission to the committee?

CHAIR: Probably not, because it came in late. It is deemed to be before the committee but we have not published it.

Mrs GERBER: Can I refer to it?

CHAIR: We can refer to it, but the disadvantage for the Law Society is that they have not seen it. We can give them a copy. It was a submission that arrived late so we were not able to publish it.

Mrs GERBER: Can I move that it be published now?

CHAIR: You do not need to. It is published automatically by being received. The difficulty was just getting it in a position where we could advise people.

Mrs GERBER: I just wanted to understand the context of the Law Society's position, in particular in relation to the case that is currently before the committee. In my view, the proposed amendments are really trying to deal with a situation like this. I understand the Law Society's position in relation to the legal document of an indictment and the meaning that has in law, but I also understand the human

element involved in this. Maybe I will give you a bit of time to read that and then come back to the question. Chair, do you want to go to someone else, because I feel it is unfair to put them on the spot?

CHAIR: Yes, we will come back to you.

Ms BOLTON: I refer to page 2 of your submission. You also mentioned this in your oral submission. Your submission states—

> QLS considers that the appropriate balance between the ability of a complainant to tell their story and for the accused to receive a fair trial ...

I am just trying to get a better understanding of that.

Ms Fogerty: That is a really good question and one that is complicated to unpack. The first thing is that the criminal justice system is not an opportunity for a complainant to tell their story. The criminal justice system involves a charge being brought by the police on behalf of the state to which an accused person must answer. That charge is proved by way of evidence, and the charge has to be proved beyond a reasonable doubt. It is not designed to be the forum for anything other than the complainant and other witnesses to the offence to come to court and give admissible evidence about what happened. The difficulty is that the threshold for charging a person is significantly lower than the threshold for committing a person to the higher court, and it is particularly complex and vexed in the case of sexual offences because they rarely involve other witnesses and they almost invariably involve one person's word against another.

The thing about these sorts of offences is that, where publication of a person's identity occurs after they have been charged but before there has been any testing of the evidence by way of a committal hearing, incorrect or inaccurate reporting can compromise the ability of the person to receive a fair trial and can also have tremendously adverse and unintended consequences for victims who do not wish to be identified. In that regard, we have to acknowledge that victims are not homogenous; they are people with all sorts of different views about things. In our view, a law that ensures the nondisclosure of an accused's identity prior to the testing of the evidence is the best way to achieve that balance. It is, of course, a balance and it is, of course, going to be imperfect.

Ms BOLTON: Is there any other way to achieve what is trying to be achieved through the proposed amendment which aligns with the various outcomes that are trying to be achieved for greater safety? Is there any alternative?

Ms Fogerty: It comes down to a balancing of competing fundamental principles. When push comes to shove, the right to a fair trial in this particular context—prior to a conviction; prior to a committal or the testing of the evidence—has to be paramount. Of course, once a person is convicted—or once a person is even committed, so that there has been some level of engagement with the strength of the evidence—then it is a very different scenario.

Mr Brunello: If the objects of the removal of the prohibition on publication are said to be as were identified by the task force—may encourage victims and other witnesses to come forward, help prevent further offending, contribute to constructive community discussion about sexual violence—there are other things that can be done to achieve those desirable effects that do not involve the publication of an accused's identifying particulars in the mass media before there has been any opportunity to test and scrutinise the evidence to see whether they have a case to answer. There can be public awareness campaigns, there can be victim support and there can be avenues for increased understanding of the implications of this offending. What this amendment is designed to remove is a protection for an unconvicted accused at the very first stage of their proceedings, when all they are confronted with is an unproven allegation that no-one has tested. Recent events interstate have shown that the decision to charge can be very imperfect. Reputational damage does not diminish necessarily when a prosecution is discontinued.

Ms Fogerty: As criminal defence lawyers, we are well aware that any time a client charged with that sort of offence and their matter makes the media—and the reporting is normally inaccurate—they will lose their job and they cannot get another job. That availability and access to legal representation also goes to the heart of the ability to get a fair trial.

CHAIR: Before we move on, Laura, you were correct: we should pass a resolution to publish, because the rule says 'until the submitter is here to give oral evidence'. The motion is that the committee resolves to accept and publish submission No. 12 from Mrs Sarah Milosevic.

Mrs GERBER: Agreed.

CHAIR: Moved by Laura and seconded by Jon. All those in favour? That is carried. Thank you.

Mrs GERBER: Now that we have resolved that, I will turn to that submission.

CHAIR: Yes, if they are ready.

Mrs GERBER: Is it okay if I address that now?

Ms Fogerty: Yes.

Mrs GERBER: I first want to point out a couple of the main points in that submission. Essentially, it occurred on 29 August 2014. She was walking with her husband. A driver, who the submission says was drunk and high on drugs, the main one being methamphetamine, decided to drag-race another vehicle and collided with her. She was 39 weeks and six days pregnant. She suffered catastrophic injuries to her unborn child, who later passed away. On the second page she says—

> The impact on a family that loses a child because of someone else actions adds another layer of grief, there was no justice for us. He lost his licence for 5 months and a $950.00 fine for the cost of a life, this law reform while it doesn't bring your child back at least you know that your baby counted. She received a birth Certificate, death certificate and was count as a death on the road toll, the only place she wasn't counted was in a court, how can we say she mattered when the court can not recognize your child.

I put to the Law Society: how do you propose to rectify this situation, given the position that you have taken?

Ms Fogerty: It is an awful situation. As someone who has very close personal experience of those matters and similar contained in that letter, it is a deeply touching and deeply vexed issue. Anyone who has been pregnant and lost a child knows that, at a human level, the idea that your child does not matter or cannot be recognised or that it is not the most grievous form of violence to yourself—they would feel that the current legislative balance does not deal with that situation. The reality is that hard cases make for bad law, and the criminal law here will extend beyond this particular situation such that it will create significant uncertainty and bad law because of the longstanding issues associated with recognising an unborn child and the philosophical and other challenges it creates in all other areas.

Specifically in the criminal law context, recognising the name of an unborn child on an indictment in the current proposal in the bill is, we say, profoundly misconceived. If the intention is to recognise the death of an unborn child then the way to do that is through the creation of a separate offence, but we know why that is not possible and we know that that is a deeply dangerous, slippery slope which will impact upon when medical abortions can be performed which will impact upon right to life and all sorts of other complicated issues that are beyond the scope of today. Naming an unborn child on the indictment will do exactly that; it will have that effect. That is because anything that is on an indictment has to be proved; it is part of the evidence that has to be proved.

If somebody is driving a motor vehicle in a dangerous way and they are not aware that the other person driving is pregnant, a fundamental principle of the criminal law is that there be some level of intent of awareness of knowledge in order for that person to be criminally responsible. It creates an incredible challenge if you are looking to increase penalties when there may not be the fundamental level of knowledge that is required for the legislation to not offend core principles of liberal justice that have been part of our system for years.

Mr Brunello: There are myriad factual circumstances which will be problematic. For example, if the pregnant woman is the driver who has driven dangerously and causes the death of her own unborn child, consistency and predictability will require her child be named on the indictment and her sentence be aggravated. Sophie's mother was in late-stage pregnancy, but at a much earlier stage there are issues about the commencement of life about which, indeed, medicine is in fundamental disagreement—the difference between an embryo and a fetus. We have an offence within the Queensland Criminal Code dealing with the killing of an unborn child, but to apply this aggravating factor more widely to the other serious offences that are nominated, which are far more frequently charged and will see an increased incidence of these issues arising and require an increase in the sentence to be imposed—it has the broad philosophical issues but a lot of practical implications as well.

Then there is the inconsistency and tension with the current state of the common law and the De Simoni principle: a person cannot be sentenced for an offence for which they have not been convicted. That sounds pretty simple, but in fact it really can become quite complicated when you start to include an aggravating factor that has an unclear legal character in section 9, the principles of sentencing, but do not charge it as a circumstance of aggravation. If it is charged as a circumstance of aggravation, it must be stated on the indictment and it must be proved beyond reasonable doubt. What this bill intends to do is create a new species of consideration for sentencing purposes where it is not alleged and not charged. That is not without legal precedent but it is fraught with problems.

Nothing I have said is meant to diminish in any way the horrific effect on the mother of this child or the legitimate views that some people have or the differences of opinion about when life commences. However, these are courts and courts have to operate on the basis of rules and evidence.

Mrs GERBER: I note that it is not mandated that the indictment include the name of the unborn child; it is something that has a degree of discretion to it. Also, on the submission from Sophie's mum, whilst that instance occurred in 2014 there have since been 14 other instances in a similar vein that have joined the cause in relation to advocating for this reform. When we are talking about a 'one-off', it is not really a one-off case. There have been a number of other cases similar to this where it has been felt that the law is not in step with the injury that has occurred.

Ms Fogerty: That may well be the feeling, that it is a case of not necessarily denying the reality of both emotion and the matter of fact that there will be people in the community who feel like the law as it currently is does not adequately address this awful situation. However, the ways to address it will create more difficulties, more inequality and more uncertainty in the law and in other areas, not just in the criminal law. That is a worse outcome.

Mr Brunello: The other thing is that the Crown in each one of those cases has had the option of charging the offence that exists. There is an option available to the prosecution, if they consider the case is one that justifies that element of the allegation being charged. That is not unavailable. It is just that the decision has been made not to do so.

Mr KRAUSE: You are talking about section 313?

Mr Brunello: Yes.

CHAIR: I do not want to close down the questions on this immediately but I am conscious of time. Do you have a question, Jonty?

Ms BUSH: Thanks, team, for your written submission and for turning up today. I want to say that I heard what you have said today. I hear your point of view and I appreciate how you have got to that. Certainly you have given us a lot to think about. I am not going to debate some of the broader aspects of it. I want to pick up on the three days notice of the non-publication order. What kind of time frame do other jurisdictions provide for, do you know?

Ms Fogerty: We would have to take that on notice, I am sorry.

Ms BUSH: We could probably find out but, if you would not mind, I would be interested in knowing that.

Ms Fogerty: Apologies: we cannot answer that.

Ms BUSH: I would not have expected you to be across it all. Thank you.

CHAIR: Could you repeat what it is that you want?

Ms BUSH: On the three days notice of the non-publication order, what time frame is provided for in other jurisdictions?

CHAIR: Is that how you understand the question?

Mr Brunello: Yes, and we will respond.

Mr KRAUSE: In relation to the first issue you were talking about, which was identifying defendants in sexual offence charges, is it the society's view that the Women's Safety and Justice Taskforce got it wrong on this?

Ms Fogerty: We do not agree with that recommendation.

Mr KRAUSE: In relation to that recommendation, can you tell us whether your counterpart organisations in other states and territories hold the same views, if you are aware, about these types of provisions that are enacted in other states and territories?

Ms Fogerty: We are aware, obviously, that the Queensland legal position is different from the other states and territories. We would have to come back to you, unfortunately, about what the position of interstate law societies is. It is not necessarily an issue that has arisen contemporaneously with what is happening now. We would have to do some research.

Mr KRAUSE: Forgive me if it is outlined in your submission, but how is this bill different to the counterpart provisions in other states and territories?

Ms Fogerty: I do not think it is.

CHAIR: Does that question need to be taken on notice?

Mr KRAUSE: No, it does not.

Ms Fogerty: Wasn't the question about the views of other law societies?

Mr KRAUSE: It was, yes, but I do not need you to take it on notice. I just wondered if you did know off the top of your head. It is okay, thank you. I could ask them.

Ms BOLTON: Rebecca, I want to go back to the Sophie's Law submission, where Sarah and Peter said that there was no law that the perpetrator could be charged under. On page 7 of your submission, at paragraph 4, you say there are ways to recognise the death of an unborn child—and I think you have mentioned this in your previous response, talking about justification. Can you explain just a little bit better in that situation what that perpetrator could have been charged with to ensure the sentence reflected the gravity?

Ms Fogerty: The issue is whether or not the conduct of the person charged to the criminal level of beyond reasonable doubt caused the death of the unborn child. That is the fundamental—

Mr Brunello: `Killing unborn child', section 313 of the Criminal Code, could have been charged on the basis of gross criminal negligence—that is, driving not to the standard required resulting in the killing of an unborn child. There is another offence that would have been available to charge. Why it was not is not something we can answer.

Ms Fogerty: It is difficult, because we do not have the basis on which the person was sentenced.

Mr Brunello: The next step is the recognition question. In the course of sentencing, the judge is fully entitled to take into account any factual matter that would tend to increase the seriousness of the offence, make opening remarks about that in open court and receive a victim impact statement detailing that. The precise facts of Sophie's particular case are not known to me, so I do not know how it was that there was a $950 fine or what the offence charged was or resulted in the conviction in that case. If that has happened, it is an aberration. That is not solid ground for law reform because I have never had a case, in 20 years, where my client has been involved in an accident resulting in that consequence and has not been charged with a very serious indictable offence where that would have been front and centre in the assessment of gravity and culpability at sentence. Why that happened I do not know, but it is very surprising and anecdotally not common. The injuries to unborn children might be more common, but I would consider they are generally taken into account in the criminal process in terms of either the charge or the sentence.

Ms BUSH: To round out the conversation, my interpretation of what you are saying is that you are supportive of some of the other recommendations around bolstering the recognition in the Victims of Crime Assistance Act and ensuring they can access funeral compensation. I think what you are saying is that that is your preferred method of seeing that recognition given, through that model.

Ms Fogerty: Recognition in any way in the indictment or statutory recognition that increases the penalty, makes it a circumstance of aggravation or brings about the very vexed issue of personhood for a fetus we do not support. The other recommendations will have, we hope, a real practical effect on families as they seek to start the lifelong processing of trauma.

Ms BOLTON: In your last response you mentioned victim impact statements. In Sophie's situation, they put in their submission and they tried to tender evidence, including victim impact statements and photos, yet were denied. Why would this occur?

Ms Fogerty: Because it may not be what happened. Their perception of what occurred may not be what the evidence shows. The person is getting sentenced on a specific factual and evidentiary basis. The victim impact statements may contain material that is not relevant to the sentencing discretion. Unfortunately, we do not know because we do not have any material about this case other than a very affecting letter by her mother.

Ms BOLTON: My apologies: I thought the reference to victim impact statements was about a way of having recognition, yet how do you get that recognition if it is denied?

Mr Brunello: If the correct charge was before the court, there is no feasible way this child's mother would not have been able to give a victim impact statement.

Ms Fogerty: That is correct.

Mr Brunello: Again, this is all unknown to us, but it is difficult to conceive how the things she describes could have happened—unless there has been a major error in the prosecutorial process, which we hope is uncommon.

CHAIR: Thank you. There was one question taken on notice. Is it possible to have the answer back to the secretariat by the close of business on Friday, 14 July 2023 so that it can be included in our deliberations?

Ms Fogerty: Yes.

CHAIR: If there are issues with the time line, please contact the secretariat. I understand that they are very accommodating. Thank you for your appearance. Thank you for your written submission. It is always very helpful to the committee in its deliberations.

BROMLEY, Ms Nadia, Chief Executive Officer, Women's Legal Service Queensland

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

Ms Bromley: Good morning. I would like to acknowledge the traditional owners of the land on which we meet today. I am grateful for the opportunity to contribute to the committee's review. Every year our service supports thousands of women, the overwhelming majority of whom are experiencing domestic, family and sexual violence. Their experience of the criminal justice system is well reflected by the words from *Hear her voice: report two*. From police to verdict, it is traumatising, confusing, disempowering and slow.

The right of an accused to a fair trial is a fundamental tenet of our criminal justice system. The provisions in this bill are a recognition that this right can coexist with the rights of victims, specifically their right to respect and recovery. Our submission summarises our position, particularly our support for the changes to better support open justice and agency for victims concerning the publication of the identity of defendants.

I have some additional points to raise in relation to harm done to pregnant people and the proposed changes to the Criminal Code and the Penalties and Sentences Act arising from submissions to the committee. Ultimately, these amendments are about the recognition of harm done to pregnant people, about providing victims an avenue for harm to be recognised and about elevating the consideration of that harm in sentencing. The Women's Legal Service is very supportive of this intent. These are complex matters, and drafting legislation which appropriately reflects legislative intent and practically operates consistently and fairly is difficult. The Women's Legal Service is of the view that an appropriate balance has been struck in this bill.

When considering the bill and the various concerns and objections raised, it is necessary to consider the amendments in the context in which they operate. For example, a criticism of the proposed changes in relation to pregnant people is that they are only designed to reflect community views. Of the five stated purposes of sentencing in the act, one is to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved. Community views are an essential consideration in the framing of offences, penalties and the sentencing process. As such, it is entirely appropriate and consistent with the intended operation of the law that the community view of this harm be reflected in an elevation of its consideration in sentencing.

A further criticism is offered specifically in relation to the circumstance of aggravation in sentencing, that it will cause complexities with evidentiary issues in causation. There is a huge range of factors a court is required to have regard to in sentencing, many of which are aggravating factors and are not required to meet any specific burden of proof. Such is the nature of judicial synthesis. The judge, for example, is entitled to accept evidence from a victim about psychological harm or distress. Judges regularly do this as part of the current sentencing process. The existence of an aggravating factor is merely that: one factor to be considered in the context of all of the other mitigating and aggravating factors. While it is entirely appropriate that this harm ought to be specifically identified as an aggravating factor in the sentencing process, the change in the law to do this will not override the ultimate sentencing discretion and judicial judgement on which our entire criminal system depends.

In summary, Women's Legal Service Queensland supports the bill, particularly those provisions designed to improve the legal process for victim-survivors. Women who are victim-survivors are acutely aware that the criminal justice process is not for them, but it is about them. It is about the harm done to them, and this bill goes some way to recognise that.

Mrs GERBER: I want to touch on two issues. The first is the publication of the identity or the name of someone charged. I refer to *Hear her voice* report recommendations 38 and 39. The Queensland Law Society's view was that they are opposed to the reforms in relation to publication before a committal and that recommendation 84 should be implemented with recommendation 83, which is that the department should develop a strategy or guidelines for media outlets to be able to publish. What is the Women's Legal Service's view on implementing recommendation 83 before recommendation 84—that is, making the reforms before the department has in fact developed the guidelines for media to be able to publish?

Ms Bromley: Both of the recommendations are important, and we look forward to recommendation 84 being implemented. I think the challenge with that approach is that it supposes that recommendation 83 is something new or different. It is important to remember that this is the exception. With all of the other offences in this state, defendants can be named. This is an aberration. This is based on principles that people make up false sexual complaints, and that is reflected in the

national community survey. We see them. The basis of this law is that people make up spurious complaints. We know that only about 13 per cent of sexual assaults are even reported, but we know from the community survey last year that 34 per cent of the community believe that women make up false complaints. There are some significant social issues to be dealt with. Suggesting that media training or media guidelines have to happen first is suggesting that this is something different that needs to be accommodated. This is simply the repealing of a law that has no place in our current society, so it is entirely appropriate for them to be done out of sequence.

Mrs GERBER: I guess my submission was not that it needed to be done first. Do you think those guidelines need to be developed as quickly as possible? Should they be happening together?

Ms Bromley: Most certainly, absolutely. The way offences are reported has a huge impact on victims, as you know. Given that we know—the surveys show us—that there is a problem in terms of the community's perception of sexual offences, it is even more important that the reporting is accurate.

Mrs GERBER: I now turn to the amendments in relation to Sophie's Law—the amendments in relation to allowing for an unborn child to be included on the indictment and the amendments to the Youth Justice Act allowing for victim impact statements and that comprehensive reform that is happening there. The submission of Sophie's mum outlines her specific circumstance, but she also states that there are 15 more families under similar circumstances who would benefit from some sort of judicial recognition in relation to the loss or the harm that was caused to them as a result of criminal conduct. Is it the Women's Legal Service's view that the current proposals in the bill are appropriate? I could not quite understand whether or not you think there are some changes that should be made to it or if you think they are appropriate as they stand.

Ms Bromley: No, they are appropriate as they stand. While people are concerned about specific circumstances of aggravation, I understand the view from others is that courts already have the capacity to consider things. Such is the nature of existing provisions. As I understand it, this provision is to be subsection (9C). Subsection (9B) in the existing law requires judges to consider the vulnerability of those under 12 who are victims of manslaughter as an aggravating circumstance. That is something they could already do but, because of the community's attitude, that became part of the law. Such is the case with this. Although it is something that will require education—it will require judges to adjust their judicial synthesis—it is certainly not unknown to the law, and it seems to be appropriate given the community's expectation and the community's experience of these particularly egregious offences.

Ms BOLTON: On page 1 of your submission you speak of jurisdictions across Australia that have already implemented and state that there would need to be some monitoring and reporting. Do you have any reports of the sometimes unintended consequences in relation to the early reporting of offenders?

Ms Bromley: I will attempt to answer that, but please feel free to give me further guidance if I do not. I suppose our concern is around ensuring that victims had agency in the process, because it might be that some victims felt less likely to report if the offender was to be named and they had no control over it for fear of retribution and harm, particularly in the context of domestic and family violence. Victims should have the agency as to whether their defendants are named, as in lots of other matters. I suppose our anxiety was to ensure there was good education, particularly for those with English as a second language, around what rights they have and what processes are involved, either to ensure that names are published or to avoid publication.

Ms BOLTON: You said—

> … treated the same as an individual charged with any other offence. This would make Queensland consistent with other jurisdictions …

You also state—

> We recommend monitoring sexual assault reporting rates and other measures …

Do we already have some data from the other jurisdictions that have already implemented these reforms?

Ms Bromley: I am sorry; I will have to take that on notice. I imagine that data would exist. As to whether the Women's Legal Service holds that, certainly not. I imagine that the sources would involve comparing the courts' data, Australian Bureau of Statistics data in terms of reporting, the police data and of course the community survey data, which is where we get those unreported incidents. That is where we get those figures such as those quoted in the *Hear her voice* report, that only 13 per cent of people who said they had been sexually assaulted reported that to police. I suppose it would be a synthesis of multiple data sources.

CHAIR: If that is too onerous a task, just contact the secretariat. Off the top of my head, I do not know where you would find that data.

Ms BUSH: Thank you, Nadia, for coming along today and for your submission. It appears that you have made a couple of recommendations in your submission. I want to test those with you so that I am reading them correctly. Sandy has touched on the first one about some kind of monitoring around the naming of offenders to make sure it does not have the unintended consequence of deterring women from proceeding with making complaints. I see that you are nodding, so I assume you would like to see some kind of monitoring in place over that.

Ms Bromley: That is correct. I understand from the department's response that that is intended as part of the implementation of the *Hear her voice* reforms.

Ms BUSH: The next one was in relation to terminology and the links to abortion and health care. Could you expand a little on what you would like to see done in that space in terms of changing that terminology away from 'unborn child'?

Ms Bromley: Yes. Again, that is a difficult area, of course, because people's experience of that life is that it is their child, but at law—the Queensland Law Society touched on it earlier—there are a lot of difficulties associated with attaching personhood to a fetus, particularly so for women, and the unintended consequences of that. I suppose the recommendation there was to use the correct language in terms of a fetus. That is not to diminish the recognition. I understand that the feedback from the department was that that was not within the scope of this review because it impacts other legislation, but that is the position.

Ms BUSH: So it is more to the scientific—coming back to the correct labels?

Ms Bromley: Yes, that is right.

Ms BUSH: Obviously there are broad recommendations around ensuring services are trauma informed, which I know is picked up in the *Hear her voice* reports as well. I found interesting your recommendation around changing some of the terminology in section 319A away from 'woman' towards 'pregnant person'?

Ms Bromley: Yes. That has been the direction of the Queensland government. The Queensland government definition of 'women' is very broad. Given that movement has happened, inclusive language in legislation seems prudent.

Ms BUSH: Could you take a minute to explain to the committee why you think that is an important consideration for us?

Ms Bromley: Certainly. I think people underestimate the power of people not seeing themselves in legislation. If people do not feel that they are represented or that legislation refers to them, they do not engage with the criminal justice system. We see that perhaps most pointedly in domestic violence, which is why reporting is so important. When only really serious acts of physical violence are reported, many people experiencing coercive control do not see themselves in that, because that is not the language used and that is not the wording. They do not see themselves as those reported. Many pregnant people would not identify with themselves as a pregnant woman and so would not see themselves in that legislation. When this legislation is about honouring very difficult and tragic things that happen, considering appropriate language is an important part of that.

Ms BUSH: You were supportive of amendments to the Oaths Act but would like further work done on reviewing the requirement for victims to have to disclose the address and the place where the oath was made. I assume that goes to safety?

Ms Bromley: Yes, that is right. Often people—and even witnesses—feel difficult, particularly in those family violence matters where witnesses may be tangentially involved in the matter. To the extent that it is possible to limit the disclosure of personal details, absolutely that would be our aim.

Ms BUSH: I did not actually look at the department's response to that, but are you aware, Nadia, of any work that is going on with the department or with the sector in that area?

Ms Bromley: I think the department did say they are doing a lot of further work, because we had made a specific recommendation around self-representatives that concern culturally and linguistically diverse people. I think they had indicated they were going to do some more work in that space as well.

Ms BUSH: Great; okay. I think that was it for me at this stage, Chair.

Mr KRAUSE: Good morning. Thank you for your submission. You referred earlier to a problem with community perceptions around women making false complaints of sexual assault, and 34 per cent, I think, was the number you told the committee about. If in fact committal processes in the judicial

system bear out that a false complaint is made on occasions and yet after the passage of this bill the accused has already been publicised, do you acknowledge or have concerns or can you comment on the proposition that this reform may in fact reinforce those community perceptions that you referred to earlier and seek to reduce?

Ms Bromley: I think that very much depends on the nature of the reporting given that in all offences, even child sexual offences, potentially people could be named. So I think it does stand aside as an obvious exception, as an obvious judicial, even legislative, recognition that these are the kinds of complaints that are easy to make and hard to defend and that they ruin people's reputations. Interstate cases have shown us that is not necessarily true. It is far more likely that the victim will experience reputational damage than the defendant, if recent cases are anything to go by, so in a properly operating justice system where the presumption of innocence that everyone understands where every charge is the same—everyone is innocent until proven guilty—I think it is incumbent upon all of us to be part of that solution, whether that is media guides about how we engage in the community and the laws that we write. In our view this is correcting a mistaken protection—a protection that should not have existed, a protection that was protecting people from allegations that were likely to be untrue.

Mr KRAUSE: I was asking, though, about the community perception issue that you identified.

Ms Bromley: Yes.

Mr KRAUSE: Do you have anything to say about how the operation of this—if in fact false complaints are made and that is borne out at a committal—might affect that community perception?

Ms Bromley: Yes. I suppose I would make the distinction between false complaints and perhaps charges that do not proceed, because that happens on many occasions. On many occasions complaints are brought where a magistrate decides that a properly instructed jury could not find beyond reasonable doubt something happened. That does not mean that it was falsely made; it means that the judicial officer informed the view that it would not meet the burden of proof. In cases where there is the evidence that charges have been brought maliciously or fraudulently of course that would be difficult, but again one would like to think the community has a balanced view of that if there is one case reported against many thousands of prosecutions. I think the Sentencing Advisory Council tells us about 140 people are sentenced every year for rape, and given what we know about reporting that suggests that the prevalence is much higher than that. I would like to think that the community is able to take a balanced view if and when there is evidence of false reporting and one would like to think that should the community become so interested in legal proceedings they will get a view of how many other false complaints are made in relation to fraud or other offences.

CHAIR: In relation to the Law Society's submission, and I know this is dealing with complainants rather than the accused, they have to get consent, I think, in New South Wales and Victoria before they can publish. Would that be a mechanism to protect the complainants before the accused was named if the court was involved so that then the complainant could, as you raised, say, 'Look, I'm not comfortable with the defendant's name being made public'? I know they were talking about the complainant, but I was just thinking whether that could be a mechanism to help the complainants by them having their say whether or not the defendant's name is made public rather than the—

Mrs GERBER: Media running with it.

CHAIR: Yes, rather than where the defendants are all named. I take on board that in other offences defendants are named but not in this for some reason, and I do not really know. I was just thinking about that and whether that would build in a safeguard to protect the complainant and that the complainant would be able to instruct the prosecutor, 'I don't want the defendant named because I have concerns,' whatever they may be. Would that help?

Ms Bromley: Yes. I think that would be effective. I think the difficulty there is the near enemy of agency is responsibility. If defendants are not named unless there is consent, it creates a lever that potentially could be used by systems abusers, particularly if there is close or intimate relationships. So it is a difficult answer and I appreciate that that is a complicated response to a well adapted strategy. Certainly that would work, but I think the challenge with that is it then is incumbent upon the victim to do it, so whether or not it is published is determined by them which is why lots of our laws have developed differently. For example, in domestic violence there is an obligation for police officers to investigate and there is an obligation for them to put in protective orders so it is not all incumbent upon the victim. I think the risk, although that strategy would provide a very good safeguard, is that it would also then make victims responsible for the publication.

CHAIR: Yes, but could it not be as simple a matter as they instruct the police officer that they do not want it or the prosecutor?

Ms Bromley: Yes, they could, certainly.

CHAIR: Yes, so that they do not have to physically do anything.

Ms Bromley: Yes.

CHAIR: Thank you.

Ms BOLTON: Nadia, I know that in your opening statement you touched on the concerns or what has been raised in other submissions, including from the Queensland Law Society, and maybe I missed where you had raised anything in relation to their reservations about the proposed changes in that if you conceptually acknowledge separate personhood for a fetus it might be used oppressively against pregnant persons in the future. That was within their submission. Do you have a comment on that or do you have similar fears or not?

Ms Bromley: Yes, we certainly have similar fears and expressed those in our submission and the department's response gave us some comfort that it was certainly not intended to create an offence. They were not intended to be directed at pregnant people and in fact that the legislation had been struck specifically using the word 'to' as in events to a person such that a pregnant person could not commit an offence to fall within these provisions.

Ms BOLTON: Thank you.

Ms BUSH: You may have been asked and I may have missed it, but I want to ask about the circumstance where a woman is driving—that is, she is the driver of the vehicle and is also pregnant—and the impact that that might have on sentencing. I guess I am after a sense of the prevalence and what is in this bill to try to provide some discretionary options for a sentencing judge in that.

Ms Bromley: Certainly. Our understanding is if section 9C is drafted as the way proposed, that would only apply to offences done to another person such that a pregnant woman would not be prosecuted or subject to any adverse consequences other than those to their physical person, and that aligns with the principles of sentencing. Harm done to self is not generally part of a—

Ms BUSH: Understood. Great; thank you.

Mrs GERBER: The Queensland Law Society expressed a view about this being an omnibus bill—that is, the fact that all of this is being crammed into one bill and there are some separate issues contained in this bill. Does the Women's Legal Service have a view around omnibus bills and whether or not it is appropriate that they all be together or whether this should have been separated out in some separate bills to allow for views and debate on the individual topics in legislation?

Ms Bromley: The work of the House is very difficult and obviously our primary interest is getting this legislation passed swiftly. The *Hear her voice* reports were some time ago. Even the bill we had passed at the start of the year is yet to be proclaimed, so our interest is in speed and efficacy and we are confident that the work of the committee will ensure that each section can be appropriately debated and exposed to community views.

CHAIR: As there are no further questions to Nadia from the committee, I propose to close this session. Is there anything else you wanted to add, Nadia, or are you happy?

Ms Bromley: No, but thank you.

CHAIR: There was a question taken on notice. Sandy, are you able to repeat the question that Nadia took on notice or, Nadia, do you know it?

Ms BOLTON: I believe it was to do with the data from other jurisdictions.

CHAIR: Yes. Nadia, if it is too onerous, can you inform the secretariat?

Ms Bromley: Certainly.

CHAIR: If you are able to provide the information to the committee, I would ask you to provide it by the close of business on Friday, 14 July.

Ms Bromley: Yes.

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

Ms Bromley: Thank you.

BERTRAND, Mr Leon, Legal Practitioner Director, Sterling Law

CHAIR: I now welcome Mr Leon Bertrand, Legal Practitioner Director from Sterling Law. Good morning. Thank you for being here. I invite you to make an opening statement of up to five minutes after which committee members will have questions for you.

Mr Bertrand: My name is Leon Bertrand. I am the Legal Practitioner Director of Sterling Law Queensland Pty Ltd, an incorporated legal practice. My submission today only relates to the proposed changes to costs disclosure under the Legal Profession Act. Section 308 of the Legal Profession Act requires that clients be informed in writing before, or as soon as practicable after, a law practice is retained of about up to a total of 23 matters relating to their rights as legal consumers and the basis and amount of their legal costs. The consequences of failing to disclose all of those things to clients can potentially be serious or very costly to a law practice. As my submission noted, many of those matters are fairly obvious things that clients would already know. Some of them are obscure and irrelevant such as information about the right to have the law from another Australian jurisdiction apply to the retainer. Some of them are superfluous. For instance, section 308 already requires that law practices disclose the client's right to receive a bill if they intend to charge over $1,500.

Under the proposed bill, if the costs are as low as $750, law practices will, by law, have to advise their clients of this. Already the Legal Profession Act requires that a bill be delivered to a client before the law practice has a right to recover its fees. That is under section 329. Furthermore, under the Legal Profession Regulation, regulation 58 requires that a bill be delivered to a client before the law practice may pay itself from fees in trust. In my submission, there is no need for clients to be told they have a right to receive a bill when it is a mandatory requirement in any case. I have given other examples in my submission and I am not going to repeat those. Suffice to say, in my experience, the vast majority of legal consumers are not interested in such matters. As such, in my submission, section 308 of the Legal Profession Act, in its current form, does not really assist clients, even though that provision intends to do so.

What clients in my experience really want to know about the legal costs is this: 'How much is this going to cost me?' The problem with lawyers having to send pages of information about their legal costs is that it obscures the providing to clients the information that they really do want. Few clients, if any, have much interest in reading about all or even most of the matters that are required to be disclosed under section 308.

While I like to think of myself as a very popular person, the reality is that, as a solicitor, people usually only contact me if they have a problem. Other than perhaps conveyancing or wills, the vast majority of clients only engage a lawyer if they have a serious problem. Take the example of the client who has separated from their spouse of many years and is in conflict with them about their property matters and their children, or the client who has been charged with a serious criminal offence and is facing a sentence of imprisonment, or the client who is being sued, or the client who is owed a lot of money, or the client who has just been given a show cause notice or been dismissed by their employer. These are typical types of clients whom solicitors encounter and assist every day. They are people under enormous amounts of stress and going through a dark period in their lives. Do such clients really want to be provided with information about their right to have a corresponding law apply to the retainer or whether interest charged on outstanding amounts will be subject to a benchmark rate of interest? With respect, I do not even have to answer that question.

Another problem with onerous costs disclosure requirements is that they may reduce the productivity of law practices by requiring them to pay more attention to regulatory requirements than advancing their clients' interests. Similarly, there is little need for a law practice to be required by statute to advise clients of how their costs are going to be calculated when that is already a requirement at common law in order for there to be a binding contract, particularly when the total amount of the cost is going to be modest. My view is that the common law affords sufficient protection for legal consumers for modest retainers.

It is useful to compare the Queensland Legal Profession Act to other Australian jurisdictions. To my knowledge, it is not suggested that the cost disclosure requirements in other Australian states is manifestly defective. In contrast to Queensland's onerous approach, the uniform law, which applies in New South Wales, only requires law practices to disclose seven things to clients at the commencement of retainer. That is fewer matters than what will have to be required to be disclosed to clients under the so-called abbreviated disclosure proposed under the bill for consideration, which will apply if the costs are as low as $750.

The background to all these legal cost disclosure requirements is that we live in an age where consumers of legal services have never had more power. With the higher number of lawyers than ever before, clients have unprecedented choice of which law practice to engage. Thanks to the internet,

consumers can and do access more information about legal practices, their rights and legal costs than ever before. Consumers can and do leave negative reviews if they are dissatisfied, and I can tell you from experience that prospective clients read those reviews. Clients tend not to be timid about asking about what they want to know about their legal costs when considering whether to engage a law practice. So much of the transparency and information that clients want to know, they can and do easily access and they tend to be willing to ask. This means that onerous costs disclosure requirements, even for modest retainers, are not only impractical but also are not needed. The proposed cost disclosure regime of the Justice and Other Legislation Amendment Bill is not suited to the realities of the modern legal market and the true needs of legal consumers. As recommended in my written submission to the committee, I suggested a more brief and relevant list of matters should be disclosed to clients and only if the costs are likely to exceed $3,000. Thank you.

Mrs GERBER: Thank you for coming today and for your oral and written submissions. Is it your general submission that this costs disclosure regime that is currently proposed is a missed opportunity to reform the cost disclosure process in Queensland, bearing in mind all of those things that you have suggested that need to change?

Mr Bertrand: Yes. I do welcome the increase in the threshold for all the disclosure of matters under section 308. I think the list is too long and I think it needs to be looked at. Having to tell your clients 23 different things is not something that, in my experience, clients are interested in reading, and certainly I think there is a need to review that. I think the abbreviated disclosure is unnecessary.

Mrs GERBER: I wanted to ask you about that as well. The abbreviated disclosure which is for matters between $750 and $3,000; why do you think that is unnecessary?

Mr Bertrand: Because the common law already requires lawyers to disclose what the amount of costs will be for an estimate and how they will be calculated. As outlined in my written submission, things like the client's right to negotiate a costs agreement or receive a bill are things that clients would already know in reality if they have capacity to give lawyers instructions, they are people who deal with tradespeople, they deal with people from other professions.

Mrs GERBER: Did you say those elements have been reformed in New South Wales? Have they been removed in other jurisdictions?

Mr Bertrand: I have a copy of the relevant New South Wales legislation. I am not sure what the history of the reforms in New South Wales are exactly, but I have a copy of the current Legal Profession Uniform Law in New South Wales and it requires that only six or seven things be provided to clients.

CHAIR: Can we impose on you to provide us with a copy of that?

Mr Bertrand: I am happy to email it through, but I can give it to you right now.

CHAIR: No, email will be sufficient.

Mrs GERBER: Just so I am clear, are you saying the abbreviated form of cost disclosure should be scrapped altogether, that it is not necessary at all—

Mr Bertrand: That is my view.

Mrs GERBER:—or that it needs to be streamlined a bit better; it is not actually in an abbreviated form and there is still too much in it?

Mr Bertrand: Ideally I think it should be scrapped. If it is less than $3,000 there are enough protections at common law.

CHAIR: From memory, a lot of this cost disclosure came about for certain matters such as personal injury matters, motor vehicles. I think that was the catalyst for change to the Legal Profession Act, from memory. I have not read the New South Wales legislation. As you say, there does not need to be a disclosure, but would it help if those matters were identified? For example, what comes to mind is a straightforward plea of guilty in the Magistrates Court for drink driving. Most firms have a set fee for a one-off appearance that is straightforward. Would it help if those matters were categorised so that, for example, if you are doing a personal injury matter then your onus to disclose to that particular client is higher than, for example, your simple plea in the Magistrates Court? Am I making it more complicated in this day and age? I have been away from it too long.

Mr Bertrand: I think the danger is that it would tend to further complicate it. I think it is safe to say that the higher the amount of fees involved in a retainer the greater the complexity. Whereas the lower the number of fees, usually you can assume that it is a fairly simple and straightforward matter.

Speaking about personal injuries, section 347, I think, of the Legal Profession Act—in response to those concerns that you identified in relation to personal injury claims—does cap the amount that all practices can charge clients. Essentially, my understanding is that the amount law practices can charge their clients is half of what is left over once outlays and statutory refunds are taken out of the settlement sum. That provision gives clients a great deal of protection in relation to those matters.

Ms BOLTON: Going back to the Legal Profession Uniform Law, you mentioned New South Wales. Is it utilised in other states besides New South Wales?

Mr Bertrand: That is a very good question. I think it is also in effect in Victoria, but I am not 100 per cent sure about that. I cannot really comment on other Australian jurisdictions.

Ms BOLTON: Is it relatively new, or has it been in existence for some time?

Mr Bertrand: That is a really good question. I think it is fairly new, actually.

Ms BOLTON: When bills are drafted often stakeholders are contacted. To your knowledge, has there been any consultation and has this particular uniform law been raised during the drafting of the bill?

Mr Bertrand: The uniform law that applies in New South Wales?

Ms BOLTON: Yes. Would that have been raised at all by any advocates previously?

Mr Bertrand: I am not sure, I am sorry.

Mr KRAUSE: You are effectively saying less is more, aren't you?

Mr Bertrand: Yes, I suppose I am.

Mr KRAUSE: Cut out all the guff; just get to the point.

Mr Bertrand: Yes.

Mrs GERBER: As it currently stands, if your legal fees are estimated to be less than $1,500 you do not have to provide a cost disclosure agreement.

Mr Bertrand: That is correct.

Mrs GERBER: But under the proposed changes if your fees are between $750 and $1,500 you will now have to provide a cost disclosure agreement. So whilst the threshold is increasing to $3,000, the regulatory burden in relation to those smaller matters is increasing for legal practitioners; is that correct?

Mr Bertrand: That is correct, yes.

Mrs GERBER: Do you think that is necessary?

Mr Bertrand: No.

Mr HUNT: How great is the imposition of this regulatory burden?

Mr Bertrand: How great is it?

Mr HUNT: Yes. From the outside looking in, it does not seem like it is going to cause any practices to fall over or anything. If you could just talk me through how burdensome you think it might be.

Mr Bertrand: That is a good question. I guess it is important to see it in context. Section 308 is not the only cost disclosure provision. There are other provisions that deal with cost disclosure. For example, if another law practice such as a barrister is retained there are changes to the cost disclosure requirement. They are not crippling any law practice, no, but from where I stand they are just completely unnecessary and ultimately having to tell clients that many things does not benefit them.

Mrs GERBER: In relation to what it might practically mean for a law firm—for example, you have a small law firm that mostly deals in wills, estates and conveyancing; the bread and butter. They have a set fee of $990 for conveyancing for their legal fees, so that means as it stands right now they fall under the threshold and they do not have to have the templates and documents necessary in order to give the cost disclosure that you might if you reached that $1,500 threshold. What would it mean for that tiny practice? They are now going to have to get templates. Are you able to talk the committee through what that might mean?

Mr Bertrand: I do not do conveyancing or estates, but I have thought about what it will mean for me if this bill goes through as is. I guess at the beginning of the retainer I will basically have to add a whole heap of information to a standard email as required under the so-called abbreviated disclosure provisions, but that is just what my law practice would do. Other law practices might send out a disclosure notice that has been approved by the Law Society. Ultimately, however, they have to check that it advises the client of everything required under the act.

Mrs GERBER: Do you think that will increase disbursements for clients? At the moment you have your legal fees, say that is $990 for a conveyance, and then a law practice might charge $250 for disbursements. Disbursements are printing, other auxiliary things that are not associated with direct advice. Do you think there is going to be an increase passed on to consumers in relation to disbursements for cost agreements?

Mr Bertrand: Not directly, in my view.

CHAIR: It is my understanding that you cannot charge for anything in relation to cost agreements.

Mr Bertrand: That is right. My point would be that, the more time you have to spend on dealing with these regulatory requirements, the less hours are available each week to spend on matters that can further a client's interests. So in that indirect way it would have a modest impact on costs in the longer term.

Mr KRAUSE: In your practice, if you want to tell us, how many of your bills actually go over $3,000? I had a look at your website. There is a broad array of work done by your practice, including criminal work. I noted that a couple of years ago you represented someone charged with fraud and obtained a verdict of not guilty after a 'brutally effective' cross-examination of the complainant. I imagine that case might have been over $3,000. How many of your bills are over that threshold or is there a lot of high-volume, low-invoice work?

Mr Bertrand: That is a good question. I cannot really give you a percentage breakdown or anything like that. In cases where a client is charged, say, with an offence that must proceed to the District or Supreme Court it is not going to be a fixed fee because the amount of work is as long as a piece of string. You cannot really say what it is going to be. At best you can only provide some very broad estimate to the client at the start of the retainer. On the other hand, as you were saying, those relatively simple matters in the Magistrates Court where a client pleads guilty, yes, that can be very simple and straightforward.

Mr KRAUSE: There is no brutally effective cross-examination required in those matters?

Mr Bertrand: No, that is right.

CHAIR: Does anyone else have a question for Leon before he gets back to his busy practice? Thank you for coming along. Would you send the email with that section of the New South Wales legislation, please, by Friday, 14 July so we can include it in our deliberations?

Mr Bertrand: Yes.

CHAIR: Thank you for your written submission and thank you for your attendance today. It is very helpful to the committee to have practitioners come along and talk about legislation that affects them.

DINGLI, Dr Kelly, Director, Clinical Governance, DVConnect

ROYES, Ms Michelle, Research Compliance Inclusion Manager, DVConnect

CHAIR: I now welcome representatives from DVConnect. 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.

Dr Dingli: I would like to begin by acknowledging the traditional owners of the lands on which we are meeting here today, Meanjin, and pay my respects to elders past, present and emerging. I would also like to acknowledge those with a lived experience as a victim of crime which also includes domestic and family violence and sexual assault. I say thank you to the committee for the opportunity to appear here today as witnesses.

We are here representing DVConnect as the statewide crisis response service for domestic, family and sexual violence and the statewide helpline for victims of crime. DVConnect have been providing support to people who use or experience domestic and family violence as well as sexual assault since the 1980s. We provide the statewide helpline for women and men impacted by domestic and family violence. We offer information, referral and brief counselling as well as practical pathways to safety across all of Queensland.

Of relevance, since 2022 we have also started to provide the statewide support service to victims of violent crime as recognised under the Victims of Crime Assistance Act 2009. We commenced this in July of last year, transitioning funding from another agency that provides a similar support. The VictimConnect service provides 24/7 telephone support as well as multisession specialist, case management or therapeutic trauma informed counselling.

Today we recognise that the bill before us is voluminous and contains many factors that we have no expertise to comment on. Furthermore, we do comment on a few areas where we note our lack of legal expertise in our submission and it does present a challenge to interpret how such changes will impact the community. However, we do have very clear and nuanced understanding about how systems, especially the legal system, impact greatly on the safety and recovery of victim-survivors and the accountability of persons using violence.

Our statements that we will make today represent this practice knowledge. We encourage the committee to take the many legal representations that also form part of this hearing and layer them over our commentary to be able to give consideration for how these proposed amendments will have very real, serious and tangible impacts on highly vulnerable populations who are experiencing or using domestic and family violence or sexual assault. I now hand over to my colleague, Michelle.

Ms Royes: I would also like to acknowledge that we are here today in Meanjin on the lands of the Yagara and Turrbal people. While our submission addresses a number of elements, there are four key points I want to make in this opening statement. Our strongest reflection is the full support of the amendment to remove protections of defendants of sexual violence crime. This protection has continued to add to the myth that victim-survivors make up stories about sexual assault and rape. These protections are not offered to other major crimes and need to be stripped away to add to the community voice that accountability for sexual violence is important to Queensland. However, we note the importance, as recommended in the Women's Safety and Justice Taskforce, that a sexual violence reporting media guide is also developed. That will ensure safe reporting in this new environment where defendants can be named.

With regard to preliminary disclosure, we recognise a real lack of expertise and exposure here. However, we are experts in how systems are abused and manipulated to perpetrate abuse. We hold concerns that the broader range of court cases and the increased number of eligible cases may result in preliminary disclosure not being used for open justice purposes but for tracking, stalking and intimidating victim-survivors of domestic and family violence and sexual violence.

There is plentiful evidence in family law and other jurisdictions of how people who use violence use court systems to exert power and control over their victims, especially those who are estranged. We know that recent estrangement is one of the increased risk periods for serious harm and fatality, even if physical violence has never occurred in the relationship before. Hannah Clarke is a case in point. We ask for consideration about the utility of this for the lower courts and for a balance of victim-survivor safety. As a minimum we would like to see information and training packages for judges and legal professionals to understand how abuse may permeate this new environment and how to protect against it.

The third important element that we wish to address in our opening statement is about the inclusion of unborn children in legislation as outlined in the bill. In the first instance we support the recognition of an unborn child. We respectfully acknowledge the tragic experience of Sarah and Peter and the campaigning of this inclusion. The loss of an unborn child is also prevalent for victim-survivors of domestic and family violence. Violence escalates during pregnancy and the loss of an unborn child occurs too often for women who are impacted by violence.

Acknowledging that perspective, we also have to consider the unintended consequences of such clear inclusion and ask that the committee give due consideration to how these concerns can be mitigated; essentially, that this amendment cannot be applied against the pregnant person. Body autonomy must remain with the person who is pregnant until an unborn child is born alive; that is, the rights of the person carrying an unborn child must remain prioritised over the fetus until it is born alive. It is in this premise that Queenslanders can access safe termination. While we acknowledge the current sociopolitical context would not see these two things oppose each other, we do hold concerns when legal statements can be applied in a pro-life context, which may occur in future.

Further, in more complex circumstances, no criminal act that a pregnant person does that results in the death of the unborn child that that pregnant person is carrying can be included in the application of these amendments. An example of great concern to us is, again, how violence increases during pregnancy. A victim-survivor can use serious force in self-defence or retaliatory violence that may result in grievous bodily harm or similar to the person who is the primary aggressor. If in that event a baby is lost, we do not want to see that held against the person who is being charged, being the pregnant person in that example. In our understanding of how this legislation is written, it appears that these amendments cannot be applied to a pregnant person, but we want it to be explicit on that.

Finally, there is the amendment relating to the destruction of legal records after seven years. We are definitely in support of this. We see this as bolstering the rights and privacy of people who use community legal services. We also see it reducing the onus on legal services to maintain them. We do, however, have concerns about vulnerable people when they access community legal services. There are many life factors that trigger a person to need community legal services support. That trigger may create life turbulence where they are not able to maintain their own records and their life may continue to be turbulent for many years after that. Therefore, we want some inclusion around knowing the vulnerabilities and the context of the matter and if there are children under the age of 18 so that when a community legal service is considering the destruction of records and is unable to get a hold of the client, they have to consider these things before considering those records in case accessing those records may help that client in future cases where they have not been able to maintain their own records due to homelessness and violence. We see that approach as being similar to the freeze on destruction of First Nations records across a range of government domains in response to the acknowledgement that systemic issues resulted in people being unable to retain their own records' safety and how the destruction negatively impacts those individuals in future circumstances.

Dr Dingli: We applaud how multiple inclusions in this bill enable a timely response to community need, but we do want to note that the breadth of inclusion runs the risk of elements of a bill not being passed. Thank you for asking us to be here today. We are very keen to respond to any questions you may have.

Mrs GERBER: I want to first look at the Criminal Law (Sexual Offences) Act amendments in relation to publishing the identity of defendants in sexual offence proceedings before committal. I understand from your submission that you are in favour of the amendments. I want to raise with you recommendation 84 along with recommendation 83 and get your view on whether or not the department should be developing those media guidelines now so it is done in conjunction with the legislative reform. I also ask whether or not you have been consulted or had any input in relation to the development of those guidelines.

Ms Royes: As yet we are not aware of any consultations that have occurred; they definitely have not occurred with us. We think the media guide is of critical importance. However, we do slightly prioritise the change in this legal context. The importance of removing this current protection of defendants, which has such negative impacts on victim-survivors and other victim-survivors who are unknown for this particular situation who may be presenting in court, is so great that we do want that to progress. Ideally, we would have liked, as the task force recommends, that media guide to be provided first because it is important for making sure victim-survivors are protected. Yes, it would be amazing if they could go together, but we do not want this to be slowed down for that.

Mrs GERBER: I understand you do not want to hold up the reform as a result of any submission in relation to recommendation 84, but good government would do it together; good government would make sure that both the media guidelines are developed along with the reforms in line with the recommendation.

Ms Royes: We do agree with that.

Mrs GERBER: We have heard submissions from some stakeholders that are against certain aspects of this omnibus bill and for other aspects. The difficulty that that poses for members in the chamber is that if they are against certain aspects in this bill and for others, they are forced to make a choice because it an omnibus bill; they cannot debate it and vote based on—I am after your view on the omnibus nature of this. Do you think it is appropriate that all of these very separate and distinct legislative reforms are crammed into an omnibus bill?

Dr Dingli: As I mentioned in my closing statement, we agree that there is a risk that if some elements of the bill may pose a risk to it not being passed, that is something we would encourage looking forward for future committees. Essentially, all of the elements that we have provided expert commentary on today and in our submission in and of themselves are valid. Yes, in terms of how that looks presenting towards a committee—

Mrs GERBER: It is difficult.

Dr Dingli: It is, and we are here to advocate for the inclusion of the things that protect the rights of people impacted by violence. I guess it is over to the committee and government in terms of how they look in the future and to reduce that risk of essential things being reduced or potentially not being approved.

Ms Royes: It was challenging for us to write our submission knowing that we were skipping over so many elements of this bill. It did not sit well with us not being able to comment on so many things and having to be silent. We do not like being silent; we would rather have an opinion on matters.

Mrs GERBER: Just to round out my questions, from listening to your oral submission and reading your written submission, there is no strong objection or there is no element of this omnibus bill that needs to change. Have I got that right? Is there something there that I have missed?

Dr Dingli: No, just the considerations that we would ask to be included, but fundamentally, no.

Ms BOLTON: Michelle, I want to go back to the identification of defendants regarding sexual offences. You spoke about the increased risk and about the importance of those media guidelines for increased safety. In our jurisdictions that have these amendments in place regarding identification of defendants do you know of any data available as to whether they have had the guidelines or if they did not have the guidelines? What was actually happening in that safety realm?

Ms Royes: I do not have any data in that regard and there is no real anecdotal information either from our sister services in other states.

Ms BOLTON: I am trying to get a better understanding of that increased risk should these amendments be passed. There is no anecdotal information, but obviously there is a reason it is considered to be a greater risk to victim-survivors.

Ms Royes: Yes. We know the media does have a huge impact on victim-survivors, and we have seen a maturation of that particularly in the domestic and family violence space. The media guides, in our opinion, should have been developed quite a long while ago. It is really important in reporting that media is given guidance on what is safe reporting for victim-survivors. There will be complicating factors that do present in the absence of a media guide, but in our assessment we do not think that they will be prevalent or significant enough to see the slowing down of this amendment around protection of the defendant. There are many cases regarding sexual violence where a media guide would have been helpful already in the past period, excluding this example. We would encourage the government to do it all at the same time, but we see this amendment as being of critical importance.

Ms BOLTON: Do you believe that that media guide is enough, even when it is implemented? For example, would media just not comply with that guide?

Ms Royes: That is always a risk that is run. Consideration and consultation with victim-survivors in deciding whether defendants can be listed needs to be part of that process, as well as the general reforms that are happening in the legal profession around becoming more aware and familiar with domestic, family and sexual violence and how that impacts on victim-survivors and the community. Some of the changes that are happening in the victims of crime space as well will bolster the considerations to make sure victim-survivors are prioritised and kept as safe as they can be.

Ms BUSH: Thank you, Michelle and Kelly, for coming in. I have gone through your submission. It is really useful, thank you so much. I see that you are also cross-referencing with Women's Legal Service, so I assume that you have seen their submission and you are supportive of their submission.

Also they made a couple of recommendations in their submission around ensuring that there is monitoring, so there is no discouragement of women in coming forward and laying charges and a few other things. Are you supportive of those recommendations as well?

Ms Royes: Yes. We defer to them for lots of the more legal understandings of the processes et cetera. When we work with victim-survivors, obviously we are hearing their narrative, we are supporting them with where they are at and that lacks the legal nuance in the way that we do our work.

Ms BUSH: Awesome, thank you. There was a question we put to Nadia and I can see in the departmental response that the way that the bill has been drafted is in a way that pregnant women cannot themselves be subjected to the aggravating factor, but I will double check and make sure that that is considered. I wanted to check your response around the expansion of the use of the preliminary disclosure matters in there. I am very aware of systems abuse; I see it in my electorate office. Were you satisfied with the department's response? I do not know if you have had a chance to review that. They have responded to say that there are some safeguarding mechanisms in the bill, that it is discretionary, that the applicant has to satisfy a couple of conditions, and that there will be training delivered to decision-makers. I wanted to get your views around whether those safeguards go far enough, or what other things you would like to ideally see built into the bill or the recommendations.

Ms Royes: On the whole we wanted to lean in on the training and information and support for that because we do not understand enough about the process. We do know that it will have an impost. We want to trust our legal professional parties. When we say 'training and information', we are really wanting it to be quite specific and nuanced around that. We already know that coercion and control can be hard to see and understand in the judicial profession, as exampled last week in the media, so we are wanting to make sure also that this has that lens over it. We are not really across other ways that would help safeguard in this space.

CHAIR: Michelle, you said there was something in the media last week. Can you elaborate on that?

Dr Dingli: Sure. We can send you the media clip. In Townsville a person who had repeatedly been using violence had been fined, I think it was, $500 by the magistrate which was clearly a grossly inadequate judicial response which got a lot of traction in the media. The risk there is that obviously not only does it show there is a lack of accountability towards the community and the woman involved but also a lack of understanding that we know exists in some areas across the judicial system about what coercive control looks like and what is an appropriate response.

Ms Royes: The violence that was perpetuated was coercive control; it was not physical. It was not perhaps some of the more classic, for want of a better phrasing, uses of violence in a domestic and family violence relationship. It was very coercive.

Dr Dingli: It was control, and it was criticised by another member of the judiciary.

Ms Royes: It went to a higher court.

Dr Dingli: It is good to see public scrutiny and accountability.

CHAIR: You are going to send the article over which we will appreciate, but was the reporting—and you may not know this—accurate or do you have no way of knowing?

Dr Dingli: Again, we do not know, but because another member of the judiciary had commented, it did seem quite legitimate. Of course, it depends on how the media portrays that, but it certainly was quite critical of the response.

CHAIR: I suppose small steps. If it is in the media, then it is being discussed publicly which then heightens people's awareness of what it actually is. My understanding is that having that broader understanding in the community is important to assisting people at the very early stage before things escalate and become more tragic.

Ms Royes: Yes, absolutely.

Mr HUNT: I am not sure who this should be directed to, because I could not see who made the comment from where I am, and I might have got it wrong, but I wrote down while you were talking 'maturation of media impact in recent times'. Are you able to delve into that? I know you have probably answered it in the previous two questions to some extent, but can you tease that out a little bit for me, what exactly that means, 'maturation of media impact'?

Ms Royes: When stories are reported in the media, whether they relate to your matter or not, it has ripple effects across victim-survivors of domestic and family violence and sexual violence. We know that because people call our helplines because they have heard the story in the media and they need extra support at that time, and we know that by working with victim-survivors who are in the media

when their matters are impacted. We have seen a general improvement in the way media does report on domestic, family and sexual violence cases. There is space for continued growth, but we want to acknowledge and thank the media on the whole, and the government in supporting them with things like media guides, in the way that they report on these cases. We do appreciate that there is a lot of reporting occurring, and it is continuing to raise this up in the community.

Dr Dingli: Further to Michelle's comments, we see Hannah Clarke's story with the recent podcast which has been so prolific and had so much attention and it has been crossed over from the news team that reported on it to now a very successful podcast. It is blurring that line now from news reporting into other actual productions, and therefore, of course, increasing perceived legitimacy of this as a narrative of domestic and family violence. Also, looking at that particular case, we had men calling in along the lines when it happened weaponising it, or women calling in where the story had been weaponised saying, 'See. Look what happened. You will be next.' It is a very powerful role that the media has when reporting on it and how we can be attuned to making sure that it is a way to encourage help-seeking, have people check their own behaviour if they are using violence, and also making sure it is not being further used to isolate or weaponise violence.

CHAIR: So there is potential risk for it to be used incorrectly?

Dr Dingli: Absolutely, and I do not think that is untrue of anything, really, but certainly post COVID, there is so much access to and reliance on, now more than ever, things online. If that is one person's contact with the outside world and therefore what they perceive as their support network, then it is very much a way that could be used if someone is being isolated or having restricted access to other forms of support.

Ms Royes: The media is very powerful and we want to use it for good. We want to use it as part of our community awareness and community engagement in this issue, and it has been really positive ever since Rosie Batty became Australian of the Year. She has been really good at raising the importance of awareness of domestic and family violence, and we have seen a positive flow-on effect from that in community engagement and media engagement and slowly improved reporting. However, media and anything in the public domain, particularly if it has an inappropriate lens across it, a victim-blaming lens, a lens that does not consider how violence is diverse and nuanced, then that can be problematic; people can use that as further sources of violence in their current relationships. However, if it is done well, it can have people who use violence reaching out for help, and it can help victim-survivors reach out for help as well, and feel supported by their family and friends.

Those informal networks are important. That is what helps people in their recovery journey the most—family and friends who can support and connect with them—and when they have a good understanding of how violence is perpetrated, then they can have a better understanding of how to support others. The media does play a role there. We want to connect with the media and support them in positive or appropriate reporting around domestic, family and sexual violence. We want a media guide to help with that in many cases. We also want the defendant protections removed.

Dr Dingli: In a different field, if you look at the example of suicide prevention and mind frame guidelines, that has come a long way whether it formalises a mechanism for not only saying what is an appropriate and safe discussion about suicide to prevent harm, but also it gives you an option if something is breaching those guidelines to federally actually then report them. That has come a long way in terms of lifting the safe use of terminology to not increase risk for people. It is different, but the fundamentals apply.

CHAIR: We are a little ahead of time, so I will open it up to the committee.

Ms Royes: Can we just make note, if we do have additional time, that with any changes to the Victims of Crime Act which will include recognition of an unborn child if this amendment does go through, as you would be aware because you are the committee overseeing the most recent victims of crime inquiry, if you could make sure there is consideration for the sector capacity to respond to those increased demands with that being included.

CHAIR: Yes. A very valid point.

Ms BUSH: I do not know if you heard the Women's Legal Service talk about changing the terminology away from 'woman' towards 'pregnant person'. Do you have any views or could you make a point on that?

Ms Royes: In a legal space we cannot, but we generally use the term 'pregnant person'.

CHAIR: Thank you for your written submission and thank you for coming along today. I ask that you provide the email with the media report by close of business on Friday, 14 July so that we can include it in our deliberations. Thank you once again for your attendance.

McDONALD Mr James, Member for Lockyer, Parliament of Queensland

MILOSEVIC, Mrs Sarah, Private capacity

CHAIR: I now welcome Sarah Milosevic and James McDonald MP, member for Lockyer. Good afternoon and thank you for being here. The process is that you just open by making a statement for as long as you require. We normally ask people for five minutes, but there are no hard and fast rules. I will not pull you up if you go over five minutes.

Mrs Milosevic: My name is Sarah Milosevic. In 2014—29 August, to be precise—I was involved in a motor vehicle crash which resulted in the death of our unborn child. On top of that, my husband and I sustained life threatening injuries as a result of this accident. I was already aware prior that there was no law as such in Queensland when somebody did not know you were pregnant to be charged under so I was aware of that at the time of the accident. Section 313 does not apply in our situation as he could not have known I was pregnant. I would like to clarify some details surrounding our accident so it can kind of fit in with it all.

At seven o'clock at night we decided to pop out to get some bread and milk—as you do a couple of days before having a baby—and we were on our way home. We stopped at the intersection where we had a green light, but it was a give way green light. We turned into our street and made it fully into our street. Rodney Shaw, who was the man responsible for the death of Sophie and the injuries that were life changing for us, was high on methamphetamine, marijuana, as well as nearly twice the legal blood alcohol limit. His blood tests were done six hours after the accident so his levels would have been higher and he would have been more impaired at the actual time of impact, which was 7.45 pm. It took them two hours to extract me from the vehicle. We were already in Second Avenue in the Marsden-Browns Plains area, we were already in our street and he drag raced somebody else and raced around the corner and made impact with our vehicle. We were found not liable in any form from the police investigation and he made a plea, therefore the grievous bodily harm charges were not answered in the District Court and everything was handled in the Magistrates Court. He received a $950 fine and a five-month loss of licence. He was four weeks past the point where they could use a previous drink-driving charge to increase his charges further from grievous bodily harm.

With everything that happened in the following months and the unjustness that we felt as parents losing our child as a result of somebody else's actions—it felt very unfair—on 4 January 2016 I started a petition for law reform around this. I have always maintained that a woman's rights should always be No. 1 and should always be protected. I have no want or need to affect a woman's right or for a woman to be charged for it and also anybody to be charged under that law if it is just an accident. The reason we have been very careful with the law reform and the reason it has taken so long is we wanted to make a safe law. We wanted to ensure that the right people are charged and hence there has to be a criminal act or description made and then that would be a charge for the unborn as an aggravation to the woman's injuries.

For us, we have been missing Sophie and loving her for the last almost nine years—she would be nine on 30 August this year. That is almost nine Christmases, nine birthdays, no first days at schools, no chance of graduations. We literally lost our future with our child all because somebody chose to drink drive, do methamphetamines, drag-race and act in a dangerous manner. Because he did not brake at the scene of the accident, there were very limited road markings. Because he did not brake there were no brake marks, there was no ability to do a speed test under the way that they do speed testing and hence he was not charged with dangerous operation of a motor vehicle, from my understanding of the basic law side of things.

This law is important. It is not just important for me; it is important for many. There is a case, which does not relate to a motor vehicle, of a young lady who was walking to work for her shift at McDonald's in Logan Central. She walked that route most nights to start the night shift at McDonald's at Logan Central. She was eight weeks pregnant at the time and excited to welcome her first baby with her fiancé. On her way to work a man committed manslaughter which caused her death. She died and obviously so did the unborn baby. I think it is relevant even to the Leadbetter family who were just walking their dog. She was five months pregnant with baby Miles. How do you tell a family that the baby that was so wanted did not matter? In 2014 Sophie's name was on the death toll. She counted on the death toll. She counted everywhere but in a court. She has a birth certificate and a death certificate. She was born, but still.

CHAIR: Thank you, Sarah.

Ms BOLTON: Sarah, what can I say, what you and your family have gone through. We all know Sophie's name and the work that you have done and your advocacy to make change. I have read your submission and I thank you for your oral submission. The Queensland Law Society has basically said

that, yes, there are ways to recognise the death of an unborn child and they spoke about gross criminal negligence. At the time did anyone speak to you about the different types of charges or why they could not use, for example, that particular charge?

Mrs Milosevic: Because under those laws he would have had to have known that I was pregnant. Because I was in a motor vehicle as a passenger at the time there was no way he could have known I was pregnant therefore that law cannot apply.

Ms BOLTON: Is that the reason; because certain charges could not be laid, you could not submit your victim impact statement plus photos?

Mrs Milosevic: That is correct. Because it was dealt with in the Magistrates Court because he pleaded, we were not allowed to tender to the court our victim impact statements and our photos, and that is really important for a family. There is a journey you go on after you lose a child and being able to talk about your child and the loss and the impact on your family that that has had is a very important fact in some of these submissions and the lack of justice because we cannot—there is no justice. The court said on the final hearing that it has not escaped the court that Rodney Shaw is responsible for the death of Sophie Ella. There was nothing under the law that he could be charged under in our situation, but not just in our situation, in many women's situations who have reached out to me since 2014. There are 15 I am aware of in Queensland where charges could not be laid for reasons of not knowing.

Ms BOLTON: Should these amendments go through, for all of those that you have met—those 15—would that then provide that recognition?

Mrs Milosevic: It would. It would mean that the responsible party would be charged and appropriate sentences would be placed. It is important to note that, when these law reforms do come in—and I hope that they do—we are trying to create a very safe law and a very sound law.

Ms BOLTON: Thank you. I really appreciate it.

Mrs GERBER: Thank you so much, Sarah, for coming today and for talking about it and for advocating for so long. I think you said that you have been advocating since 2016; is that correct?

Mrs Milosevic: That is correct; 4 January I started. I got sick of being told, 'Send us an email.' That was kind of where it started in 2015. On 4 January I launched a Change.org petition. We got 121,000 signatures in four weeks and on 4 February we met with Yvette D'Ath, who was the attorney-general at the time.

Mrs GERBER: Since then you have been advocating for this, so what we are talking about is for an indictment to be able to name the unborn child.

Mrs Milosevic: That is correct.

Mrs GERBER: What kind of impact will that have and how do you see that being the legal recognition that is needed for families in your situation to have justice?

Mrs Milosevic: I think in the early days you are in a bit of a fog for a while, but I think now, looking back at my journey—and without obviously advocating for the law reform—having your child acknowledged as an unborn child and not a fetus, which is not a very nice term when you are going through what we have been through, gives a sense of healing. I talk to a lot of women who have lost children. I advocate and do peer-to-peer counselling for a lot of women in all different circumstances—sometimes it is just because it happens—but having that acknowledgement of your child helps in the healing process. It helps you to heal and grieve and to know that your child mattered, just as much as they mattered to you.

Mrs GERBER: We have heard from a number of stakeholders and almost all of the stakeholders have been supportive of this legislative reform. I think the Queensland Law Society is the only one that is not. In my questioning with the Queensland Law Society—and I apologise: I may have read your statement out wrong; I think I read it out to them that you were walking and not in a vehicle—one of the issues they raised is that there would be unforeseen consequences in relation to naming an unborn child on an indictment and that it could mean that a woman might be charged and it could mean that a person with someone who causes the injury to the unborn child or the death of the unborn child could be charged if they did not know the woman was pregnant. I know you have already addressed some of that, but can you talk us through why this reform does not mean that that will eventuate?

Mrs Milosevic: Because there has to be an aggravating circumstance. Somebody has to have broken the law. Whether that is drug driving or acting dangerously or just walking up in a meth rage and punching a woman who is not known to you as she is walking down the street and her baby dies, that baby should be recognised. I think it is really important to understand that.

I think it is also really important to understand that under this law reform—this was something raised when we were going through this with Shannon Fentiman—I never want to see a woman charged for the death of her baby for falling down the stairs or, as I heard before with DVConnect, in a DV situation. I do not think a woman should ever be charged with that, but if she was to do something when she was high on methamphetamines, in a rage and drove into a wall and that baby died and she did not, then I think that would be up to the determination of the law. That is a pretty severe circumstance and an intentional circumstance to end life potentially. I think it is really important to understand that we have worked very hard on making sure that everybody is protected under this law—not just the unborn babies but also the people who could potentially be charged under it and also the woman. A woman's rights are so important to me and I advocate for choice.

Mrs GERBER: Is there anything more you want to add? Your submission talks about 15 more families that would have had justice had this law been in place when you started advocating for it in 2016.

Mrs Milosevic: Yes.

Mrs GERBER: Can you elaborate on any of that for us?

Mrs Milosevic: Some of them have been motor vehicle accidents. Some of them have been domestic violence. Obviously there was the manslaughter case in Logan Central and many other incidental ones, without obviously breaching somebody's privacy and after private conversations with me because they have reached out.

Mrs GERBER: Yes, of course.

Mrs Milosevic: I have had so many messages of, 'It happened to me and my baby didn't matter. Thank you for giving our unborn babies a voice.' What I think is really important to understand is that we do not know that these children are not the cure to cancer or the cure to SIDS or that they are not the person who is going to do something amazing in their life because they never got a chance at their life.

Mrs GERBER: Thank you.

Mr KRAUSE: Sarah, thanks for coming and talking to us and telling us your story. I just want to ask you about one aspect of your oral submission here. You mentioned before the use of the term 'fetus' or 'unborn child'. The Women's Legal Service in their submission to this bill raised deep concerns in relation to the use of the term 'unborn children' and they said they strongly object to the use of that terminology in the bill because it is, among other things, unnecessarily emotive. Do you have any reaction to that?

Mrs Milosevic: From my reaction point, there has always been a conflict around a woman's right to choose abortion and I have always said that this has nothing to do with an abortion and nothing to do with affecting a woman's rights. When a woman chooses to terminate a pregnancy, in the medical field, yes, it is considered a fetus. When a woman has chosen to carry that child to term in the hopes that they bring home a baby, I think of the damage that it causes emotionally to a woman, especially speaking for myself. All of her medical records referred to her as the 'fetus' and all the court hearings referred to her as the 'fetus', but to me she is my child. She was stillborn and there are others specifically past 20 weeks, because obviously that is the federal law. If we look at viability, even a baby at 24 weeks can survive, and in Queensland I think 21 weeks and six days was the earliest surviving born child. I think it is really important to determine the fact that these children are children because they still get born. It was not a termination. It was not a first-trimester loss from natural causes. I have had four of those myself. I understand in certain ways that, yes, that is the correct terminology from the medical side of things, but we are referring to a child that is wanted. I think it is really important—that is, unborn child. I think we can differentiate because abortion is legal in Queensland. I think we can separate those two things. I do not think that has an impact.

Mr KRAUSE: Thank you.

Ms BUSH: Thank you, Sarah: that was actually a really impressive response to that question. I had thoughts in my mind as well. I just want to thank you for coming and for the work that you have done. Our committee has heard a lot from victims of crime and survivors, and I am sure I speak on behalf of everyone when I say that we are just always so impressed by the quality of information given and the strength it takes to come here, so thank you so much. I am really sorry: I have not had a chance to look at your original petition and campaign, but what exactly, in a nutshell, was that calling for?

Mrs Milosevic: The very first campaign that I wanted was this law that we are currently putting through. Through lots of feedback we had tried it a few other times but maybe it was not well executed—not from our side but from the other side of things. I think it is really important to—sorry, what was the question?

Ms BUSH: I am just interested in your original intent and where it has ended up, I guess.

Mrs Milosevic: Where I was going with it. I wanted anybody who had a criminal offence that caused the death of an unborn to be charged and to leave that decision up to the investigation and then things like that. We are here to write the law, not say how that law is placed in the community. Then we were kind of told that there is not a chance in the world that this was ever even on the cards, so we looked at traffic laws and ways to amend that. That was kind of the starting thing. Prior even to abortion being legalised in Queensland, there was a lot of conflict and a lot of back and forward between people, so it was really challenging in the very early days of it. My only aim at the end of the day is: if somebody causes the death of an unborn child through a criminal act or a reckless act they should be charged.

Ms BUSH: It sounds like you have been working pretty consistently with the relevant authorities to get it to this point and that you are satisfied with the proposals in the bill, because I think this bill takes it a bit further around expansion under the victims of crime act and recognition and assistance with funeral costs. You are satisfied with everything that is in it?

Mrs Milosevic: Yes. I think those little things are really important. It is the same as tendering your victim impact statements—not just the parents but the children of that family or grandparents to also be able to do that. I have a 10-year-old. She was actually involved in that accident and watching the light go from her eyes, because she was very advanced in her language almost to where she could have a full conversation. In adult terms she is very advanced and just the impact it has had on her for her to have been able to go, 'Hey, this happened to me. This was my sister. I don't get to play with her ever.' It is those sorts of things—those little things within this legislation that allow for victim impacts and all of those things. I think those things are really important and they make a difference: the cost of the funeral being covered, being able to get everything you want for your final goodbye. We called it her 'celebration of a life' because it was so short and it was really important for us. We had doves and balloons and asked everybody to wear bright colours. With regard to being able to financially afford that, especially when you potentially have medical bills or whatever that may look like, I think having the burden of that taken away in terms of the cost of the funeral is a fantastic bit that will add to it.

Ms BUSH: Yes. Thank you. Well done.

Mr HUNT: Sarah, I just have to echo the sentiments of everyone else and thank you for coming in. The way you have carried yourself and presented your story has been remarkable, so I thank you for that in the first instance.

Mrs Milosevic: Thank you.

Mr HUNT: Sarah, as much as we would wish it otherwise, there will be other instances like this, like what has happened to you.

Mrs Milosevic: Yes.

Mr HUNT: How will this make the journey for the other parents different from your journey? That might seem like a startlingly obvious question, but I think you will be able to tell us what it is going to mean for other parents going forward.

Mrs Milosevic: For other parents going forward—obviously it is really important to note that this law reform absolutely cannot help us. Double jeopardy protects him. He cannot be charged under this law. It has passed. Having justice at the time of losing your child may seem not irrelevant at the time, because obviously the trauma is so much and the grief is so much it is very hard to bear, but later on and as police investigations progress and charges get laid—knowing that your baby mattered, that it counted, that it was a human being just waiting to take its first breath. This kind of relates back a little bit: it is actually proven that babies practise breathing in the womb. They actually breathe in and out amniotic fluid. That is why the birthing process is the way it is. It is really important to note that, while they are not breathing oxygen like we do here, they are still actually using their lungs and breathing.

Having that justice and recognition that your baby mattered and that your baby was important just changes everything. Knowing that the responsible party who caused the death of your baby is charged appropriately under the legislation means that at least there is some justice. The word 'justice' can mean a lot to a lot of different people, but, in our situation, if this law was in place then I would know that at least he would have received appropriate charges. Instead, he tried to get a work licence by bringing his newborn daughter to court to show he was a good and proper person. I think it is really important to note that people who do these things are not good people. I think it is important to note that going to prison, if that is the appropriate charge that has been applied, gives a sense of comfort—maybe not in the early days—that at least there was some accountability for somebody's actions. I think that is society, isn't it: accountability for action. For every action there is a reaction and I think it is important to note that.

Mrs GERBER: I want to give you an opportunity to respond, maybe directly, to some of the things the QLS said. This bill does not introduce a new offence. What it does is provide for a statutory aggravating factor that may increase the sentence a court gives within the existing minimum penalty for the offence. The QLS contended that the proposed amendments regarding an aggravating factor in sentencing are not necessary and that there are alternative ways to recognise the deaths of unborn children as a result of criminal conduct. That is it, essentially. Then they go on to explain how, in their view, there might be unintended consequences based on that opinion that they have given. I want to give you an opportunity to respond to that.

Mrs Milosevic: I think it is really important to understand that obviously every situation is unique and the circumstances around that are unique. The current legislation in Queensland does not allow for all circumstances. We already have a law that protects our unborn babies if the person who caused the death of the unborn baby is aware. In most situations, unless that is a partner or it is DV or it is an intentional assault or something like that, we actually do not have a law or legislation in Queensland that does work in all situations. Having it as an aggravating factor—there was grievous bodily harm done against me, not because of the death of Sophie but because my injuries were life-threatening. He then would have received an aggravating factor because of my grievous bodily harm.

Mr McDonald: Can I add something to that?

CHAIR: Of course.

Mr McDonald: Thanks, Sarah. Thank you for all of the advocacy you have done to bring this law here today. It has been a long journey. It started off with laws similar to this but they were watered down and it has come back. There are some very thoughtful amendments before us today to minimise any risk of unintended consequences. If the QLS submission is correct, after this bill goes through a baby of 20 weeks, with a birth certificate, who dies in utero, with a death certificate, will still not be able to be on an indictment. Whether somebody is charged or not they 'will not matter', in Sarah's words. That shows the thoughtfulness of these amendments, to make sure that the babies matter—

Mrs Milosevic: And that they are recognised.

Mr McDonald:—and that justice is done. Many families in the future will be able to grieve and turn to the fact that somebody was responsible because of the criminal nature of their actions and not because of some accident, as the QLS submission suggests—some criminal activity, as Sarah has so clearly articulated. Sarah, if it does not kill you it makes you stronger. I think you can see that Sarah has been on this journey for a long time and understands the law. We have worked through this for a long time. Again, I commend her for the way she has presented here today. It is not just about being charged; it is about seeing justice done.

CHAIR: Jim, to pick up on that, the name of the unborn child will not be on the indictment; that is the way this law will stand?

Mrs Milosevic: Yes, the child's name will be mentioned on the indictment.

Mr McDonald: It will be able to be mentioned on the indictment. It allows for that to occur.

Mrs GERBER: I understand that there is discretion there.

Mrs Milosevic: Of course.

Mrs GERBER: Of course, the woman or the parents have to consent to that and want that in the first place.

Mrs Milosevic: That is correct, because not everybody wants to be public. Grieving the loss of a child is a devastating experience and it does not matter how many years have passed; it still is.

CHAIR: James, I understand you have previously submitted a petition to the parliament.

Mr McDonald: Yes, that is correct.

CHAIR: Obviously, you would still have a copy of that?

Mr McDonald: Yes.

CHAIR: Would you mind forwarding that to the secretariat? I only need the wording, please; is that okay?

Mr McDonald: Sure.

CHAIR: Could you have that to us by 14 July, please?

Mr McDonald: Certainly, Chair.

CHAIR: Are there any more questions of Sarah or Jim, before we close?

Mrs Milosevic: I do want to go back to the child's name being used on the indictment. I think that is where it goes back to that child mattered. In Canada, a similar situation happened. There is a petition called Molly Matters. A man's wife was murdered in a home invasion and she was full-term pregnant. Obviously they do not have a law that protects an unborn child so there was only a single count for that death. I think it is really important to note that that child's name was Molly. I have had many conversations over many years with Molly's father. I think that says it all: Molly matters. It is just like Sophie matters or a Leah matters or a Tony matters. It does not matter what the child's name is. If a parent chooses to allow their child to be counted and have their name written, I would not know a woman who has lost a child who would say no to that. That is in a very wide community across Australia and I am in US support groups as well. I think it is really important to note that we all talk about our babies and we share photos of them, even if they might be offensive to others, because our babies matter.

Mr McDonald: I think that is a really important point, too. As a baby develops in the womb, it is a wanted child. As that baby nears full-term, the level of awareness of the baby coming into the world is important. That is important for the courts and shows in the way these thoughtful amendments have been written to allow for a circumstance of aggravation to be considered. Whilst the Queensland Law Society is expressing some really specific unintended consequences, it is almost impossible to think of a circumstance where it will actually apply when criminality occurs.

Mrs Milosevic: That was the importance of why I wanted there to be a criminal offence or something that somebody did legally wrong that caused the death of that baby. It is also noted that we have always maintained not only a woman's rights but also that doctors, nurses, midwives and all of those in a hospital situation cannot be charged under this law because there was not a criminal offence. I think it is really important to note that we have touched on a lot of those issues over the years and we have had a lot of feedback from community. In four weeks, 121,000 people told us what they thought of the law. Probably not even half of a per cent were opposed because they did not understand it and then when they understood it they were not opposed. I think it is understanding that.

Mrs GERBER: Because it is not a separate offence but is a circumstance of aggravation, the court's discretion to consider all of the circumstances of the case in relation to exercising their sentencing options still applies.

Mrs Milosevic: That is correct. It is up to the police investigation and the information that is handed to prosecutors and all of those things. Our police investigation was two years because of situations of him under acceleration and not braking and determining speeds and things like that that he was doing at the time of the impact. It is really important to understand that in these cases of a sensitive nature the forensic crash units or the investigative units—whatever the relation to this loss has been—are well thought through. They do not take a case to court if there are not correct circumstances for that.

Can I say one more thing? This is something that I had said last year. While Shannon has done a tremendous job on this legislation, I think it is really important to note that I would absolutely love to see this done for her ninth birthday. I know that is a tricky situation and there are a lot of parts to this bill. I know it is a very large piece of legislation and changes. However, as a family we need time to heal and I cannot rest until this is done. 30 August is her birthday. I know: it is six weeks away. It may be a little after that, I understand, but that is on the record.

CHAIR: It may be pushing it to have the second reading.

Mrs Milosevic: I understand it is challenging and there is a process.

CHAIR: We will do our best. As there are no further questions, I intend to close the hearing. Thank you, Sarah. I would like to express my sympathies for your loss.

Mrs Milosevic: Thank you.

CHAIR: Words cannot address what you have just told us. Thank you for being here and thank you for your written submission. Thank you, Jim, for coming along.

Mrs Milosevic: And for all of Jim's hard work.

CHAIR: That concludes this hearing. Thank you to everyone who has participated today and to all those who have helped organise the hearing. I give a big thank you to our Hansard reporters and to the secretariat of the committee. Thank you, Jacqui, for helping us out today and Melissa. A transcript of these proceedings will be available on the committee's webpage in due course. I declare the public hearing closed.

The committee adjourned at 12.57 pm.