# *YOUTH JUSTICE REFORM SELECT COMMITTEE*

**Members present:**
Ms SL Bolton MP—Chair
Ms JM Bush MP
Mrs LJ Gerber MP
Mr AD Harper MP
Mr JJ McDonald MP
Mr DG Purdie MP
Mr A Tantari MP

**Staff present:**
Dr A Beem—Committee Secretary
Dr S Dodsworth—Assistant Committee Secretary

## PUBLIC HEARING—INQUIRY TO EXAMINE ONGOING REFORMS TO THE YOUTH JUSTICE SYSTEM AND SUPPORT FOR VICTIMS OF CRIME

### TRANSCRIPT OF PROCEEDINGS

**Friday, 24 November 2023**

**Brisbane**

# FRIDAY, 24 NOVEMBER 2023

**The committee met at 9.00 am.**

**CHAIR:** Good morning everybody and welcome. I declare open this public hearing for the committee's inquiry to examine ongoing reforms to the youth justice system and support for victims of crime. My name is Sandy Bolton. I am the member for Noosa and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past, present and emerging. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we all share. With me here today are: Jonty Bush, member for Cooper and the deputy chair; Aaron Harper, member for Thuringowa; Laura Gerber, member for Currumbin; Jim McDonald, member for Lockyer; Dan Purdie, member for Ninderry; and Adrian Tantari, member for Hervey Bay.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. I would like to restate the bipartisan approach that each member has committed to in the undertaking of this important inquiry. As chair, I remind all members that questions put to witnesses must be relevant to the inquiry and that witnesses will be treated reasonably, fairly and respectfully.

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

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

## JURATOWITCH, Ms Carolyn, Member, Children's Law Committee, Queensland Law Society

## REECE, Ms Laura, Member, Criminal Law Committee, Bar Association of Queensland

## WALSH, Professor Tamara, Member, Human Rights and Public Law Committee, Queensland Law Society

**CHAIR:** I now welcome representatives from the Queensland Law Society and the Bar Association of Queensland. Good morning everyone, and thank you so much for your time. Would you like to make an opening statement before members start asking some questions?

**Ms Reece:** Good morning Madam Chair, Deputy Chair and honourable members. The Bar Association also acknowledges the traditional owners of the land on which we meet today and thanks the select committee for the opportunity to give evidence today. We are grateful for the opportunity to make submissions but we note that we will also provide a more fulsome written submission in due course given the breadth of the terms of the reference and the time provided in which to do so. Fortunately, our colleagues at the Law Society with their significantly greater membership base and with whom we appear today were able to make a written submission which we have considered. The association notes and joins in the submission made by the Queensland Law Society, with whom we work closely on issues such as youth justice. I appear today without my friend and colleague Mr James Benjamin, who is unable to attend due to illness. Mr Benjamin is widely recognised as the preeminent advocate appearing regularly in youth justice matters across the state and has given evidence previously in this place. I ask that his absence today be noted as a formal apology on behalf of the Bar Association.

The members of our association who practise in criminal law range from those who practise mostly in defence to those who prosecute and some who do both. As defence lawyers, we visit our young clients in watch houses and detention centres across the state. I would like to give by way of example the kind of interaction that we have with our clients two cases, which I draw from my own experience. The first—and these are very brief, but they are a bit of a snapshot of the kind of interaction that we have with young people in custody—was a 10-year-old child whom I acted for while living in regional Queensland. He was living in residential care by way of a child protection order. He had been removed from the care of his mother after she attempted to have his sisters recant their evidence against their father who was convicted of serious sexual abuse of them.

This young person had committed a series of offences of assault and wilful damage, consistent with a young emotionally disturbed child acting out. One charge that I acted for him on was a common assault that included squirting detergent on a carer's foot, but his behaviour was escalating. The police would be called, he would resist arrest and he would often be in the watch house in this regional town where I was working at the time. I would see him sometimes weekly, sometimes fortnightly, in the watch house, and he began expressing suicidal thoughts as early as 10 years and six months old.

This example may also be seen with the more recent example of a matter I was involved in, again in regional Queensland, of a young person charged with very serious offences. He was held on remand for two years. There is no complaint about that, because they were serious offences. During that time, the evidence before the court, which was put forward both by way of a pre-sentence report and taking evidence from workers at the youth detention centre, was that no psychological intervention had been made available to him despite his assessed need as it was not available through the mental health service that provided care in that particular youth detention centre. He had spent lengthy periods on effective lockdown—in his cell for more than 20 hours a day, not as a result of poor behaviour but as a result of staffing shortages. I note some of the evidence consistent with that which the committee heard yesterday. He got to the end of his two years on remand and it has to be noted that he was no less dangerous than he was when he was remanded in custody, and, in fact, he was probably more dangerous. It significantly limited what a court could reasonably do in the circumstances, given, of course, concerns with community safety.

These sorts of experiences inform our knowledge of the youth justice system and inform our evidence when we come to give evidence on the difficult issues that face the committee—this intersection between community safety and how to deal with individual young people in the criminal justice system. As advocates, we become keenly aware of the impact of the experiences of detention both in watch houses and youth detention centres on our client base, but, at the same time, we are not and we never have been unaware—and, indeed, we are not unmoved by the experiences of victims of crime. We are members of the community that we all live in. We see both sides of the story on a daily basis as matters progress through our courts. As such, when we provide this feedback on proposed changes to laws which impact on young people, we are very keenly aware of that dual challenge which our contemporary youth justice system faces to protect and maintain community safety while providing a just response to young people and one which hopefully fosters their rehabilitation.

One of the things we often come back to, not only in the evidence we give before the committee but in our submissions before the court, is that the emphasis on rehabilitation in the Youth Justice Act and in the kind of orders that we seek in the submissions that we make serves both of those purposes. It is intended to help the young person but, in doing so, to help the community and to make the community safer.

The association has previously raised concerns about the use of exceptional powers under the Human Rights Act to declare that amendments to the Bail Act and Youth Justice Act will apply despite being incompatible with human rights. This was of particular concern a few months ago because it was done so in a time frame that made consultation very difficult. In that context, we support the establishment of this committee and the opportunity it presents for a more considered and consultative approach to this difficult issue. Thank you again.

**Mr Bartholomew:** Thank you for inviting the Queensland Law Society to appear at the public hearing on youth justice reform in Queensland. In opening, I respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place, Meanjin, Brisbane, and I recognise the country north and south of the Brisbane River as the home of the Turrbal and Yagara Nations and pay deep respect to all elders past, present and future. I would also like to acknowledge the over-representation of Aboriginal and Torres Strait Islander children and young people in both the youth justice and child protection systems.

The Queensland Law Society acknowledges that youth justice has a significant impact on our community. We recognise the significant trauma victims and their families and their communities receive as a result of the impacts of crime. We also recognise that children in the youth justice system have a multitude of disadvantage and have often been victims themselves. The Queensland Law Society is dedicated to supporting measures that keep our children and young people and communities safe. In order to promote these objectives, in our opinion there must be a strong focus on evidence-based policy, legislation and programs. In providing our evidence today, we note that we are apolitical and seek to promote good law for the public good. I am joined today by Professor Tamara Walsh, member of the Human Rights and Public Law Committee, and Carolyn Juratowitch, a member of the Children's Law Committee. We welcome any questions the committee may have.

**CHAIR:** Thank you. I will hand over to the member for Cooper.

**Ms BUSH:** Good morning, everybody. Thank you for coming up along today and for all of your contributions to the sector more broadly. I find that we only have a short time for these committee hearings, so I want to get to a couple of straight, direct questions. Laura, I might start with the example that you just gave of the 10-year-old in resi care which is quite compelling. I have worked in that sector and have heard those stories, but I do think it is good to capture some of that on the record. I am particularly interested because the department classifies young people as a 'serious repeat offender' based on a range of things—and we will have them in front of us at some point—including: the quantum of charges that kids in care have and the overcriminalisation of them, including through wilful damage and assault and the range of behaviours that fall into those charges. Can you talk a little bit about that and give us a sense of some of the charging practices that you have seen?

**Ms Reece:** He is a good example of that because by the time I acted for him he had already pleaded guilty to a low-level assault but still an assault of a carer. The policy of that particular residential care provider was that, if there was any kind of violent interaction, the police would be called. You can understand that from a duty of care point of view that they have to their employees. The difficult reality of that for this young person is that it criminalises behaviour which in a family would be absorbed and might be addressed in a different way. There might be consequences to the young person, but it is highly unlikely that within that range of behaviours I was seeing with this young person that the police would be called by a parent. Even though the behaviour would, no doubt, be quite unwelcome in any family, for that young person, because of his position as a child in care, it had the effect that by the time he was 10 years and six months or 11 years old, he had quite a lengthy criminal history—not a recorded criminal history—but he certainly would have been considered a repeat offender. It was difficult. At the centre that I was working in at the time, the local magistrate did a lot of work to try to span that stakeholder group, including child safety, the residential care providers, youth justice and the police. Everyone was trying to do the best that they could, but the absolute vulnerability of that child was that the response to his behaviour was a criminal justice response. That is quite a tenacious problem because it does have that tendency to criminalise children who are really acting out emotionally.

**Ms BUSH:** I want to try to understand this serious repeat offender classification. I appreciate that it is not you who will help me with that definition, but you are part of that solution. Is it probable that you could have someone who is a serious repeat offender who is someone who has kicked holes in walls in resi care multiple times, but that has generated that classification now as a serious repeat offender?

**Ms Reece:** I do not know about the exact nature of the classification, but certainly when you talk about children with lengthy criminal histories or who have rap sheets, as they are sometimes referred to, that are lengthy, we are often talking about numerous, low-level offences. For this child, for example, the kind of wilful damage he would commit was in the course of police trying to arrest him. He might kick or jump on the boot of a police vehicle. It is not acceptable behaviour, but, again, an escalation from a situation which might ordinarily have been dealt with domestically.

By the time I finished acting for him, when I moved towns, he probably had 30 charges reflected on his criminal history and none of them were more serious than an individual struggle or a wilful damage offence committed in that police interaction ultimately when he was being arrested. I do not know if that assists you. I can talk about other cases where my clients certainly have lengthy criminal histories, but when you look at the individual entries often they are very minor offences and obviously, sadly, they also can be escalating offences. That is a pattern that we see and it is a pattern that we know occurs in that group of offenders, that I think everyone is aware of now, who really are resistant to a lot of the interventions that often work for young people.

**Mrs GERBER:** Thank you to both the Bar Association and the QLS for being here today and giving us your expertise. I want your view in relation to penalties, in particular. We saw the government introduce the 14-year sentence, which obviously was capped out at half under the Youth Justice Act. In your experience with your client base, both in your work professionally and within your organisations, can you tell us how many cases have been dealt with under that maximum sentence? Has anyone proceeded to the superior court or are they all still electing for the Magistrates Court?

**Ms Reece:** The maximum penalty is the high point to which a sentence can be imposed. Generally speaking, in the criminal law the way a maximum penalty is approached is that on a plea of guilty you would rarely get the maximum penalty. The maximum penalty is reserved for cases that are really the worst of the category and they would also tend to be imposed, first of all, for a very serious example of the offence but not on a plea of guilty because if there is a plea of guilty there has to be some recognition of that plea of guilty in our system of justice. It is actually what makes the wheels turn, providing an incentive to people to do the right thing if they have committed offences. It is incredibly rare, across our entire jurisdiction, regardless of whether it is children or adults, that anyone gets the maximum penalty. What it does is guides the imposition and the gradual increase often of the kinds of penalties involved. You hear magistrates and judges say, 'That case was before the increase in the maximum penalty so tell me why it should not be more in this case?' That is the kind of effect that it has. If you look for individual cases where the maximum penalty has been imposed, I doubt you would find any. That is not how it works.

**Mrs GERBER:** What is the maximum that the Magistrates Court can impose?

**Ms Reece:** For children it is less again so it is three years for adults and then for the children it is a similar period of detention.

**Mrs GERBER:** Is it 12 months?

**Mr Bartholomew:** For children, it is 12 months that the lower court, the Magistrates Court, can provide. The Childrens Court of Queensland, the judge there, has a much broader sentencing capacity and can impose up to 10 years detention. In this state, the Supreme Court, of course, has the capacity to impose life imprisonment and, indeed, has imposed life imprisonment on children. We have a broad range of sentencing options that reflect the nature of the offending that is being dealt with by the individual court.

**Mrs GERBER:** I am trying to work out how many cases have been dealt with in that way, whether or not we are seeing a lot of pressure on our Magistrates Court and a lot of cases being dealt with in the lower court under that shorter sentencing measure of three years or one year that we are talking about or whether we are seeing an election to go up and the higher penalty being imposed?

**Mr Bartholomew:** The nature of the offending that is generally before the Childrens Court is of a kind that can be dealt with summarily and there is much to be said for resolving matters expediently for children. That is consistent with the principles of the Youth Justice Act and well-recognised principles in terms of resolving matters and not keeping young people on remand for significant periods. Being able to deal with matters quickly is an aim of the system and has been shown to be quite effective in terms of resolving matters. Most matters for children do get resolved in the Magistrates Court and that reflects the criminality, really, of the offending that young people commit. Certainly there are a number and the Childrens Court of Queensland is also a very busy jurisdiction dealing with matters and, indeed, it has the capacity to impose other sentences in appropriate matters.

**Mrs GERBER:** Are we seeing any impact of the increased penalty in relation to sentencing if most of the matters are being dealt with summarily—and I accept everything that you just said then? Are you able to talk to any of the impact that that recent legislative change has had?

**Mr Bartholomew:** I cannot speak to those specifics in terms of that. Perhaps that is a question for the Sentencing Advisory Council in terms of what that impact looks like. Ms Reece talked about how a court will view a charge based upon the maximum penalty that can be imposed and will look at that issue.

**Mr HARPER:** Picking up on the member's questioning, recent changes in legislation were around serious repeat offenders or recidivist offenders, breach of bail et cetera. To clarify, Mr Bartholomew, what you are saying is that in that hierarchical court system of Supreme, District and Magistrates, sentencing options are there to deal with serious offenders. You are saying that the courts have the tools now.

**Mr Bartholomew:** Absolutely. Queensland does send and has the capacity to send children to detention for life. Of course, under our law that actually means that 10-year-olds are vulnerable to being sentenced for life imprisonment for offences that they commit as children. I am not aware that that has happened in terms of the imposition of life penalties, but they certainly have been given to children who commit offences when they are 16. That certainly has happened.

**Mr HARPER:** Ms Reece, your comments struck a note with me: the tension between community safety and the just response. In Townsville we have had calls around this. I have met many victims of crime. We have had tragedies. I have seen cases in my former career where young people have lost their lives. I have seen it as an elected representative where people have lost their lives because of high-risk behaviour and offending in stolen cars. With that tension, we need to find a balance. The committee has an approach to find the best way forward. If we go stronger and remove youth detention as a last resort, what would happen in that scenario?

**Ms Reece:** I think the terms of reference of this committee demonstrate that the approach of the committee is one that acknowledges that a criminal justice response will never be the entirety of a response to this kind of issue, and it just cannot be. What we know of children is that they are not easily deterred simply by the prospect of detention or an increased maximum penalty. They are impetuous. They are not thinking things through. Their brains have not developed to a point where they can really even act in their own interests, often.

We see it in court and we listen to victim impact statements, sometimes read by members of families who have lost a loved one or have had a dreadful experience perhaps in a home invasion. We see body worn camera footage of police turning up to these incidents. We are not immune by any means to the reality of what happens in these towns all across Queensland and in our own communities. What we do also know is that when we sit with a young person who is 10, 11, 12 or older and we talk to them, there is absolutely no sense really that they are thinking, 'If I do this then there's a new maximum penalty and I might get in more trouble.' They just do not think like that.

A criminal justice response may take young people out of circulation and sometimes that is the right thing to do because it might act as a circuit breaker. However, a longer period in custody or even custody at all sometimes just might not be the right response for this young person because the causes of their offending behaviour need to be addressed simultaneously. Rehabilitative orders like probation orders and all of the restorative justice options that are available become really important because they do not simply create this punitive response to a complex issue; they have to look at all of the things that are going on that are contributing to that young person's offending.

**Mr McDONALD:** Thank you all for being here and I appreciate your submissions. They are very well thought out. The committee is charged with developing the whole of the system, but I think very quickly we have come to a point—or I certainly have—that the government has let down those high-risk repeat—

**CHAIR:** Relevance, please.

**Mr HARPER:** Point of order.

**CHAIR:** I made a statement earlier regarding the bipartisan nature. Can we ask questions about any relevant situations at the moment? We can remove the references to what government has or has not done and move to what we need to do and focus on that.

**Mrs GERBER:** Point of order, Chair. My point of order is that it is contextually relevant to be able to provide an example in order for these witnesses to understand. Is there a standing order that that is offending?

**CHAIR:** No, we can say that currently the situation—

**Mrs GERBER:** Then the member should be allowed to ask the question.

**Mr McDONALD:** We have discovered that victims are increasing in number and the serious repeat offender cohort is increasing. When we talk about detention in the current context in Queensland, there is really only one option and that is to send young people to a watch house—and as Mr Bartholomew said they can be as young as 12—and sometimes to an adult watch house or a jail. From the evidence we have from youth advocates, we need a situation where the children who are the worst of the worst and have many pathologies are taken to a point where they are not a risk to the community but have wrapped around them consistent support with very intensive rehabilitation and health matters addressing those pathologies. If that were available to those kids, do you think that the issue of the word 'detained' would be a problem for us?

**Ms Reece:** Are you talking about a form of detention outside of a conventional detention centre, like an on-country program or a boot camp?

**Mr McDONALD:** Professor Walsh's suggestion was secure schools or supervised residences. It would be an alternative that could have that high-intensity rehabilitation and consistent support.

**Ms Reece:** I think our members would always be interested to see options that cater more therapeutically to young people who have committed offences. The terrible situation that many young people find themselves in at the moment, because of these issues we know are occurring in detention centres, is that they are not receiving education and, in fact, they are basically being contained in detention centres. I will let my colleagues from the Queensland Law Society speak more to that because they have more expertise in this area. Certainly from the Bar Association's point of view, we would support any exploration of options that do not involve the kind of conditions that children are held in currently.

**Mr McDONALD:** As a follow-up question, and for others to understand as well, I understand from evidence before us that it is not just the children who have been sentenced; it is also those on remand who are not getting health attention or education attention because they have not been convicted yet. Again, there is a large gap there.

**Ms Reece:** Typically, children spend more time on remand than they end up spending on their actual sentences. It is an unfortunate aspect of our current system.

**Prof. Walsh:** If the suggestion is that this relatively small number of serious repeat offenders should be put somewhere and we can place them somewhere that is appropriate, the literature would suggest that small facilities that focus on education and training, that try to identify children's strengths and try to give them hope so that they can see an identity and a possibility for themselves outside of that environment is the better way to go. That is the international literature.

**Mr McDONALD:** The international literature and the learnings internationally, from my research, say that this has been happening for decades. Why is it not happening in Queensland?

**Prof. Walsh:** There is very little equivocation on many of these issues throughout the literature. Again, I would emphasise that we are talking about a very small number of children—around 500. It is a relatively small number. I would emphasise that this measure of serious repeat offender is actually—and if you speak to the criminologists who developed this they will tell you—very highly correlated with the adverse childhood experience measure. What we are talking about here is exactly the same cohort of children. The children who have the most adverse childhood experiences also tend to be the ones who fall into that SRO cohort.

**Mr McDONALD:** That 500 are committing almost half the serious offences in Queensland. Again, this has been the international learnings for decades so why is it not happening here in Queensland?

**Prof. Walsh:** I think it can happen here in Queensland and I think that is why we are all here. The reality that Queensland needs to face is that community safety and helping children are not actually in tension. What the literature suggests to us is that we can do both at the same time, and in fact if we are not doing one we will not achieve the other. If we are not providing support to these children, if we are not meeting their very basic, material, fundamental needs—and I am talking about housing, love, education, which are the things these children lack—the community will not be safe. If we continue to alienate those children and we continue to subject them to periods of custody—and it is not necessarily about the length of custody; it is the revolving door, it is the in and out where there is no chance to develop any community links, there is no chance to get to know peers, there is no chance to have positive teachers involved in their lives over a long period of time—then the community simply will not be safe. I would argue and the literature would suggest and what I hear from lawyers in my research is these two things are not in tension. In fact, they are inextricably linked and we cannot have one without the other.

**Mr Bartholomew:** I think what we also need to ensure is that, when we are talking about those therapeutic programs and alternatives that people might be suggesting, they need to be available to young people not just because they are offending. Young people who have those traumatised backgrounds, young people who are in care—those who have been exposed to trauma and need that assistance—need to have those programs available to them. We do not want to stigmatise those programs with just young offenders. If we start making it a condition of an order, for instance, that a young person attend at that therapeutic program, then perhaps that does make it more difficult to get that young person to engage. Currently, that is the difficulty—that there are people who are

identifying, 'This young person could do with this therapeutic intervention, but it isn't available.' We need to ensure that those interventions are not just available to young people who are in the youth justice system but that they exist for young people across Queensland.

**Mr TANTARI:** Ms Reece, I want to cover commentary you made in your opening statement about fast-track sentencing. From your experience, what do you think would be the impact on that youth cohort of having fast-track sentencing in place, particularly in regards to remand?

**Ms Reece:** I think it is really important. I was talking to a magistrate the other day who was telling me about a young person she had sentenced that morning. He had been charged arising out of an incident where a police officer might have charged him with armed robbery but he was charged with assault occasioning bodily harm and stealing from the person instead. That meant he could be dealt with quickly in the Childrens Court. The absolute benefit of that to the community is it is immediate. The consequences to that young person are immediate.

What we find with young people, if they are charged with the more serious offences which have to go to the Childrens Court of Queensland—and of course sometimes that is simply inevitable given the seriousness of what they have done—is that you might be talking about 12 months, 18 months or two years between the commission of the offence and when they are ultimately dealt with. That might also impact on the period of time in which they might otherwise meet the victim in a restorative justice process. When you act quickly with children, I think you have the opportunity to reinforce to them that what they have done is not okay, that there are consequences, and that can only be useful to them and to the community. So we support fast-track sentencing. We also support any measures that see, where appropriate, charges being dealt with in the Childrens Court rather than having to go through that more convoluted process of going to the Childrens Court of Queensland.

**Mr TANTARI:** Is that including diversionary sentencing and that sort of thing as well?

**Ms Reece:** Yes, but that is available in both jurisdictions.

**Mr PURDIE:** I have a quick question, and I do not know the answer to this so it is not a loaded question. Do you know what the failure rate is for court ordered restorative justice programs? I have the figures in front of me of how many there are. I do know—and I do not have the data in front of me—that police ordered RJs are quite successful, probably because they are given to a child early on in their course of offending. I understand that with court ordered ones there is a very high failure rate. Going to principle 18 of the Youth Justice Act of detention as the last resort, Ms Reece, you mentioned before that sometimes a young person just needs to be taken out of circulation, often for their own safety or for the safety of the community. Do you agree that the sentencing regime in the Childrens Court at the moment is more of a linear type process? Even if a magistrate knows that a young person might need to be taken out of circulation, they have to step through restorative justice options, reprimands and the whole linear of options until they get to that point where they can take someone out of circulation? It is not necessarily just a wheel that a magistrate can pick and choose; they have to go through those steps knowing that the child has to fail at every one of those options along the way before they can get to a point of taking them out of circulation.

**Ms Reece:** They do not have to get restorative justice the first time they go to court, for example. It does not work like that. A magistrate, regardless of how many times a young person has been to court, might impose a detention order. What they have to do under the Youth Justice Act is they have to satisfy themselves that that is the appropriate sentence in all of the circumstances, and the Youth Justice Act requires them to consider the detention is a sentence of last resort; it does not mean that it is not imposed. It is simply the framework in which they are making a decision. They have to consider all of the options, and on the basis of the seriousness of the offending and concerns about ongoing safety and the young person's personal circumstances, they have to make the right decision within that framework. It does not dictate to them that they cannot detain that young person. I act for lots of young people who have no criminal history but they are in custody on serious offences and they will absolutely get a detention order. There will be no question of it being off the table because of the principles of the Youth Justice Act.

**Mr PURDIE:** Haven't there been a number of appeal court rulings where that has been overturned because options of restorative justice and other options available to them should have been offered—mindful that principle 18 that detention is a last resort and for the shortest amount possible? Appeal court rulings are quite definitive in that those options should have been offered to a young person before they—

**Ms Reece:** They should have been considered by the court. The court is required by law to consider whether restorative justice is appropriate. It is actually incumbent on us to remind them to go through those steps, so sometimes I feel sorry for the whole system when I see cases where that

has not happened because the judge has not gone through that process. The process itself does not dictate the outcome; it simply says the judge has to turn their mind to whether restorative justice is appropriate. Often, a prosecutor and a defence counsel will say, 'We concede that in circumstances it's not appropriate.' Cases involving sexual violence are often not appropriate for restorative justice, particularly if it is going to involve a face-to-face interaction with the complainant. It may be appropriate if there can be other accommodation, like speaking with the police officer instead of the complainant.

The fact that courts have overturned decisions of judges because of a failure to consider restorative justice does not mean that they had to refer that young person to restorative justice in the first place. It means they had to consider it—they had to actively consider it—and in not doing so they are found to have failed in the exercise of their discretion.

**CHAIR:** I have a quick question for clarity. When I was reading *Safety through support* from the University of Queensland, it talks about diversion orders as a sentence order. They state that diversion orders 'could' be added as a sentencing option, and this is what I am trying to get clarity around. I thought that was already an option.

**Ms Reece:** Yes.

**CHAIR:** So I read more into the word 'could'.

**Ms Reece:** There is a dual scheme which operates. Mr Bartholomew can explain it in more detail than I can.

**Mr Bartholomew:** There are essentially five ways under the Youth Justice Act that a young person can be referred to restorative justice. They can be referred by the police. They can be referred by the court where a charge is dismissed because the police should have referred them. They can be referred as a diversion by the court. They can be referred as a pre-sentencing option, where the court can require that that restorative justice process happen before they impose the sentence. It can also then form part of a sentence order, or it can form the sentence order of the court that they participate in a restorative justice order with particular conditions attached to that order—in terms of reporting, very similar to a probation order—and that can happen in conjunction with other orders of the court, including detention, probation and community service.

**CHAIR:** That would include their reference to a 'youth justice rehabilitation order'. Given the conversations we have been having over the last couple of days and that Professor Walsh has mentioned, it would be these smaller facilities that have the full rehabilitation and the services and working with families; that could be done as an actual facility. This rehabilitation order in here has a range of things, but it does not have detained somewhere with those services. Is that available now? If there was such a facility with all of those services, that could be applied through the courts through a sentencing order.

**Ms Reece:** There is currently no option for that. There used to be. The only alternative to detention that we have really seen in recent times is boot camps and they were for short periods of time. I would caution against reconsidering those because the young person ends up just going back into the same community again after a short period of time. What is being contemplated I think in the material that is before the committee is something which is quite different. It provides an actual alternative to detention, rather than a short period of being removed from their everyday life and then just going back into that everyday life. Certainly, at the moment, while there are myriad options under the Youth Justice Act which can be very responsive to the young person, the point at which we probably do lack options is where there is that need that you get to with some young people where they do need to be detained.

**CHAIR:** So at the moment there is a gap in options for that therapeutic model.

**Ms Reece:** Yes, particularly because what we are seeing is that jail is not a therapeutic option. It might be in some cases if there were more services provided, but at the moment it is simply not.

**Ms BUSH:** Picking up on restorative justice and youth justice conferencing, things seem to be labelled often as tough on crime or soft on crime. I personally think we need to have a much broader suite of options available to us to let victims explore what justice looks like for them and for their communities. Can you talk about why justice conferencing and restorative justice approaches are not soft on crime? Can you say why they are deeply beneficial for both parties and actually help to drive down crime, if that is in fact your observation?

**Ms Juratowitch:** It is actually very confronting for a young person to come into a room full of adults and sometimes an adult who might be a little angry or distressed at what has happened. It is a far more challenging option for a young person than getting another one of the options such as a reprimand, a good behaviour bond, even a probation. It takes an enormous amount of courage for

young people to participate in that process. We encourage it as legal professionals because we know it is evidence based and we know that long term it can be very helpful for a child to understand in a real way the consequences of their actions.

We also know from representing people in those conferences that it can be an incredibly powerful experience in terms of a victim understanding what has happened and also no longer being afraid when they see that tiny little 10-year-old or the 14-year-old in the room and hear of their experiences. Also, if it is enter dwelling, a house burglary or something like that where people are expressing that they are feeling unsafe, a victim is able to have that discussion about, 'How did you get into the house?' or, 'Do I need to change the keys?' If the child says that they got in the dog door or they got in the backdoor, those are things that the victim can fix and then they feel safer in their own house. For other victims, it can be, 'You weren't specifically targeted. We were just going by and we saw your door open.' It can be very beneficial for victims in terms of helping them to feel more at ease and to feel safe.

The benefits for the children are that it assists them in developing both empathy and an understanding of the consequences. The children that we see committing offences are sometimes very young and sometimes have a range of other disadvantages. It is not the case that there is one restorative justice conference and they think, 'I understand why I shouldn't steal a car or break into a house.'

Sometimes we find results from having a series of restorative justice options because, in the same way that children learn math at school, it can be building blocks. They might get a little bit of benefit here, maybe more benefit here, maybe there is then a sort of a step back or maybe there is a period of detention. We find that it is not the case of just stepping through what are the options. Even after an offender has had a number of offences and periods of detention, sometimes at the stage when they are on the edge of adulthood to come back and have restorative justice at that point can also be really positive for those children. There can be some really creative outcomes from those conferences.

The difficulty at the moment is that we are experiencing quite significant delays. For a child in court today, what you would really like is to have that conference very quickly after that, because children do not remember—the same way that you would not give a penalty to your own child in your own house for something they did last year. When we are seeing delays of six, eight, 12 months before these processes start, it is too late. The child has moved on. Often the victims have moved on. I think there is some frustration sometimes from victims who say, 'I have agreed to this process; I am really keen for this process.' It is so delayed that it can lose some of its effectiveness.

**Ms BUSH:** Were there any barriers or any recommendations you can present to us that would help in opening that process up a bit more? You have touched on that, but is there anything else any of you would like to say on that just to round out that question?

**Ms Juratowitch:** I think successful conferencing depends very much on the skill and the experience of the conference convenor and that the investment in those workers and the investment in those processes—even though it is a big investment—it is much cheaper and much more economically sound than the costs of having children in detention. It is sometimes frustrating to have children in detention who have orders where they are to complete restorative justice processes even though they might have been on remand for six months and the child is there, but none of that work has been done with the child in detention. There is no reason while the child is on remand that they cannot also be complying with their other orders.

**Mr PURDIE:** To pick up on restorative justice conferences, I agree that some of them can be magnificent—and I have been involved in a lot—particularly at that early stage of offending and particularly the police ordered ones. When a young offender first starts offending under the Youth Justice Act the police have to look at alternatives before they instigate proceedings. They are cautioned. There are restorative justice programs and at that point people can have that awakening, I suppose, when they are confronted with the victim. The problem then is that they start going to court and the court will often reprimand them and go through a lot of those things before they go to another restorative justice program. By the time that person is under a court ordered restorative justice program, they have essentially been on that long process. That is why I go back to my original question about the failure rate of court ordered restorative justice programs or conferences, which I do not have in front of me but I am sure we can get. My concern is that there are a lot of those being ordered. At the early stage they are great, but, from what I am hearing, by the time a young offender has been through the police processes, has gone through other court processes and gets to the

restorative justice processes they are not necessarily the kids who are turning up at a conference for the first time to understand their impact of their long-term offending on their community and on their victim. Do you know what the failure rate is for those court ordered programs?

**Ms Juratowitch:** I do not know what the failure rate is. I think you have to look at the reasons for that failure rate. We know that a large proportion of our children do not have stable accommodation and that applies even to children who are subject to long-term guardianship orders with Child Safety. If children are homeless or are couch surfing then attending at 11 o'clock next Thursday for your conference often gets missed if they do not have the suitable adults in their lives to assist them to make those appointments. The other thing is that because the youth justice conferencing system is fairly labour intensive, we do not want to waste that on the children for whom maybe another caution would suffice, or maybe the discussions that they are having with the police officer are enough to assist that child to desist from offending. We want to make sure that we are using that in the most appropriate ways for the children for whom it is going to have the most effect.

**Mr HARPER:** My question is to Professor Walsh. Your paper is very good. I am thinking about gaps and what the committee can do going forward in terms of recommendations. In my former clinical experience, a lot of these youth are addicted to drugs, chroming or substance abuse and that is quite often linked to the criminal activity. You make some points about youth drug and rehab facilities. I think there is definitely a gap there. Without the consent of an adult, how do we stand up these services? I wanted to try to expand on that, because I think if people can get treatment early you are going to prevent the criminal activity downstream.

**Prof. Walsh:** You have picked up on the one point for which I cannot suggest there is consensus within the sector. When I did that research, I did have a number of people suggest that there should be detox facilities, but I also had people suggest that that perhaps was not the best approach. There is a lot of consensus in the youth justice research. That is one area where people differ. One thing on which there is agreement is the importance of diversion wherever that is possible. A lot of people will say, 'We cannot force children to address those issues' because, as I said earlier, there are a lot of things that lead children to become involved in drugs. Often they are self-medicating—we all know that—and often it is a result of the peer group. It is quite complex and sometimes those matters are best dealt with in the community rather than in a facility. It is one thing that people do not have a lot of agreement on. I would not mind hearing from the practitioners on that because they are dealing with the individuals.

**Mr Bartholomew:** I think it is very important that we have resources that are available for young people who do want to get assistance, that those resources are easily accessible and that there are not long waiting lists. Having the availability of those programs is very important. What is equally important is consistency in relationships for those young people because, quite often, it is about having those relationships and having that support that then encourages young people to access those programs. It is about young people having the confidence to be able to do it. It is important around these issues to be listening to young people who have accessed those programs to know what did provide the motivation for them, talking to young people in the system around what would encourage them to participate and ensuring that we have those supports in place.

**CHAIR:** I am mindful of time and I want to make sure we get in two more questions. Member for Currumbin, do you have a question?

**Mrs GERBER:** Thank you very much. I wanted both the Law Society and the Bar Association's view. You touched on it in your opening statement, Ms Reece, when you talked about overriding the Human Rights Act. I am interested in your view on the government's move to declare watch houses as detention centres and any impact you have seen that have on the youths held in watch houses and whether that has had any impact on levels of crime?

**Ms Reece:** I do not think the Bar Association is well placed to comment on whether it has an impact on crime. The police might be able to give more information about that. Certainly, we are seeing children in watch houses and, frankly, that is something none of us want to see. The reality is quite stark and the Bar Association was concerned about the moves earlier this year to effectively legalise the detention of children in those places, sometimes now for lengthy periods of time, and we maintain that concern.

**Mrs GERBER:** And the second part of that question about the impact on youths?

**Ms Reece:** The impact on youths?

**Mrs GERBER:** The impact on young people being held in watch houses?

**Ms Reece:** It is terrible. It is a terrible experience for young people. Unfortunately, I gave the example of the young man who was kept in lockdown conditions whom I acted for earlier in the year. Children in watch houses are kept in even worse conditions than that.

**Mrs GERBER:** Can you talk the committee through that so that there is an understanding around the difference between a detention centre and a watch house and what that looks like for a young person being detained?

**Ms Reece:** Sure. Watch houses differ across the state, but, generally speaking, you do not have natural light and you do not go outside. I know the police are making every effort to ensure that watch houses have separation between young people and adults. Children are still exposed to the noise of a busy watch house. We are talking about heavy doors slamming throughout the night, people calling out, people in the throes of coming down off drug highs and people who might be psychotic. They are exposed to a level of, really, brutalisation which we think has no place in a response to young people in trouble with the police.

**Mr Bartholomew:** In response to your question about what has been the reaction of young people seeing the legislation introduced and the notion that young people's human rights are able to be overridden, I have witnessed a sense of an 'us and them' mentality that has been created. That is not just about the watch house issue; it is about the fact that young people are being detained. In fact, the discussion within the media and the law and order debate that has been happening in the media for many young people has made them feel that they are not part of the community. That has been a significant concern that I have seen in my own practice in talking with young people.

**Ms Reece:** As members of the Bar Association, we can really only talk about the views of the association which are based on the experiences of our members. We are not psychologists, but we see a lot of thing from our own experience. When children think fatalistically, when they do not feel like there is anything to lose, those children need hope and need to feel a connection with the community. These sorts of experiences that we are going through as a community at the moment and what Damian has described, we fear does not address community safety; it increases the risk to the community that those young people pose.

**Mr TANTARI:** This question is addressed to the practitioners. When dealing with youth, particularly in the courts, do you feel that the hands of the courts are tied under the Youth Justice Act?

**Ms Reece:** No.

**Mr Bartholomew:** No; in fact, we have had some expansion of some options. I think the recent amendments in terms of the show cause legislation have indeed restricted some of the options that were previously open to the court and to perhaps recognise the particular nuances of young offending that I think was well articulated by Ms Reece in terms of that example that she gave of the young person in care. We have seen some closure, perhaps, of some of the discretion that the court had to be able to exercise its jurisdiction, but, generally, I do not feel that the court is restricted. In fact, the more options the court has, the happier I think they feel in terms of reaching their own outcomes.

**Ms Reece:** I should say that when I said 'no', I meant in sentencing. I do think the court has been restricted somewhat in the exercise of its discretion on bail.

**CHAIR:** We have heard the community say that they want greater safety as the response around those creating harm in the community. As they are being arrested and taken off the streets, we are seeing the resulting overcrowding of watch houses. We have to get back to what solution is for that. We have heard over the past couple of days that we should build more detention centres. What would be the immediate solution if there is nowhere for them to go? What options are there in the courts to be able to divert them somewhere so that they are not in watch houses or in the community continuing to create harm?

**Ms Reece:** It has to start with accommodation. A lot of our young people leaving detention do not have adequate accommodation. That is a very significant cause of offending behaviour because there is not stability. It also leads to the carrying of knives because, if you are sleeping on the streets or you are sleeping in places that are not safe, that is when children say that they are carrying knives for their own protection. It is really making sure that quite basic needs for these children are addressed, starting with accommodation and then moving into appropriate supervision, or where there are not parents available, having appropriate supports, appropriate adults in their lives, and the continuation of therapy, not just therapy in detention. The therapy that they should receive in detention should also then be available immediately upon release to assist with their release into the community. There are huge gaps. There are gaps in education. If a child gets out of detention today,

and even if they are really keen to go to school, there is probably a five- or six-month wait before they can get into a flexi school program. It is making sure that all of those things work smoothly and seamlessly. There are some very basic things that children need.

**CHAIR:** Given that there is so much in this and we cannot flick a switch to achieve—

**Ms Reece:** There is no magic wand.

**CHAIR:** Is there anything that would alleviate the current situation regarding watch houses? Is there any other alternative or could there be any other alternative to the courts?

**Mr Bartholomew:** The courts do not have all the answers in terms of youth justice. Much of it is around the infrastructure that is associated within the youth justice system. Having proper cognitive assessments available for young people, making sure that all young people when they are entering the youth justice system have access to proper assessment to identify what might be the cause of their entry and to be able to address those quickly is obviously very important. Having consistency of workers of course is also very important. It is easy to talk about those notions but that is about resourcing the system properly and recognising that this sector is a sector that is dealing with highly traumatised young people. That needs a particular skill level. It is about recognising that and therefore resourcing the workers who are in the sector properly so that you have an appropriately resourced sector of experienced workers and also of people who have that experience on the ground.

**CHAIR:** I raised this yesterday. We have a reported situation that adults—those who are turning 18—are within youth detention. However, there is not a lot of difference between a 17-year-old and an 18-year-old, especially when we have heard a lot of reports regarding fetal alcohol syndrome. There is a whole gamut is issues. Do you feel that it is appropriate for the work of this committee to be extend because whatever is done with a 17-year-old really should also apply to an 18-, 19- and 20-year-old? Do you think the role of the committee should extend into adult crime as well?

**Mr Bartholomew:** I think there are gaps for young adult offenders as well, but I think particular work needs to be done within the youth justice system currently. Until we are able to address the issue in relation to our children, I do not know the scope of the committee to be able to extend that into the adult system as well. I definitely think there are significant gaps in that area. Other states certainly do much better in recognising that there are ongoing issues in relation to brain development and maturity where we need to be looking at those 18-, 19- and 20-year-old offenders.

**CHAIR:** Thank you so much. We are out of time. My apologies to the next witnesses for going over time. I thank everyone so much for your time. It has been invaluable in the work of the committee.

## BICHEL, Ms Kerry, Director, Criminal Law Services, Legal Aid Queensland

## LAW, Mr David, Assistant Director, Youth Legal Aid, Legal Aid Queensland

**CHAIR:** I welcome representatives from Legal Aid Queensland. We have Mr David Law, Assistant Director, Youth Legal Aid; and Ms Kerry Bichel, Director, Criminal Law Services. I invite you to make an opening statement before members ask questions.

**Mr Law:** Legal Aid Queensland is the biggest criminal law practice in Queensland, and Youth Legal Aid is a subdivision of Legal Aid Queensland. We have the biggest Childrens Court presence in the state. My team in Brisbane provide duty lawyer and representation services all the way from Southport to Pine Rivers, west to Ipswich and all the courts in between.

We also provide training for lawyers as part of our youth certification program. We are also the authors of the youth justice practitioners handbook, which unfortunately is not online yet because there have been amendments and I have to update it. We also provide representation in the higher courts and are members of the Childrens Court committee. We are not social scientists; we are lawyers, so the answers to any of the committee's queries will be from that perspective.

**Ms Bichel:** I am here as an observer today. My responsibilities are that I have oversight of our criminal practice at Legal Aid Queensland. David's team falls within my division. I also have oversight of lawyers throughout the state who deliver services within the Childrens Court.

**CHAIR:** Thank you. I will hand you over to the member for Cooper.

**Ms BUSH:** I might start with a broad question, if that is okay. We heard from Sheryl Batchelor from Yiliyapinya around the importance of transition points for young people coming in and out of the sector: coming in and out of education, and interacting with police. There is a whole range of transition points in their life where there is a moment to intervene and to do things differently. You are witness to some of those transition points—young people interacting with police, young people interacting with courts, potentially young people interacting with transitioning out of prison. It is a bit of an open question. What is working well at those transition points, what would you like to illustrate to us and what do you see as real opportunities to do something differently to make a material difference?

**Mr Law:** That is a big question.

**Ms BUSH:** It is a bit broad, yes.

**Mr Law:** There are some things that have changed in the sector. I have been heading the Youth Legal Aid team for 11 or 12 years. We have seen real growth in what has occurred in the court space over successive governments. One thing that is working really well is the education officers who are attending courts now to try to get the kids back into education. That was a real problem initially where children who misbehave for whatever reason—whether there are behavioural issues or neuro disability or whatever the reason might be—are excluded from school. It then meant that it was very hard to get them engaged back in education because mum and dad may not be able to take them to a different school or whatever the reason was. Those education officers who have come to court are not only re-engaging the children who are coming to court in education but often are picking up whole family groups that have been disengaged. One example was given in a meeting that I went to where there were actually five members of the family—some as young as six or seven—who were not going to school and they were picked up as part of this program. It is a brilliant program. It is one that has some tangible results.

What I think is failing at those transition points is that, once they go into detention, to the external providers back in the community they are out of sight and out of mind. The detention centre is almost like respite care for community groups who may have been providing some care for them outside. That transition from detention back into the community I think is poor for both sentencing and bail, in particular. Bail is a particular issue that I am involved in. I think that transition planning is very poor. As lawyers we are making calls to numerous community organisations—Youth Justice and Child Safety—trying to get some supports around a child before we make a bail application for a child. The worst thing we can do is make a bail application for a child and then they reoffend very quickly because those supports are not there. It is the supports that give the court some confidence and the community some confidence in maybe those children not reoffending. We do a lot of work in that space.

I think the education side of things is getting better. The transition planning needs a lot of work. Child safety is an issue. You have heard about accommodation from other witnesses. I will not repeat what they have said other than maybe to give it more force. It is not uncommon for children who are part of a guardianship order not to have accommodation. Once they go into detention that

accommodation is closed down. Then when you are making a bail application and you ask, 'What extra supports can we put around this child? What can we do here?' They say, 'They have no place. We have closed it down.' 'Okay. What do we do now?' Then there is a huge argument and a lot of work in trying to get accommodation up and running again. The accommodation part of the equation is a real issue.

**Mr PURDIE:** In relation to that work you are doing around bail, does Youth Legal Aid have a specialised youth bail team?

**Mr Law:** We do have three lawyers—and I am one of them—who focus on making bail applications in the higher court and also conducting sentence reviews, yes.

**Mr PURDIE:** Was there a special allocation of funding given to you for that?

**Mr Law:** Yes.

**Mr PURDIE:** Essentially when police in communities oppose someone's bail, a magistrate might agree and not release that young person on bail. You and your colleagues have a special allocation of funding to travel around as experts to get those children out on bail?

**Mr Law:** We do not travel around. We do the applications in front of the Childrens Court of Queensland in Brisbane.

**Mr PURDIE:** I am glad you clarified that. So you do not have people in local areas that will appear in a Magistrates Court on a first appearance when they are making an application for bail?

**Mr Law:** No. They do. Sorry, I do have people who do that. Often they are represented either by my office in a regional area, maybe the Aboriginal and Torres Strait Islander legal service and maybe private lawyers. Those are the three groups. Sometimes they are represented by community legal centres as well. They will appear at first instance. Some of my lawyers are in my team in Brisbane. If we think there is merit in appealing the decision, we will have a look at that and see if there is merit in appealing the refusal of bail.

**Mr PURDIE:** I think that has been publicly reported before. What is that special extra allocation of funding that you are given for that bail team?

**Mr Law:** I could not give you a dollar figure on that. It is part of a youth justice allocation—legal advocacy support I think it is called. We can get that for you. We can take it on notice.

**Mr PURDIE:** Maybe that is a question we can come back to.

**Mr Law:** The department can probably provide those details.

**Mr HARPER:** Mr Law, I have a question in relation to fast-track sentencing. Townsville is now part of the trial. Do you think the committee should consider extending past the pilot? Is it working? There are two parts to this: could restorative justice conferencing be achieved earlier with fast-track sentencing versus people sitting on remand and not accessing that as a tool quickly?

**Mr Law:** In terms of fast-track sentencing, the initial figures are looking good. It looks like it is something that is working. The finalisations of the Childrens Court are very high, particularly in Brisbane. I think Cairns is doing very well. I think Townsville is going pretty well too. Southport has had some staffing issues in terms of having police to be able to case conference, so that is falling a little bit behind. When fast-track sentencing is resourced properly, it is an amazing process to get matters dealt with quickly. Delay is a real problem within the Childrens Court jurisdiction.

The research shows and the feedback I get from youth justice caseworkers is that often the children who have been charged with an offence think that their bail conditions are actually the penalty. If you have a child who is, for instance, on a robbery charge—yes, there can be very serious robberies. There can be home invasions. I am not talking about those robberies. I am talking about the ones occurring in the local skate park: 'Give us your shoes'—those sorts of robberies. They could be dealt with much more quickly by, for instance, expanding the jurisdiction of the Childrens Court magistrates to deal with those sorts of offences. It is quite an easy legislative fix. What happens now is for those offences which are basically a schoolyard or a skate park style offence—'Give us your shoes,' or 'I want your iPhone'—by the time they get to the High Court they will end up getting a probation order for the most part, whereas that could have been done nine months earlier.

In terms of restorative justice conferencing, I do not understand your question completely.

**Mr HARPER:** If you are getting people through more quickly off remand can they access restorative justice faster?

**Mr Law:** At the moment I think there are delays because training convenors take some time. We need more of them to speed that process up. The faster that process occurs, the better the outcome. I was not aware there was a high failure rate for court diversion rather than police diversion,

but because police are able to act very quickly the child can relate the offending to the consequence. The way I train lawyers around it is to get them to remember back. When you were in primary school and you were waiting for Christmas, Christmas took forever. When you get to our age, Lord, it is only four weeks away! That sense of time is a real issue with children if you wait nine months to deal with an offence. The time that it takes the DPP to present indictments could be shortened and there can be some real legislative change around time frames for matters to go through court—not just simply practice directions—to actually enshrine what needs to happen. The intervention that comes at the end of that, whether it is a youth justice conference, probation, community service or whatever, will be that much more effective if it happens closer to when the offending occurs.

**Mr HARPER:** Could I ask, Chair, that this is taken on notice: when you talk of legislative change, could Legal Aid Queensland write back with the detail of what changes are needed?

**CHAIR:** Yes.

**Mrs GERBER:** Thank you very much, Mr Law, for appearing today and sharing your expertise. You spoke about the transition of young people when they are released on bail as well as when they are released from a detention centre. I would like you to take a deep dive into that for the committee. Can you give us some examples of how that is working—and if you are able to de-identify, that would be great—so we can really practically understand where the system is failing in relation to the transition of a young person from a detention centre into community and being released out on bail.

**Mr Law:** A lot of it will really depend on where the child is going back to. If they are remanded in custody and they are on a child safety order, as I said before, it could be the case that their accommodation has been closed and then we have to wait, essentially, for another place to become open.

**Mrs GERBER:** What happens to them then?

**Mr Law:** They stay in custody. There is no other option. I know the act says that accommodation by itself is not a reason to remand a child in custody. That is a very simplistic view of the way courts operate. There are a lot of children who are in custody because they do not have anywhere to go because the lack of accommodation increases risk. Particularly in the higher courts when we are perhaps appealing bail decisions, the amount of work that goes into finding accommodation is huge. Some of the referrals that we get last three or four months because we are actively the stakeholder trying to sort these kids' lives out in terms of getting the supports around them, finding accommodation.

**Mrs GERBER:** Are they receiving therapeutic benefits while they are in custody at that time? Because it is obviously not part of their sentence, so they are in custody because they cannot get accommodation.

**Mr Law:** There are therapeutic interventions within detention. It is about how that transitions into the community. If they have perhaps a mental health intervention within the centre, how does that then look on the outside? Is there actually a clinician available where they are going to? For a lot of these children there is not. If you are in the south-east you are lucky. In Townsville, in some of the bigger regional centres, you are also lucky because those clinicians will be there. In some places there is nothing. They will go back to nothing. I am thinking particularly of remote areas and getting those clinicians there. I know what it is like to recruit staff to more regional areas, and it is tricky. That transition is not happening. I think there needs to be more conversation, particularly for remote areas, and talking to the community about what reintegration for that particular child looks like.

**Mrs GERBER:** What consequence does that have on the child? Does that mean they are more likely to reoffend?

**Mr Law:** They just go back to the exact same circumstances that caused the offending in the first place.

**Mr TANTARI:** Turning to your submission, one of the options you propose is conducting Childrens Court at detention centres with magistrates. That is a very interesting option. Can you explain to the committee why you are looking at that option?

**Mr Law:** It comes from my cynicism about the use of videoconferencing for children. It is a terrible option. The issue I have with the Childrens Court is that the child needs to participate in the proceedings. If the child is going to get anything out of the intervention they need to participate in some way. We actively remove their participation by having them on video link. When you put a child who is neurodivergent, who has issues, in front of a screen and then you only have one video of a magistrate, they do not get to see their lawyer; they do not get to see the police prosecutor; they do not know who is in the back of the court. All they see is the magistrate, and the magistrate is talking

to them in language they do not understand. Again, this is coming from my experience with caseworkers at the detention centre, who are excellent. The youth justice caseworkers at the detention centre are an excellent group of people. They will ring me up and say, 'Can you come out and see that child?' 'Why?' 'They have no idea what just happened.'

Obviously Queensland is a big place, and the expense of getting children on airplanes to some of these places and then being in watch houses maybe for a week until the plane comes back to get them is not a great option. The thinking is that perhaps if there was court that occurred at these detention centres then maybe more children could be dealt with and participate in their proceedings. You could have parents there. They could come to the detention centre with the help of Youth Justice. For instance, in Townsville the detention centre is 10 minutes away from the court, yet every child appears via video link because the watch house is not up to standard. You cannot have the kids there.

It is worthwhile exploring. It would require significant legislative change, and it is tricky legislative change. That would be the hardest bit if there was some merit in the proposal. There would need to be some stakeholder groups set up around it. That is where I come from, because I want children to be able to participate. I want them to be sitting at the bar table. I want them to be able to communicate with their lawyer—'I didn't understand that. What does that mean?' We spend a lot of time in youth certification training explaining why lawyers cannot even communicate with children, and I get it wrong constantly. I do this as a bit of an exercise with some of the lawyers who attend the training. I say, 'Explain the concept of bail to me.' I am 51 years old; I will get it. Now imagine I am 13 and I have not been to school since I was eight. Explain to me bail in a way that I can understand.

**Mr McDONALD:** Thank you both for being here today. I appreciate your expertise and I understand the difficulty you had, Mr Law, explaining that bail situation. Obviously you have dealt with a number of those things and it must be very frustrating. In terms of the transition out of detention or out of the watch house, we heard from Mr Atkinson yesterday about the challenges when services like Youth Justice and Child Safety do not work 24 hours. Can you talk us through some of the challenges that you have in terms of support for the children?

**Mr Law:** There are those challenges with the weekends; that is the difficulty. We have seen some really good improvements there though. There used to be no supports available on the weekend. With those co-responder teams in particular, I think they are doing amazing work. The police are taking the lead on a lot of this. They are doing a really good job with providing support for the families, keeping an eye on things, doing referrals, and getting a relationship with the family, which is really important. For instance, if I do a bail application on a Friday for a child in the higher court and bail is granted, my draft order will always say, 'Not to be released until Monday', because the worst thing I can do for that child is have them released on a Friday and do nothing. They will stay in over the weekend because there is the chance of them staying out. It is awful as a lawyer to say that, but that is what you have to do. I do not want to see them there—

**Mr McDONALD:** It is in the best interests of the child.

**Mr Law:** It is in the best interests of the child, and they understand that. 'I'll make this bail application for you, but the deal is that you're going to get out on Monday into the care of the department.'

**Mr McDONALD:** Why is there not that weekend support from those departments?

**Mr Law:** I do not know. That is probably a question for them.

**Mr McDONALD:** In terms of the commentary you made before about the education programs that are positive and working, we heard from witnesses who talked about that when youth are on remand or in jail there should also be health services, but they are not provided. What are your thoughts on that?

**Mr Law:** I do not have a great deal of expertise on what sort of health services are provided at the detention centre. There was a program a few years ago, I think it was at Woorabinda, where they sent out audiologists, because part of the real issue with some of those remote communities is the children get glue ear. They actually cannot hear. It is often found years down the track that the child has not been able to hear for five or six years. Health screening is such an important part of this. What we are finding too is that when we are trying to get some information about a child, whether they have a brain injury of some sort, whether that is FASD or whatever—I do not really care what the reason is, it is just whether they have the brain injury—the reports we are getting are from Education. They are not coming from Child Safety; they are not coming from Youth Justice or

anywhere else. They are coming from the education department when the child is maybe in grade 2 or grade 3 and not achieving milestones. Education has the resources to do that and they are really important for early screening as well.

**Mr McDONALD:** Do you know why health is not provided within the justice system? It seems vitally important if there are pathologies or mental health issues.

**Mr Law:** Yes, it is something that needs to be considered, because a lot of these families are not coming from a socioeconomic group that can afford private health. Somebody said to me the other day, 'Medicare will provide eight sessions with a psychologist.' Well, it does not, because the psychology appointment is $300 and Medicare pays $85 of that, so where is the $215 going to come from? You have to rely on the public system. There is a dearth of psychiatrists in particular who are trained to work with children in the system whom we can access.

**Mr McDONALD:** Mr Law, you also mentioned the fast-track program. I understand that commenced about March this year.

**Mr Law:** Yes.

**Mr McDONALD:** We have seen that serious repeat offender cohort increasing over the last period of time. That investment occurred in March just this year and that is obviously welcome, as other practitioners have said. You mentioned a delay at Southport. Can you talk us through that, or are there some challenges at Southport?

**Mr Law:** I think the challenges are just in terms of making sure you have the appropriate staff to do it. It is really just a staffing issue more than anything.

**Mr McDONALD:** For yourself?

**Mr Law:** No, we are great; we have our staff down there. It is getting case conferencing prosecutors. That has been a challenge for the police all the way through. Once they have those case conferencing prosecutors up and running it works famously.

**Mr McDONALD:** Do the case conferencing prosecutors all come from the Police Service?

**Mr Law:** Yes. There is a prosecutor who appears in court and there is also a prosecutor who sits outside of court where we can maybe negotiate some facts or a charge or two or something to get it resolved.

**Mr McDONALD:** Has that been resolved now? We now are in November.

**Mr Law:** They do have those prosecutors in place. I think they are both finishing up on 1 November. I do not know what the plans are. There are different prosecutors coming in hopefully, or they will be.

**Mr HARPER:** On the member for Lockyer's point, are you aware of the Townsville Stronger Communities Early Action Group and the work it is doing?

**Mr Law:** Yes.

**Mr HARPER:** They do have health. I received a briefing from them about 24 hours ago and a number of those young individuals are being health screened and assessed early, which is good. Those models have now been extended to Mount Isa and Cairns. In terms of diversionary sentencing, you were not in the room when I was talking with previous witnesses, but I said there is this real tension between community safety and a just response. As local members, we meet the victims of crime who want action and people to be held to account, particularly when there is violence and serious violence. There is only one place they really belong in that sense—that is in custody for a period. When it is a first-time offence without extreme violence—as an example a first stolen car—do you think there is value in diversionary sentencing? I will use Townsville as an example. If we had a facility that could house people and provide therapeutic rehabilitation, an on country type program, do you think there is value in trying to get them into diversionary sentencing at a lower end of offending?

**Mr Law:** In terms of diverting them away from detention?

**Mr HARPER:** Yes, as an option. It is a first-time offence. We are going to put you on to this program. I do not know whether it should be a condition of parole or voluntary. I wanted your view on that.

**Mr Law:** I do not really have a view. The reason being is that I am not an expert in what works and what does not. All I do is read the data, the reports and the evidence that is provided. Anything that is put in place has to be evidence based—it doesn't have to be—but have some courage about letting a program run and teaming with academics to assess that program at the end to see whether—

**Mr HARPER:** I probably should have prefaced that as I did yesterday. I was using as an example the Armidale New South Wales BackTrack program that has been going for 18 years. It has had a number of reviews. Could we mirror that?

**Mr Law:** If there is evidence, it is worth a go. Everything is worth a go if there is evidence behind it. We have to stop kids getting into detention because when they go to detention we lose them.

**Mr PURDIE:** I have a question that is a little bit off topic and I probably would not asked if it were not addressed in your submission. To follow on from the member for Thuringowa's question, that question was about someone committing their first offence stealing a car? Was that the question?

**Mr HARPER:** As an example. It might be a passenger; I do not know.

**Mr PURDIE:** Mr Law, you would agree that by the time you get engaged with a young person and by the time a young person appears in court for a stolen car offence—the unlawful use of a motor vehicle—they have potentially stolen a lot of cars because, as per the Youth Justice Act, police have to give alternatives to initiating proceedings. On almost all occasions they would have been cautioned and would have been given restorative justice programs for their second offences. By the time they get to court, it is not necessarily the first time they have stolen a car.

**Mr Law:** Not necessarily, no.

**Mr PURDIE:** Probably more often than not?

**Mr Law:** Yes.

**Mr PURDIE:** They usually have a history of offending before you are engaged. My question is a little bit different, but I have identified from your evidence today that you are a probably the person directly responsible to answer this question. I appreciate that you have given the committee some advice on legislative fixes. In 2016, the government tabled legislation that included 17-year-olds in the Youth Justice Act—essentially raising the age of a young person in the eyes of the law—which came into effect in 2018. The government announced at the time—and I think it was the intention of parliament at the time—that 17-year-olds, mindful that they are drivers often on P-plates, would be treated as adults even though in the eyes of the law they would now come under the Youth Justice Act. I understand that your office has identified deficiencies in that legislation which routinely sees 17-year-olds referred to a restorative justice program for life endangering offences like drink-driving, dangerous driving and others. Have you provided the government with any legislative fixes to try and fix those deficiencies, mindful that 17-year-old drivers—P-platers—are in the highest cohort at risk of fatalities? In my electorate we have seen some young people who have lost their lives to 17-year-old drivers. Is there a legislative fix that needs to be undertaken by the government to better protect road users? Can you explain what that legislation is and how it is not being enforced as the parliament probably intended?

**Mr Law:** To explain the member's approach, what occurs at the moment is that for there to be a mandatory disqualification period against a 17-year-old they have to be sentenced or given a sentence order. There is this tension in court because some of these 17-year-olds would be eligible for diversion, and the act says it and the case law says it also. They are eligible for diversion. If they are eligible for a diversion then the mandatory period does not apply. That is the issue—the difference between the TO(RUM) Act and the Youth Justice Act.

**Mr PURDIE:** There is a deficiency then? Would you agree that maybe the intent of the parliament at the time and certainly the announcement of the government at the time when they did that was—

**Mr Law:** I am not aware of what the intention of parliament was at the time. I cannot think back that far but that is certainly the way the law operates.

**Mr PURDIE:** At the moment there is tension between these two acts which is seeing 17-year-olds routinely being diverted for life-endangering traffic offences, which then subsequently has no impact on a young 17-year-old P-plater's licence. Whereas an adult in terms of drink driving—as we know it is a serious offence—or dangerous driving, and I am not really sure about dangerous driving causing death, maybe not—

**Mr Law:** No, certainly not.

**Mr PURDIE:** For those serious offences that an adult knows are serious offences, 17-year-old P-platers are routinely getting off those offences with no implication to their licence whatsoever because they should have been offered a diversion in the Childrens Court.

**Mr Law:** That is the way the law operates.

**Mr PURDIE:** That is the way it is operating at the moment.

**CHAIR:** From your experience, you said there is a tension. Do you believe that needs to be a legislative amendment?

**Mr Law:** I do not think that is a matter I can really comment on. It is not really a matter for—

**CHAIR:** That is alright. We have taken the list of some of the other matters where you said the legislation needs some—

**Mr Law:** In terms of outcomes to children in terms of sentencing and those sorts of approaches, that is really a matter for the government. In terms of speeding things up and making the system work a little better, that is where our suggestions fall.

**Ms BUSH:** I take an interest in the workforce, and particularly your example around dedicated children's lawyers and having those particular skills to work with young people and to explain the justice system in a way that has an impact for them. I am interested in a comment from you on the importance and the availability of dedicated Childrens Court lawyers across Queensland and whether there are any workforce shortages or opportunities to do something differently to have an effect there?

**Mr Law:** At the moment, I think we are recruiting very well in terms of putting specialist lawyers in our regional offices for Legal Aid Queensland. I think the Aboriginal and Torres Strait Islander Legal Service is undertaking recruitment at the moment. I do not know how their recruitment is going, but ours has certainly gone very well. There really is not an issue there for Legal Aid Queensland in terms of lawyers. I think we are okay for the moment.

**Ms BUSH:** It sounds like there are no issues around your capacity to work well with stakeholders and to engage with departments or funded NGOs to navigate that system a little bit?

**Mr Law:** That is so. Where the challenges sometime are is in terms of our preferred suppliers, the external lawyers. They are finding it much for challenging to recruit lawyers, particularly in some of those areas. There are some areas where we do not have private lawyers on the panel anymore to do Childrens Court. That is also happening in the adult sphere, but also in the Childrens Court sphere as well.

**Ms BUSH:** I do not really have any oversight and have not done much in the Childrens Court. What happens in that situation?

**Mr Law:** We work quite holistically as a group to make sure there are lawyers for children. The difficulty that can arise is when there are conflicts that arrive with co-offenders it is finding those lawyers who can do that work in communities. Often we are sending people from my team in Brisbane, particularly to those areas like Townsville. We have a fair few Townsville clients and clients in Mount Isa as well where there is not that option for private firms to do that work.

**Ms Bichel:** It places significant stress on our practice to provide that service, but we work really hard to ensure that everyone is reached.

**Ms BUSH:** Thank you. Obviously the principle of trying to get children and young people dealt with in court quickly would depend on the availability of legal services. Do you find that that is part of the issue where things can get bogged down a little bit? I guess, in reverse, having a well-resourced, comprehensive children's legal team across Queensland would help to expedite those matters?

**Mr Law:** Yes. Fighting against delay in court is one of the big challenges going forward. That is why there may be some benefits in legislative change around time frames for how long a matter can be brought in the Childrens Court, disclosure of evidence et cetera to get that to speed up a bit. If that is the case, I do not think the availability of lawyers will necessarily delay that so much, because everything is in place in terms of practice directions et cetera. It will just be something that the lawyers and the system will have to deal with. The clock is running. Let's make sure that there is somebody there.

**Ms BUSH:** Off the back of that, what about accessing appropriate reports to bring into court to have considered before the magistrate or judge? When we are trying to condense the time frames that we are working in to fast-track things, are there any issues coming up in terms of bringing on those reports so that people are not denied justice?

**Mr Law:** We can get reports quite quickly from the forensic mental health liaison service that is in a lot of courts. Where things become a little more difficult is maybe obtaining private reports. Finding those clinicians to do that work has become more of a challenge. That can lead to significant delays.

**Mr PURDIE:** Mr Law, in answer to my question you said that appeals are essentially successful because the child was eligible for diversion. Just broadly explain to me and the committee—not just for TO(RUM) matters but more broadly—is it an avenue of appeal for you if the magistrate has not offered the child diversion?

**Mr Law:** Yes.

**Mr PURDIE:** We heard from the Bar Association that it is something a magistrate needs to turn their mind to. Did you say that you are successful with appeals if they are eligible for diversion and it was not given?

**Mr Law:** Not that it was not given, but that it was not considered. It is the same point Ms Reece made. It is not about whether it is given or not; it is whether it is considered. The legislation makes it very clear that before you sentence a child you have to consider diversions. His Honour Justice Sofronoff made it very clear in the case of SCU and cases that followed that that is the starting point. Sentencing children is a complex process. It is much more complex than sentencing adults.

**Mr PURDIE:** I think that is what we are trying to get clarity on. Feel free to explain that complex process in the legislation.

**Mr Law:** Part of the issue with children is that we know—the research says—a lot of children time out of offending. Maturity kicks in and they stop offending of their own accord. Some do not. We know that diversion, getting children to meet their victims, is also a pretty powerful outcome. There is just so much to take into account, because when you are sentencing a child you also have to consider things like the neurodiversity of the child, where they are coming from, their education. You are not dealing with an adult who has all of the experience of life.

**Mr PURDIE:** From a legislative or case law perspective, and going back to what Justice Sofronoff said, I assume it was not just the magistrate saying, 'I turned my mind to it, but I decided I was not going to divert this kid so I am sending him to custody.' What does it mean to 'consider'?

**Mr Law:** They have to consider whether it is an option. As Ms Reece said in the previous panel, the court has to consider it. They may say, 'Obviously diversion is not an option here because of the seriousness of the offence', or 'Because your criminal history is really long I do not think it is an appropriate outcome here. Moving on', which is the next step.

**Mrs GERBER:** So there is no appealable point with that?

**Mr Law:** No. The sentence might be manifestly excessive. An argument that happens on appeal pretty regularly is that the sentence was too high. The Crown appeals because it is too low. Manifestly inadequate or manifestly excessive, that is different.

**Mr PURDIE:** Explain to me as a layperson how your office has been successful in appeal decisions for a 17-year-old who has been found guilty of drink driving. The magistrate did not turn their mind to diverting that child and losing their licence was too harsh a penalty. If the magistrate could just as easily say, 'I considered it', but the community expectation is that someone would lose their licence for drink driving, how are you going to the appeal court and saying diversion was not considered?

**Mr Law:** Even if diversion is considered, diversion might still have been the right option because they can do so much on diversion. It may be in that 17-year-old's interest to go through a diversion program because they do driving programs, they meet victims, they talk to the police officers. Police are fantastic in those restorative justice conferences. They are fantastic because of the way they talk about the impact it has on the community. For a 17-year-old first offender coming through who has made a mistake and is considered a child, that diversion option could be even tougher than losing your licence for three, four or six months, whatever it is. The diversionary option has some benefits in that maybe they will not be disqualified at the end of the day. It also might mean there are greater benefits to the community in the longer term if that is something that has worked.

**Mr HARPER:** You mentioned Justice Sofronoff. Can you just expand on that?

**Mr Law:** There is a decision of R v SCU [2017] QCA 198. It was probably the most important youth justice decision that came down for some years. It provided guidance on how to approach the sentencing of children and what the act actually requires. Basically, His Honour went through the Youth Justice Act and explained all of the points that have to be done as part of the sentencing process. It is a very beefy judgement; it is very dense. It is the definitive decision on that. It talks about detention being a last resort, but it has been considered in cases, particularly this year, where detention was the right outcome and those children were detained for their offences. It is just a very good explainer for lawyers and courts in how to approach the Youth Justice Act.

One of the issues with the Childrens Court is that—except for my team and some of the other witnesses who may have appeared in front of you—it is really a part-time pursuit for most lawyers. They appear in the adult court all the time. They talk to their adult clients. They explain things in an adult way. They are dealing with adult orders. Some of the sentence reviews we do are because children have been given adult orders because there is that disconnect, because it is rare in some places. To have Childrens Court in some of these remote areas can be quite rare. That is part of the issue that arises and that is why Legal Aid has brought in certification. If Legal Aid is paying you to do a Childrens Court matter, you have to have a certain level of knowledge around First Nations children, around communicating with children. We do a bit of brain science within the certification and we also spend a fair time on the law, explaining SCU, explaining all of those sorts of decisions, explaining doli incapax, section 29 of the Criminal Code.

**Mrs GERBER:** I just wanted to get from Legal Aid a bit around penalties and understand your experience in that. Firstly, so that I can understand where we are sitting, in terms of the youth justice charges that you are appearing for in relation to your clients, can you give us a rough indication of the proportion of those who are being dealt with in the Magistrates Court and the proportion who are being dealt with in a higher court?

**Mr Law:** It must be 95 per cent in the lower court.

**Mrs GERBER:** In the Magistrates Court.

**Mr Law:** We try to deal with everything, if we can, in the lower court. Those are the marching orders to my lawyers. If you can deal with it—

**Mrs GERBER:** What is the maximum sentence you can get in the Magistrates Court?

**Mr Law:** Twelve months.

**Mrs GERBER:** I just wanted to get Legal Aid's perspective. It is the same question that I posed to the Bar Association around increased penalties. We saw the government say they were introducing a 14-year sentence for stealing a car, and we know that obviously that is capped out under the Youth Justice Act at under half. I was trying to understand how many of these cases were actually being dealt with in the higher court. Is that figure you have given an accurate reflection of those cases, or is it different because we are talking about a car stealing offence? Are you able to give me any context around that? If you cannot, that is fine: I can get it off the Sentencing Advisory Council. Given the cases you are dealing with, you would be dealing with those kids. You would be representing them as Legal Aid Queensland.

**Mr Law:** It happens for adults too. There are offences that carry 14 years that can be dealt with in front of a magistrate. The magistrate has the proviso that, if they do not feel they can adequately punish, they can refuse to deal with it and send it to the higher court. There is actually a lovely provision in the Youth Justice Act which very few people have even considered. A magistrate can call a Childrens Court of Queensland judge and say, 'Can you delegate your sentencing power to me?' I think it has only been used twice. 'I am capped at 12 months probation here. I would like to see them on supervision for longer—18 months to two years probation.' They can ring up a Childrens Court of Queensland judge and formally get the delegation and sentence appropriately.

**Mrs GERBER:** That permission has only been given twice. Do you know how many times it has been asked for?

**Mr Law:** No, I have no idea. There is a provision in there for that delegation to occur.

**Mrs GERBER:** The second part of that question—it is the same question I asked of the Bar Association—can you speak to any impacts you are seeing as a result of the increased penalties that came into effect earlier this year, I think it was?

**Mr Law:** Probably the biggest effect has been the serious repeat offender part of those changes, because there is a different set of sentencing principles that apply to those children.

**Mrs GERBER:** Just remind me: how many kids have been sentenced under that?

**Mr Law:** I do not know. I do not have those figures. I know there are two reported decisions from the Childrens Court of Queensland, but I do not know how many. We have seen a difference in sentencing there. In terms of unlawful use charges, they are still dealt with in the Magistrates Court and there are still all of the provisions of the Youth Justice Act that have to be taken into account when sentencing.

**Mr HARPER:** If it is helpful, there is some data that 40-odd offenders have been declared serious repeat offenders.

**Mrs GERBER:** I thought it was around 30.

**CHAIR:** Regardless of whether they are in remand or leaving detention—and I am going back to transitions which have been raised over the last couple of days—from what you said, as Legal Aid you are busy looking for accommodation and whatnot with regard to bail. Is there a portal or are there connections? We heard from Sisters Inside yesterday and we heard from Yiliyapinya about fantastic programs that are wraparound programs. I suppose what I am asking is: is there a formalised list or anything that says, 'Here are all the avenues' and then they provide that wraparound, especially in those remote communities?

**Mr Law:** I think the communication about those wraparound services can be better. Services start and services end, and sometimes it is not fully communicated to everybody in the sector about what actually is out there and available in terms of those wraparound services. We know that with a lot of girls we call Sisters Inside because they know. If we have children in Cairns, we will call Yeti. We call Darumbal in Rockhampton. Those groups know all the services, all the wraparounds, so we have these one-stop shops with some of these fantastic community organisations. We then can branch out.

**CHAIR:** The clear message from them yesterday was that it does take a village. This is a whole-of-society issue and communities need to be involved in the solution and providing services. We also heard that Victoria has the lowest rate of reoffending. We have not had a chance to look that up, but one of the witnesses said that. From your experience, and from what you know of organisations down in Victoria, is it because they may have better transitioning? Is there anything you might know of that could lead us in a direction so we can do some further research on that? In other words, what are they doing differently?

**Mr Law:** I really cannot answer that in terms of what they are doing differently, but I think a state the size of Victoria would be much easier to service than what we have here. It is such a difficult state to service—to get all of those sorts of supports and everything we need in a state the size of Queensland. It is tricky. That goes for other smaller places as well. That is the only comment I would really make about that.

**Ms Bichel:** It would be interesting to see what allocation of resources are made in relation to those support wraparounds to get a comparison. In the adult sphere I understand there is a huge investment in supporting people on parole particularly. We think if that was replicated in youth justice that would probably make sense.

**CHAIR:** Today we have not touched on the Murri Court at all in terms of your interaction with them across Queensland. What has been your experience with them?

**Mr Law:** I have never appeared in a Murri Court. It is more a matter that perhaps ATSILS can talk to. More of their clients will attend the Murri Court. I think there is a high-risk court in Townsville that our lawyers attend.

**Ms Bichel:** We are called upon from time to time if the Aboriginal and Torres Strait Islander Legal Service has a conflict and are unable to service a particular client, but generally speaking they be the better agency to address those issues.

**CHAIR:** I thank you both for the time you have given today. Your contribution has been invaluable. We deeply appreciate it. We wish you well in your endeavours and on your trip home. We will have a short break and return at 11.15 am.

Proceedings suspen**ded from 11.00 am to 11.14 am.**

## RIGBY, Mr James, Member, Queensland Youth Policy Collective

**CHAIR:** Good morning. I now welcome Mr James Rigby from the Queensland Youth Policy Collective. Would you like to make an opening statement before members ask you some questions?

**Mr Rigby:** I would. My name is James Rigby and I am a solicitor based in Brisbane, although I spent six months earlier this year based in Townsville. I am a member of the Queensland Youth Policy Collective, which is a non-aligned grouping of law students and young professionals who wish to advance youth perspectives in public debate. Of course, this issue is exactly the sort of issue we are interested in. At this stage, I propose to open by identifying certain principles that we say should be kept front of mind when formulating policy in this area. Some of the general ideas may seem trite, but I will attempt to illustrate the very real and practical importance we see in some of these ideas. We think it is worth repeating when the safety of the community and the liberty of our most vulnerable people are at stake.

First, we say that the criminal justice system is a fundamentally flawed mechanism for dealing with those who are not mentally fully capable and there are a couple of reasons for that. The first is that, of course, in principle, it is intended as a system to punish moral wrongdoing. That requires there to be a moral actor to punish and that requires that person to have some capacity to engage in moral thought. We have capacity tests and those sorts of things in the system for those reasons. Critically, we also say an important element of this is that as a practical matter that is really important. It is not just that it is unjust to punish someone who is not a real moral actor because they are, for example, nine years or 11 years old. The protective effect of our criminal justice system is partly achieved through preventing people from committing crimes by locking them away so they cannot commit those crimes. The most important protective effect is actually the general deterrent effect of the criminal law. It works on adults every day and we restrain human excesses every day of the year to prevent criminal acts occurring through that system. The problem is for that to work, as Jeremy Bentham identified a long time ago, you need people to be thinking rationally and thinking about it properly. The question is whether for young children that is something that follows.

The second principle we will advance flows from the first really, which is that not every harm to society or bad thing in society can be solved by the criminal justice system. For example, if a hailstorm breaks a window we do not try to criminalise the hailstorm. That is obviously impossible. Similarly, if a nine-year-old breaks a window we do not treat it as a criminal act. We treat it almost as an act of nature. The question is whether that is any different for a 10-year-old or an 11-year-old. Obviously we accept that if an 18-year-old does it or a 16-year-old does it then it is a very different story. There is a question around that. It is important to note that sometimes other means are required and, of course, are used in this state through diversionary options and those sorts of things to deal with these problems, which are very real problems and do affect people. If your shop is broken into, that is a very real problem for you or if someone breaks into your house at night. They are very serious problems but the question is whether criminal justice is the response that is needed.

The third principle we wish to advance is that, before applying the coercive power of the state, of course, we treat every person as innocent until they are guilty to a satisfactory standard. That is on a sliding scale. Before they search a person, the police need reasonable suspicion. Before we remand someone or subject them to bail conditions, you need a charge and essentially prima facie evidence, a police report to the court at that stage and then, of course, for guilt the test is beyond reasonable doubt, including as to capacity. The difficulty with children is that that third category, the punishment for guilt, is often not as severe a punishment as the second category because the bail conditions are so much worse than what they will get if they actually plead guilty and remand, of course, is much worse than what they will get if they plead guilty because, as we know, I think it is between 80 and 90 per cent of the children in detention currently are not there on sentences; they are unsentenced in our detention centres. That is obviously a principled problem in terms of that sliding scale of how confident we are that something wrong has been done to what we do as a practical matter in response.

Again, it is also a practical issue because it drives guilty pleas from innocent children. They are innocent not because they did not commit. In some cases, of course, they may not have committed the physical elements of the offence, but they may be an 11-year-old and they may have committed the physical elements of the offence—whether it is punching a hole in a wall, shoplifting or whatever it might be—but they are innocent because the Crown cannot prove their capacity, as they are required to do, beyond a reasonable doubt because in many cases the child does not have that capacity to engage in the moral reasoning that is necessary. That means that every day in this state children are driven, on the good advice of their lawyers, to plead guilty and avoid bail, which is much worse for them than a reprimand from a magistrate on their first occasion. On that first occasion, that

is a fine practical outcome, but then, of course, on the fourth or the fifth or the 10th or the 20th occasion, the magistrate is looking at that history. If they then wanted to argue they did not have capacity, it becomes a lot more difficult when you have that sort of rap sheet. Then you have a 12-year-old and they say, 'It certainly looks like you understand the criminal law. You've pleaded guilty 10 times.' I think that becomes a serious principled but also a practical issue.

The fourth point we wish to advance is that general laws, as our criminal laws are, can have the effect of creating different laws for different classes of people. To take some examples I have been given from people involved in the process in Townsville, common charges for under 14-year-olds include wilful damage, trespass and, of course, breach of bail is now increasing as a charge for young people. Taking wilful damage, often those are cases where a child in a residential facility run by the state has caused some damage. They are annoyed at what they have been told to do and punch a hole in the wall. Kids do that sort of thing. When my brother and I—I do not remember—were maybe 12 or something, we smashed a window at home. My parents punished us but they did not call the police and I was not charged with wilful damage. However, state facilities often do call the police and those children are charged for things that other children are not. The difficulty is that the majority of those children, at least in Townsville, are Indigenous children and so this general law has a very specific effect on one class of people and not on others.

A similar one is trespass where shopping centres often ban children who have misbehaved. They have thrown food somewhere, they have shoplifted or whatever it may be. All of those things no-one wants, obviously. They are then banned from what is otherwise really a public place. You or I can go to that shopping centre and it is fine. If that child goes there, the police are called, they are trespassing and it is a criminal offence for them to be in this public place that anyone else can go to. I think it is important to think about that because the effect is largely on our most disadvantaged communities.

The final point, briefly, is obvious but we think it needs to be said: children are humans but the law does not allow us to see that, at least in their media portrayal. These kids have personalities. They crack jokes in their conversations with their lawyers. They have aspirations and dreams. However, those stories, for very understandable confidentiality reasons, cannot be told. We do not have the media naming a child, showing their picture on TV and interviewing them. That is obviously necessary for the reasons that we do not record convictions against children et cetera, but the difficulty that needs to be kept in mind then is to make sure that we are not influenced by the fact that we are only seeing one side with the very understandable distress, for example, of victims and not thinking about the other side as well.

I would encourage this committee, in addition to hearing submissions from the legal groups and others, to go to the Cleveland Youth Detention Centre, the residential facilities and the watch houses, and that may be something that has already happened or there may be plans for it to happen, and speak to the children involved. It is the stories I have heard retold from people speaking to those children that have had the most impact on my thinking about all of these issues. Those are the sorts of principles we wanted to discuss. There are a few specific policy matters in terms of charging children, bail, remand and detention facilities that I am happy to talk about. I have probably used up my opening time well and truly.

**CHAIR:** I am sure that members will ask you questions and you will have opportunities then.

**Ms BUSH:** James, I have a number of questions but I will start with one and share it around and, hopefully, it will come back to me. You touched on doli incapax, the practice of children aged 10 to 14 needing to be able to demonstrate capacity. Recently, it was put to me that if children have been cautioned then that is an indicator of capacity, but your opening statement suggests otherwise. Could it be that young people are being cautioned and are compelled or feel compelled because of the power imbalance to simply accept whatever is on the table or accept a plea? Can you talk us through what is happening in practice there?

**Mr Rigby:** To take the point that you make about cautioning being an indication of capacity, I can understand some of the reasoning for that in the sense that if a person has been told, as part of a caution, that this is wrong and they ought not do this thing because it is wrong then obviously you might expect that when you are asking whether they understand what is wrong and right or whether they have the capacity to understand that it might be an indicator in the same way that if they have completed 10 years of schooling you might take that as evidence. In terms of whether children are being coerced into cautioning, I am not sure practically if that is generally occurring but I am sure it is possible in the sense that obviously a caution is a lesser, in some ways, punishment—although it is

not really a punishment in that sense—and, therefore, people may choose to take that path, for example, on the advice of their lawyers. However, I am not sure that is necessarily a bad choice for those individuals to make.

**Ms BUSH:** I certainly do not mean to infer that I think there is anything untoward or coercive happening. I am just imagining. I know as a young person myself, in an uncomfortable situation with adults and a lot going on you will do anything to get out of that situation. I guess I am thinking of those scenarios.

**Mr Rigby:** I think that is certainly true. I am not a criminal lawyer myself but I have spoken to a number of people who are. My partner, for example, while we were in Townsville, was working at the Aboriginal and Torres Strait Islander Legal Service with those children, among others. You would think that the rational response is, 'I am possibly going to court and I will just take this caution rather than engage in the restorative justice process.' However, because there is a level of disengagement, distrust or even just cultural misunderstanding, and some of these processes obviously require the child's consent to participate, often they will be declined by the child simply refusing to give an affirmative answer to participate. That can have serious consequences because it may be much better for both that child and for the victim for a restorative justice process to occur. However, if they are not trusting the magistrate or there are not the elders in court to help them engage with the process, you might actually end up with a worse outcome where they have to go to sentence rather than have that other process put in place. That is something to keep in mind in terms of the practical implementation of it.

**Mr PURDIE:** Thank you, Mr Rigby, for your great presentation. I want to pick up on one point and it goes to the member for Cooper's question as well. You were talking about this series of offending and a young offender potentially feeling pressured to plead guilty at an early stage, even though they might not have the requisite capacity at that point. Then, by the time they have taken advice and pleaded guilty, it is too hard to go back and argue requisite capacity. What people today have failed to take into account, which Legal Aid did accept, is that by the time that person gets to court they have, on almost every occasion, had probably multiple cautions by police, all of which have to be recorded. The police cannot talk to a young offender without a support person of their choice present. Thanks to some legislation from 2019, the police cannot talk to any child without first ringing the youth bail hotline where they are obviously more often than not told not to answer questions or whatever—they are given their rights. Were you taking that account? By the time of the person's first appearance in court when they have spoken to their lawyer about pleading guilty, they have probably been cautioned and also, more often than not, been to a restorative justice process and sat through that with social workers and victims. Do you still think that, by the time of their first appearance in court, they do not understand requisite capacity?

**Mr Rigby:** I think it is certainly the case that, say you take a 10-year-old child, at their appearance in court they may have gone through those processes and may come out not understanding. I know that is obviously an extreme case, but we will start there. They may not have the capacity to understand right from wrong. I think part of the evidence for that is that these children go on to do exactly the same things again, particularly at that young age. They are not breaking and entering and stealing car keys and a car to sell the car or anything rational. It is in many ways unexplainable behaviour to rational adults.

I would say that, yes, children at court appearances are pleading guilty to offences where they lack capacity. I am sure that is happening. There is a question as to how many, certainly, but I am not sure that the caution itself is giving that child enough capacity because if they fail to understand right from wrong—and keep in mind that these children might be suffering from mental impairments, of course, that mean that their development is not at the same stage as other children of that age. If they do not understand right from wrong, it is all well and good to tell them that this is wrong or to issue a caution or to have that restorative justice process, but they may still not actually really understand it.

**Mr PURDIE:** I appreciate your answer.

**Mr HARPER:** I am glad you have been to Townsville. Were you practising up there as well?

**Mr Rigby:** I work for a firm based here, but I was working semi remotely for that firm while my partner was working up there.

**Mr HARPER:** Clearly you have had connections with people working in law with youth justice. You mentioned the Cleveland Youth Detention Centre. In Townsville we have had calls from the community—there is tension—for more to be done and for people to be held to account. There have been reports in the media saying they want sentencing as a last resort to be removed. I want your

views on that. Would that achieve anything versus the most recent legislative change which is the serious declaration of a repeat offender? The Bar Association and the Queensland Law Society were here earlier saying that that legislative change has increased sentencing principles and options. Can you comment on that?

**Mr Rigby:** I cannot comment specifically on the latter point in terms of the increase in sentencing outcomes for serious repeat offenders. In terms of the principle of sentencing into custody as a last resort, we think that should remain the case, as it generally does for adults, because the deprivation of a person's liberty by the state is an extremely serious matter and it should be a last resort. You can have a debate about when we reach the stage of last resort—it is really just a semantic question in some ways. Particularly for children, given that we know in the latest data in the briefing papers that 93 per cent of the children who are detained on sentences go on to reoffend, the question we need to ask is: with a seven per cent success rate, are we happy with that rehabilitation system?

Part of that is driven, I should say, by quite practical matters. At Cleveland, for example, the children are often in what is called controlled cell occupancy. They are not properly allowed out or they are in night mode, which is full lockdown. That means no-one is going to the school at Cleveland Youth Detention Centre or the sports program or other programs. Firstly, that is a totally unacceptable way of treating children. Secondly, in terms of the practical outcomes, rehabilitation is not going to happen in those circumstances. I thought it was compelling in the Youth Justice briefing paper to this committee where there was a case study of a young girl who had really turned her life around. The one line in there about the times she had been I will use the word 'tempted' to go on and commit crimes was when people she had met at the Cleveland Youth Detention Centre contacted her. If she had not met those people, if she had not been in that environment, perhaps even that temptation, which must have drawn away others, would be less of a situation.

I think the last resort principle is important for those reasons, although obviously we need to have some detention facilities available. I note that the government is building more in an attempt to deal with these capacity issues and staffing issues, although I would suggest that that needs to be done much more quickly. The 2027 completion date for the one in North Queensland is four years from now. If we want to treat children better then that needs to be done as a priority.

**Mrs GERBER:** Thank you, Mr Rigby, for enlightening the committee. I want to go back to something you said in your opening statement. You talked about how children in residential care are being criminalised, so being charged with criminal offences. I was not aware that the state was actually doing that. Do you have some data?

**Mr Rigby:** I am afraid I do not. That is based on anecdotal reports from lawyers who act for these children. I am confident that it has occurred. I could not tell you how often though.

**Mrs GERBER:** We heard a lot about children also being victims of crime themselves. In Caloundra there were a number of children who were killed in a stolen car in which they had been a passenger. Does your organisation deal with children victims as well?

**Mr Rigby:** We do not provide services to anyone. In terms of advocating, we like to think that we advocate on behalf of all youths. We are seriously concerned by children victims of crime as well. One thing that is worth noting in that is that often it is a cycle where a lot of these children who are committing crimes are themselves victims of crime.

**Mrs GERBER:** Can you speak to the committee around their experience?

**Mr Rigby:** From what I am told, essentially often because of the situation these children are in at home, they are either themselves a victim or being exposed to crime, which can often include violent crime and also social issues in terms of drug use and those sorts of things. As all the data shows, that is a serious driver of offending. We are very concerned by youth being victims of crime as well. Again, we think that a response to that in terms of protecting these youths from being victims of crime is not entirely within the criminal justice system to fix. If there are health issues, if there are mental health issues, if there are drug issues, if there are domestic and family violence issues affecting these children and their families, then that is something that we as the state need to do a better job of fixing generally, particularly in our most disadvantaged and Indigenous communities in regional areas.

**Mrs GERBER:** It is also about access to health, yes?

**Mr Rigby:** Certainly.

**Mr TANTARI:** I would like to go back to what you said in your opening statement about the media story about youth. Can you unpack that? Then I have a further question about the assessment of that. What did you mean by that?

**Mr Rigby:** When I was speaking about the media engaging with this issue, I think it is important to note that of course you cannot identify children who are charged with offences. There have been some stories in papers and those sorts of things where they have said, 'Let's call this child "John" and we will tell you their story,' and there is an asterisk next to his name saying, 'That is not actually his name,' or there might be a blurred photograph of this child. These are really compelling matters in terms of people's emotions about them. When you hear stories of victims of crime, for example, it is understandably very moving to people. When you hear the stories about these children, that is also very moving to people, particularly when it is a situation where they themselves are victims and this is the continuation of a cycle.

The difficulty is that we hear more of one kind of story and less of the other because of the restrictions on telling the stories of these children. That means that when there are advocates for harsher punishment, which of course in some cases may be required but not in others, it is difficult to understand what that looks like as a reality. It is difficult to see that 23 hours in a cell at Cleveland Youth Detention Centre when you cannot see it, but you can see the very real impacts of crime on other members of our community.

**Mr TANTARI:** Further to that, being an advocate for youth, in your opinion do you believe that, with the assessment level with social media or the media attention around youth crime, the attention given to crime has been a promoting factor in youth behaviour towards youth crime?

**Mr Rigby:** I think there are two elements to that. I think there is a lot of media attention given to crime stories. As I said, that is because at a human level they are very engaging. People listen to them, so news bulletins lead with them. That has relevance for broader public debate. In terms of the specific effect on offending, there seem to be reports that social media does drive—

**Mr TANTARI:** Sensationalises?

**Mr Rigby:** Yes. It does drive offending because you see videos of people in stolen cars, for example, shared amongst each other. That can be a driver of children's behaviour, as we know with all sorts of problematic behaviour, whether it is vaping and other issues affecting children. Certainly social media can be a way in which that occurs.

**Mr TANTARI:** It drives notoriety. Is that what you are saying?

**Mr Rigby:** I think for some child offenders that is relevant, yes. Status in a sense is driven by those things. I am not sure that is true of all child offenders, and I think it varies a lot by the offences. When we are talking about children shoplifting, that is very different to people driving stolen cars, for example.

**Mr McDONALD:** Thanks, James, for your presentation. You are a very articulate young man. We found throughout the inquiry that about 77 per cent of cautions and restorative justice orders and things of a police nature right at the start are very effective in terms of seeing low recidivism. We believe that that is working. The police are doing a good job in that space. You made me think about Mr Atkinson's response yesterday when you said it is a challenging mindset for normal people to understand—I am paraphrasing. When I asked a question about consequences he said that these offenders do not have any concept of professional reputation or the fear of going to jail. In fact, you can turn that right on its head. It is a challenging conundrum.

We are dealing with that serious repeat offender cohort, which is no doubt increasing significantly and committing almost half the offences in the state, and the number of victims is increasing. We are really interested in that. I heard your response before about detention. I do not know whether you have been watching the program but I have asked this of many of the witnesses. I think we are caught up on the issue of detention because the only option for these youth offenders is a watch house, often an adult watch house, or a jail. Youth advocates have said to us and agreed that, if there was such a facility that had consistent support with high-intensity rehabilitation and health issues for the youngsters, then that cohort who are a higher risk to Queenslanders could be kept out of society. Do you concur with that?

**Mr Rigby:** Certainly as a preference to detention, that sort of facility, assuming it has all the attributes you have just described in terms of providing the right rehabilitation services, is desirable. In theory I think that is what the youth detention centres are meant to provide, but the practice in terms of their staffing and the facilities and simply the number of beds with the watch house issues means that they do not provide that. Instead you have multiple children sleeping on the ground in the Townsville watch house which is not something that is good for those children but it is also not something that is good for our police officers who are just doing their job, which is made much harder by that. Of course these things take time, but it should be a high priority.

**Mr McDONALD:** It is also not good for the youth detention workers. We heard there were five assaults per week happening. You mentioned before in response to a question a program that has been going for 18 years in a location. I understand that this type of facility has been around for decades in other jurisdictions. Do you know why it has not occurred in Queensland?

**Mr Rigby:** I could not speak to that, no.

**CHAIR:** I am mindful of time, so I am going to fit one question in. You spoke about how difficult it is to get these stories out because of confidentiality regarding perpetrators who were victims first themselves. Has any work been done in any other jurisdiction or within Queensland to start working out a way those stories can be told so that there is a greater understanding by our communities? Without those stories, often our communities take offence because it is felt that we are making excuses for dangerous behaviours. They think we should be more victim centric. They think we have moved away from that and that we are perpetrator centric. Has any work been done on how to open up and share those stories in a way that is inclusive to all for greater understanding so that as a society we can move forward, understanding that we all have a role in this?

**Mr Rigby:** I have not seen that myself. I could not say that there is not and, as I think I briefly noted, there are occasionally stories. I recall seeing one—it must have been in the *Guardian* online a few months ago—about a child and their experience in the watch house, but in terms of the traction it was getting, I doubt many people were seeing that story. It certainly was not leading one of the major news bulletins that evening. The short answer is, no, I am not aware of that, but it certainly is something worth looking at. Part of it could be the granular data being made available, and some of that is in the briefing papers. You can see some of that, for example, from the Department of Youth Justice. However, if there were more access given to media or even just more funding to organisations that work with these children in terms of things like ATSILS and other organisations, that might help drive that awareness, which I do think is important. We have seen increased awareness has led to relevant legal challenges and those sorts of things in this state. Obviously, parliament has seen fit to amend the laws in response to some of those, but the media attention, at least around those issues, were brought to light. Views may differ on what occurred thereafter.

**CHAIR:** Thank you. We all really appreciate the time you have given today. Thank you so much. You have given us a lot of information. We wish you well and safe travels home.

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

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

**CHAIR:** I now welcome representatives from the Queensland Family and Child Commission. I invite you to make an opening statement before members start with their questions.

**Mr Twyford:** Thank you, Chair. I will keep my comments short and provide time to Commissioner Lewis. I will start by acknowledging the Yagara and Turrbal people. I want to welcome the opportunity this committee gives us to pause and reflect on Queensland's youth justice policy. Youth justice policy is an area where there is little disagreement about the aim. Everyone wants the community to be safe. However, it is also an area where there is a huge gap between expert advice and community understanding and where the pace of change is volatile. This committee is an opportunity to reaffirm the purpose of our youth justice system.

I endorse and support the testimony you have already received, and I want to emphasise the points made by both Bob Gee and PeakCare who outlined the evidence concerning root causes of offending and the need for family focused intervention. I also support the testimony by Mr Atkinson regarding the different cohorts of offenders and how our system needs to identify and address the differing gaps and groups of young people in that cohort.

When considering the new information I could provide you, I thought I would turn to the theory of punishment. Theoretically, there are five main reasons humans have created sanctions for bad behaviour. The first is that we want it for risk management reasons, to remove offenders who are a risk to society and to keep them away or out of society. We use it for restitution, to remove any benefit the offender received from not following the law. We use it to deter in the hope that our punishment of one person scares others into not offending. We use it for retribution through which we impose a punishment as a revenge, as a way to harm the offender for the harm that they have caused. We use it to rehabilitate through which we compel offenders into facilitating their own positive transformation to becoming more pro-social. The emphasis on these goals may vary, based on the legal systems and societal values, but I will put to you that the gap between the desire for retribution and the need for rehabilitation is why this committee has been formed.

We do not make Queensland safer through the harsh treatment of young people. Our punishment approach is increasing recidivism rates. In your rethink and assessment of Queensland's youth justice policy, I ask you to consider these five forms of sanction and pay due regard to the programs and services that emphasise rehabilitation. I will pass to Commissioner Lewis.

**Ms Lewis:** Good morning. My name is Natalie Lewis. I am a commissioner with the Queensland Family and Child Commission. I want to start by saying very clearly that incarceration causes harm. It perpetuates the inequalities of the outside world. Having started my career working in a youth detention centre, I can certainly say that from a worker perspective—and I am sure for children—that incarceration breaks some part of every person that is exposed to it. Disrupting and changing the life trajectory for children in conflict with the law takes incredible resolve, especially for children and young people who carry a very heavy burden of trauma and unresolved experiences of their own victimisation and injustices across their childhood. This is not to say that nothing is being done to attempt to help children and young people in conflict with the law. For instance, there are educational and therapeutic programs offered. However, those resources are not consistently accessible in all facilities, nor are they effectively offered in a continuum of care, enabling continuity of the type of consistent quality support both before, during and after their release.

There is a clear disconnect between what is expected of children in conflict with the law, particularly incarcerated children, and the resources that are made available to them to achieve these behavioural changes, most likely because the changes in behaviour that are desired neglect the fact that these behaviours have been cultivated in conditions and adverse experiences that their participation in a program cannot change. These conditions, these root causes, I think, have been really well covered not just in submissions made to this committee, but inquiries across decades and across jurisdictions, so I will not labour on those points too much.

Unfortunately, we do not seem to think about public safety in the same way that we think about public health. I think we can all accept that hospitals alone do not keep our population healthy, no matter how well run they are. A healthy community needs neighbourhood clinics. It needs access to preventative treatment, access to vaccinations, quality health education, clean water, parks, recreational facilities, safe homes to live in and government policies that protect the public during health emergencies and much more. Health is not just about hospitals in the same way that safety is

not just about police. That, I think, is the first of our biggest barrier to effective youth justice reform. We have operated on a number of really problematic assumptions that the justice system is simply about police, courts and detention, that justice is about punishment, and that punishment is an effective deterrent for offending. It is seen only as the domain of the justice system, rather than of our communities.

A further impediment to successful reform is the politicisation of the issue of youth crime. It has come to be about politics and not people. It is about a show of toughness rather than an appreciation of leadership through a complex space, informed by evidence and the perspectives of the people who are most profoundly impacted by youth crime. The committee's ability to provide a clear space for the consideration of evidence of diverse perspectives and to safeguard the process from politicisation of the issue is absolutely critical, and I am really hopeful that this process can be a circuit breaker and a much needed opportunity for course correction.

In order to protect against short-term law and order solutions that produce long-term perverse outcomes for young offenders and for the broader community, we need to shift our attention away from an oversimplified suggestion that in response to issues of serious youth crime that harsher punishments for all young people is required. While the focus, energy and urgency remains fixed on a particular issue or responding to a particular incident at a point in time, the opportunity for real transformation just drifts over the horizon. This sees us locked into this cycle of short-termism and has confounded multiple governments for decades. It remains, I think, a real impediment to true policy transformation and innovation in the youth justice space. It finds us grasping for this patchwork of programs, this sort of carnival of quick fixes, to improve a system that in actuality could be, and absolutely should be, completely deconstructed and re-imagined.

The intended impact of all these well-intentioned activities and initiatives is undermined by the lack of cohesion and coordination of these strategies in their design, their implementation and how they are evaluated. We typically define problems and assign responsibilities by and within portfolios. We design policy in silos, we develop and fund programs in silos and, more often than not, we also evaluate their impact in silos—in these one-dimensional ways. We then rely on individuals at a local level to somehow disentangle all of these strings and then find a way to tether them to a single point in time to achieve real outcomes for the individual children or for the victims they have harmed.

I believe that a commitment to a comprehensive and a cohesive, long-term plan for promoting and protecting the rights of all children in Queensland is fundamental to address both the inequity and the injustices experienced by children and the effectiveness of the systems of justice for children in conflict with the law. In the absence of a focused, rights-based approach to young people that truly supports integrated responses, equally in decision-making and in the development of policy, we risk continuing to view the challenges in known areas of improvements in siloed ways, with these bursts of disjointed activity that are superficially or loosely connected without clarity of purpose or any outcome that we can measure. This just leaves us more vulnerable to law and order options and that lends public order divorced from the broader social context that we all live in.

Centring community and importantly the participation of children and young people and those impacted by crime to establish self-directed solutions is critical to achieving transformational change and better life outcomes for all Queenslanders. Thank you.

**CHAIR:** Thank you. That was really good.

**Ms BUSH:** I could not concur more with your opening address. Thank you so much for being here and being a voice for children. We do not have a lot of time with you and I might not get to ask many questions, so I will start with the one I want answered most which is: you have a statutory function to monitor and oversight systems—the child protection system and youth detention—to visit kids in those systems. We will have a hearing with representatives from those departments, so guide us. Give me three areas in each department that we should inquire into to help reveal the issues that you are seeing and guide us to the end result that you are looking for.

**CHAIR:** If that is really large, we can take it as a question on notice.

**Ms BUSH:** Of course.

**Mr Twyford:** I think we will take it on notice, but give a draft answer now. For my mind, the first is: how are they working together? Approaching the young person, as Commissioner Lewis has pointed out, and multiple reports that we have produced, the youth justice system is highly transactional. It deals with an individual young person for their individual set of offences and it almost is indifferent to their family home situation, their education status and their health status. So, when you have those government portfolios here, ask the question: how are they holistically working to address the root causes and situation for that young person into the future?

**Ms Lewis:** I agree. We have released a number of publications that point to what we think are the critical concerns in both of those spaces. Given the topic and that we are talking also about accountability, what we need to remember is that children and young people are rights holders. Even children who have made poor decisions and who have made mistakes, kids have a right to live free from violence, to be safe and to know where they are going to be sleeping that night. They have a right to have access to quality health services, education, those types of things, and that should never be compromised by virtue of being under the guardianship of the state. It should certainly not be compromised by the fact that they have been placed in detention. I think there needs to be that accountability of systems that interact in the lives of children to promote and protect those rights regardless of the circumstances. That does not minimise their behaviour; it just means that we are a rights affirming state with the introduction of the Human Rights Act, and we should not get to make exceptions for that, depending on where children happen to be.

**Ms BUSH:** When will your residential care report be made public?

**Mr Twyford:** Just to confirm, I am providing oversight to the department's review of residential care. That involves me producing monthly reports that I am publishing around the status of that review. Minister Crawford and his department are committed to producing a road map for reform before Christmas.

**Mr PURDIE:** Thank you for your submission. I really appreciate that example you gave us about how a society deals with the health issue. We have a youth crime issue that is just left to the police to solve essentially. I can assure you the police do not necessarily like having that burden. In about four or five hours time, every light will be turned off in the education department, DoCS and Youth Justice, and the police, until 9 o'clock on Monday morning, will be left to try to deal with this issue, which, as you pointed out, is a holistic issue. What could other government departments be doing a lot better to help police and communities deal with this in a more holistic way?

**Ms Lewis:** That is a great question. A number of submissions have raised the importance of getting proper assessments undertaken, and not assessments that are just driven or initiated by a child's appearance in a courtroom. There are so many times when we have the ability to reflect back and look at a young person and their interactions with the system along a life course. We see so many missed opportunities for that type of assessment to truly respond to children's needs. For example, the role of early childhood services is incredibly important. To have young children involved in quality early childhood services, having skilled staff who are able to identify where there are learning disabilities, where there are potentially issues at home—those types of interactions in the provision of support in a non-criminogenic way can set children up for different trajectories. I think the importance of assessment, whether that is in an educational environment, whether that is having equitable access to routine health and paediatric assessments—those types of things—needs to become normative for all children in Queensland. When it does come time for a young person who has come into conflict with the law and is appearing in court, we absolutely need to be able to prioritise getting them an appropriate assessment. We need to understand not just their capacity to plea, to understand their offences, but their status in terms of disability. How long is it since they have been in school? What are their prospects in terms of being able to engage in cognitive behavioural therapy? They are the types of things that we need to know about a young person to actually understand if what we have on offer is fit for purpose and is going to achieve a real outcome that is not only going to deter them from further offending but also promote the protection and safety of community in the long term.

**Mr PURDIE:** I agree with everything you said, and I am sure the committee does. Bob Atkinson was here yesterday and he talked about whether we should perhaps be looking at a short-term—four-year—and eight-year and 12-year assessments. I appreciate that what you are talking about is long term. I think we all agree that at an early stage we could be better doing assessments of identifying potential risks in the future of vulnerable people who need more attention. More acutely, this weekend essentially, across Queensland specifically from the children you are dealing with, the departments and the community servicers which you are dealing with, what services could we as a committee recommend that the government fund or roll out more quickly to better protect victims? Unfortunately, I think you guys would agree, the level of violence we are seeing from young offenders is going up, and the number of victims is going up. What can we do? I appreciate the long-term approach, 100 per cent. More acutely, what can we do as a committee to advise government of policies or legislation or funding for different departments that they could use to help the police better resolve this issue?

**Mr Twyford:** One thing I would say in response to that is provide each young person with a case manager who follows them through the system. We are currently conducting a review into exits from detention which is in part looking at that recidivism rate. To my mind, it is the start-stop relationships that the young people have. They might get to know someone through their restorative justice conference who they can bond with, but that person disappears because of funding constraints upon court appearance. They might know someone in detention who they actually form a bond with and that person provides the young person hope and opportunity and a sense of self-value. In every bit of evidence I have seen, it is relationships that change a young person's behaviour, but we are funding silos and transactional ways of working with young people. If we could find a way this weekend to let workers who have bonds with young people that they are already working with to continue working with them, I think that would be a fundamental game changer that requires no new money; it is just a repurposing of what we are already doing.

**Ms Lewis:** To add, being flexible in terms of service agreements and allowing services to operate 24-hour models so that they are responsive—those are very practical things. I think that we can clearly demonstrate that the need exists after hours for children and young people, so that is where the funding and availability of those services should be focused. Being able to guarantee that for every young person who has committed an offence who is vulnerable and we do not have a safe home to return them to, there should be priority investment in terms of accommodation options that provide for safe accommodation in the short term for children and young people because at the moment our only option is a watch house, and that is tragic. I think that having a service system that is based around need and responsiveness to the children and young people that they are there to help, through flexible service agreements, through different funding models, I think, is something that we could do quite quickly and would certainly have an impact in terms of the number of children we are seeing in watch houses.

**Mr PURDIE:** One of the recommendations in Mr Atkinson's 2018 report was that the Department of Youth Justice operate after hours. I am pretty confident that that is not happening. Going to your point about mentors, you are suggesting that if some of those departments like that were available more often and not unavailable from 4 o'clock this afternoon till 9 o'clock on Monday morning, that that would be a more holistic approach to not burden our police with trying to resolve it?

**Ms Lewis:** Yes.

**Mr TANTARI:** I wish to unpack a little the comment you made regarding policy and silos, and also coming off the back of what the member for Ninderry just said. Does your commission have any experience interacting with multi-agency collaboration panels? If so, how well do you think these panels are working to address the needs of young people engaged in the youth justice system?

**Ms Lewis:** Luke may be able to give a broader comment about their efficacy. I personally have observed one. I am trying to be positive, but I think that one very clear thing that was missing from those panels was the direct participation of the children and young people who are involved. There was lots of discussion about and around and speculation about what might work, but no actual direct involvement and participation of those children and young people. We can navel-gaze all we like and make big plans for a young person, but without their informed consent, without them actually having an opportunity to talk to us about the types of things they are capable of or that they think they could do or might be interested in, then the overall success is going to be limited.

**Mr Twyford:** As part of my role, I have sat as an observer on the senior officers' working group that oversees those multi-agency panels. I have attended a number over the last 24 months including Goondiwindi, Toowoomba, Townsville, Cairns and some here in Brisbane centrally. My comment would be that it is variable and it depends on the practitioners in the room on the day. They are a very positive and healthy part of the system where workers come together with real knowledge about the young person that they are discussing, understand the family situation, the schooling situation, and that they can each discuss what action they are taking in response to that young person's behaviour. Where it is not as effective is where there are senior representatives from portfolios who do not know the young person or their situation, but are reading the notes of the case manager who works with that young person. Where it is a representative group coming together within a region, I see it as less effective in dictating that young person's case management, notwithstanding it might be good for other reasons, such as strategic partnerships across region. But where I have seen real discussion and real decision-making across the silos is in those multi-agency panels where there are multiple case managers for that individual child, discussing how it is going, what the short-term future of that young person is, what the long-term goal for that young person is, and I would double down and say the young person should be in the room for that.

**Mr TANTARI:** You are basically saying that the framework is there; it just needs tweaking to make sure it is more effective?

**Mr Twyford:** Absolutely, and if it was taken away and did not exist, I would be worried. It is a way to encourage cross-portfolio ways of working, and I think it is a strong policy for that regard. It will really start to make a difference when the true case managers for each child are there together.

**Mrs GERBER:** I want to get the QFCC's view in relation to the correlation between Child Safety and Youth Justice. You were in the room when I asked the question previously of the young gentleman who very articulately advocated on behalf of young people. Are you able to give me any further information around that question?

**Mr Twyford:** I can in a number of ways, but it will not be the data that you are perhaps looking for. You would have to approach the department or police in relation to that. Queensland has actually led the way historically around its protocols for managing the behaviour of young people in residential care. It created an operational protocol between police and Child Safety to try and decriminalise some of the behaviours, but it is an ongoing issue and it happens in a couple of ways. The first is a young person might be on bail and live in, placed within, a residential care home and there are breaches of bail and there is an obligation on the workers there to report, 'Did not return for curfew,' et cetera—

**Mrs GERBER:** I guess James is more talking about the conduct of a child that might be acceptable in their own home and is being criminalised in residential care.

**Mr Twyford:** That does happen and it is a balancing act for the provider and the workers at the time. There are clearly situations where there is escalated behaviour that is not reported, and nor would a parent be reporting that behaviour, but there are also insurance obligations on some of the providers around property damage that calls them to report behaviours that they state that they did not want to report but for the need for their insurance coverage. Then equally there are behaviours that are approaching dangerous that do need to be reported and would be legitimately reported.

**Mrs GERBER:** Given that interaction that is happening there and some of those concerns that were raised, on average is it about four years that kids are in residential care? That is the figure I have.

**Mr Twyford:** That is correct.

**Mrs GERBER:** How do you think that contributes to their prospect of being back in the justice system? Given they are not—

**Mr Twyford:** The first thing I want to say and to be very clear on is one system does not drive the other. Both the Child Safety out-of-home care system and the Youth Justice system have root causes in family dysfunction and disadvantage, and what we are seeing when young people are in both systems is actually their life situation and adversity that they have experienced. Having said that, the young people in residential care—and this is clearly evidenced through the current review—are lacking a clear adult guardian or person who is their champion and, within that construct, you can lose hope, you can lose self-value, and you can find your way very easily into antisocial behaviour. Residential care settings that are not offering a relationship in terms of an adult champion—

**Mrs GERBER:** Are you talking about the CSOs, the ones living in the residential care facilities?

**Mr Twyford:** A child safety officer will be in the Child Safety office. The residential care workers will be in the home, but the residential care workers are employed on shift. It is a difficult job and often paid at entry level, so there is a high turnover of residential care workers.

**Mrs GERBER:** What is the pay?

**Mr Twyford:** I would have to take that on notice, but it is—

**Mrs GERBER:** When you say 'entry level', are they entry level as in they are graduates or—

**Mr Twyford:** No, there is no qualification required for residential care work.

**Mrs GERBER:** So those residential carers are dealing with those kind of behaviours. They are essentially meant to be the parent in the house. If you are going to translate that into a home environment, that is meant to be their home.

**Mr Twyford:** That is correct.

**Mrs GERBER:** The residential care worker living there is meant to act as the parent. You are saying that they are on an entry-level wage and they have no qualifications. Is that contributing to this disconnect that you are talking about? Is there more that could be done in those residential homes around the qualifications of people to be able to help those kids?

**Mr Twyford:** Qualifications and training. I do not want to demand that people need a university degree to be a parent-like figure, but certainly training and awareness of fulfilling a parental role and what that looks like, distinct from being a house manager for what might otherwise look like an institution.

**Mrs GERBER:** Understood.

**Mr HARPER:** It is really interesting, Commissioner, to hear you worked in a youth detention centre. You really get the understanding now in your role. I thought your opening statement was very good. I want to go to some of the words you used around incarceration promotes reoffending and causes harm. Clearly, for those violent crimes, a period of custody has to occur, and I think that is the community expectation when we talk about community safety. However, you also talked about politicisation of the issue—who is tougher. Some words are being thrown around right now of removing youth detention as a last resort. Do you think that would be helpful?

**Ms Lewis:** No. I think that absolutely is well founded in international law, and I think that it is a safeguard and a principle that we should protect. It does not get in the way of children being held in custody, otherwise we would not have 250 kids in custody right now. I think that it is an important safeguard. I think that it does not prevent courts from considering all of the information in front of them and making a decision that balances the requirement around community safety and the child.

**Mr HARPER:** Can they do that now with that recent legislative declaration of a serious repeat offender? Does that elevate the sentencing principles? I think the Bar Association said it did provide options for sentencing.

**Ms Lewis:** I have a totally different issue with that.

**Mrs GERBER:** We are happy to hear it. Tell us what it is.

**Ms Lewis:** When we talk about young people being placed on a list or categorised in a particular way and that then opens the door for more significant sanctions, I wish that what it did was open the door for more comprehensive assessment and more tailored responses to the profound needs of children.

**Mr HARPER:** We have been hearing the last few days—assessment, rehabilitation.

**Mr Twyford:** If I could just respond to your first question, though, and make the very loud point: Queensland locks up more of its young people than any other state. The sense that we need to continue to tinker with the legislation to better enable detention does not align with our statistical reality. We have been locking up more young people than any other state, I think for more than 10 years, but it is certainly more than five years. We are not seeing the behaviour change and the community safety that I think we would hope for from that course of action. In our Youth Justice Act, our Bail Act and our police administration acts there are a whole range of legal provisions that have been created by parliaments rightly through correct processes, but normally in response to individual issues, particularly front-page issues. Taking a step back and looking at the big picture of what is the most effective way to keep the community safe both in the short-term and the long-term, brings me back to rehabilitation. Where is the rehabilitation?

We can tinker with provisions like it should be the last resort, the second last resort or the first consideration, but, ultimately, that is still playing into hands of the judiciary who are going to be the decision-makers, and rightly so. Balancing what the legislature can do with what the judiciary will do with ultimately what we all are trying to achieve brings me back to my opening statement that we need to fully understand what the intent is. What are we trying to achieve? Removing something as a last resort changes the words in the act. Can we show how it would change the current cohort or the future cohort of offenders? Where is the evidence that shows what the outcome will be?

**CHAIR:** I am very mindful that we are over time, but I still have two members who want to fit questions in. My apologies to the National Children's Commissioner. There will be two more questions and we will be straight with you.

**Mr McDONALD:** Thank you both for being here. I refer to the questions that have been asked around the services of Youth Justice and the services of Child Safety. We heard this week that only 72 hours of care are provided by the department for people transitioning. What are your thoughts around that? Secondly, we heard that when somebody reports as being homeless they are actually taken off the books of Youth Justice. Can you talk to us about those two issues?

**Mr Twyford:** The way we exit young people from detention is almost certainly back to the circumstance where they entered detention. If we are not using that period of time not only to work with the young person but also to work with their family or their external life circumstance then it is no

wonder we have the recidivism rate. Over 90 per cent of young people who exit detention come back. That is not a business or a system that you would want to invest in with that level of success rate. The economics of youth justice need to be looked at. The idea that the young person suddenly becomes no-one's responsibility when they leave the detention centre door has to change.

**Mr McDONALD:** Katherine Hayes from the Youth Advocacy Centre was talking about some intensive rehabilitation for those kids—the worst of the worst kids, kids who need to be removed from the community to save themselves and our community—and wrap support around them. I think that is where we get locked up. From the overseas experience, it is decades in the making. Why are those services not provided in Queensland? I am sure with your experience you have been advocating for these things, so why are they not here?

**Ms Lewis:** We continue to overestimate the rehabilitative prospects of custody. We keep believing that punishment actually does something in terms of deterrence. When I was living in the United States I was working in gang prevention. We had a group of young people whose circumstances were fairly compatible with the circumstances here—eight per cent of the kids were committing more than 50 per cent of the offences. These kids were all known gang members. They were on a list in California called 'Cal Gangs', similar to our SROI here. We worked with them intensively and it had nothing to do with custody. We did not need custody in order to provide a full-day program for every single one of those young people. We had involvement of probation. We had involvement of county sheriffs and police that provided a sense of dynamic security. There were no bars. It was not a custodial setting. The children were picked up in the morning and they came to the program. They did tailored education to meet their needs. They had access to every type of counsellor, restorative justice and enrichment programming you could imagine and the recidivism rate was 14 per cent.

**Mr HARPER:** Chair, it might be helpful for the committee if we can get some more information on that program.

**CHAIR:** Absolutely, and any other programs as well. Before we close this session, I seek some clarity for the committee's benefit—maybe it is only me who needs clarity—regarding assessment. We have a task to do and time is of the essence. We need to get on with it and get some work done right now. Other things are obviously going to take longer. Do you believe that the appropriate process would be for every juvenile in any form of process with Youth Justice as of right now have a thorough assessment to ascertain what supports and services are needed for that juvenile and their families? The broader picture is that all children should be assessed at preschool age. The logical place for this would be for it to be embedded in the school system in some form. Am I heading down the right track?

**Ms Lewis:** Yes. Without a clear assessment of what a child's needs are and how to best meet those needs, we will continue to try and cram them into a handful of responses in the criminal justice system that are not going to be fit for purpose. It is about not fumbling in the dark; it is about getting the clarity of an assessment to understand what the capacity of a young person is, what their needs are, what their past history of trauma has been and what is the best way for us to respond to pain-based behaviour. We then get to see some of the responses we have on offer for what they are and that they are perpetuating trauma not healing it.

**CHAIR:** When I relate to that whole-of-school life, say with monitoring, that is every child; that is not a child who has been identified at risk because we can pick up on contributors very early on.

**Mr Twyford:** I would just briefly add two things to that: firstly, if you speak to primary school teachers, they will identify the young people; and, secondly, rather than doing the individual assessments—which we should be doing—I would strongly argue for family assessments. The siblings of the young people who are currently on the serious repeat offender index—we know from youth justice censuses across multiple years—are more than likely to start finding their way into the early end of our youth justice system. We also know that, of all the young people in our detention centres, 27 per cent have a parent who has been incarcerated. If we were to start to identify cohorts where that assessment should be done. More importantly, the assessment needs to result in action. There is no point in assessing people for the sake of it. I close on that point.

**Ms Lewis:** And that action should be support not surveillance.

**Mrs GERBER:** When the QFCC is providing us with that information in relation to the overseas program, can it also include whether or not it was compulsory that the children participate so that we can understand how that fits in with our system?

**Mr Twyford:** Okay.

**CHAIR:** Fantastic. Thank you so much. I am sure you have seen that we could have asked another 1,000 questions. We have three questions on a notice. I remind you that we require those answers by Friday, 8 December—just in time for Christmas.

**Mr Twyford:** We are very happy to come back another time.

**CHAIR:** Wonderful, thank you. We really appreciate it. Safe travels home.

## HOLLONDS, Ms Anne, National Children's Commissioner, Australian Human Rights Commission

**CHAIR:** Good afternoon, Ms Hollands. I do apologise again for the delay.

**Ms Hollonds:** Not at all. Thank you, Chair, for the opportunity.

**CHAIR:** Would you like to make an opening statement before we move to questions?

**Ms Hollonds:** Yes, I would; thank you. I would like to acknowledge that we are on the lands of the Turrbal and Yagara people and I pay my respects to their elders past, present and emerging. I am based at the Australian Human Rights Commission. The functions of this role are focused on ensuring that our laws and policies in Australia protect the human rights of children and young people. I am currently conducting a project called Youth Justice and Child Wellbeing Reform across Australia. In this project, we are investigating opportunities for youth justice reform based on evidence and the protection of human rights. We are interested in the reform of upstream systems across health, education and social services at the front end, which is what you have just been discussing, as well as reform of the youth justice system itself, because both need to happen, including how we provide scaffolding for children to be reintegrated into the community after detention.

The project's findings will be reported to the Commonwealth Attorney-General through a National Children's Commissioner statutory report in 2024. We are gathering information through a review of research and a call for submissions. So far, we have had 162 submissions and we are holding expert round tables and stakeholder interviews. Importantly, I am also conducting targeted face-to-face consultations with children and young people who are at risk of or already in contact with youth justice systems across the country, including in Queensland.

One submission to our project was from the Queensland Department of Youth Justice, Employment, Small Business and Training. I would like to briefly quote from that. I am just picking out a few bits, but I know that this committee has a paper from them as well which I have looked at. The submission states—

> Evidence shows a clear association between antisocial behaviour and exposure to domestic and family violence, child maltreatment, socioeconomic disadvantage and poverty. Often young people in the youth justice system have untreated mental health issues, compounded by problematic substance use, have disengaged from education and are subject to adverse living circumstances. Young people with developmental disorders and cognitive and intellectual disabilities are also over-represented within youth justice systems. These conditions affect decision-making ability, consequential thinking and increase engagement in risk-taking behaviour.

The submission further notes—

> The United Nations Convention on the Rights of the Child states that children with a disability or particular vulnerabilities should receive special care and support. It is common for young people engaged with youth justice to have witnessed or experienced acts of family and domestic violence in the home. Such exposure to trauma, particularly if prolonged, can increase the likelihood that these young people will become vulnerable to lifelong adverse outcomes like homelessness, mental health issues, substance abuse and increased likelihood of entry into the adult criminal justice system.

The submission states—

> A whole-of-government-led approach is required to support those young people to divert from those trajectories. Strengthening families and addressing challenging behaviours as early as possible need to be done. The earlier issues are identified, the better chance there is of preventing antisocial behaviour and offending.

In terms of early intervention and prevention—which I know the committee has been looking at heavily—they talk about including proactive health responses including mental health, wellbeing, alcohol and other drug diversions, domestic and family violence and education, as well as for older kids looking at pathways into employment.

The reason I quoted your government's submission to our project is it clearly summarises important evidence about what should be done to reduce youth crime. It appears that these factors are well understood. The question is: where is the coordinated plan for this whole-of-government approach based on the evidence? Where is the plan to address the current failures in the basic Public Service systems which are unable to meet the complex needs of these children and their families? I will list a few examples: lack of housing; lack of addiction and mental health services, including for children under 12 years; lack of services for children with disabilities, including learning problems; lack of appropriate schooling for children with complex needs and behaviours—of course, you know that we are seeing high rates of suspension and disengagement from school; lack of very basic things like public transport to get kids to school in some towns; and lack of whole-of-family support services that are culturally appropriate, designed and led by the communities themselves. These are not things that Youth Justice can fix.

Your government's submission to our project correctly identified that we need to act much earlier. Currently our service systems are unable to do this and, as a consequence, we are waiting way too long and are then reacting inadequately, or even punitively, when a child is already at risk. Currently we are often ignoring the children who are not at risk enough. Our systems are fragmented, piecemeal and uncoordinated, with each portfolio running numerous programs. I have read the submissions to your committee and the list of programs in Queensland is impressive. I acknowledge that there has been a lot of work done, but often these programs are operating separately in silos in a disconnected way. It would be a mistake, in my view, to just focus on the reform of the youth justice system in isolation from the other Public Service systems that are meant to be helping people.

The youth justice system must be improved, but the other systems also desperately need reform. Currently, our basic public services across health, education and social services, including housing, are based on outdated models that are not fit for purpose for complex needs today. There is a lack of coordination and we keep tinkering around the edges with symptoms, rather than addressing the underlying causes of child maltreatment and youth crime. The unintended consequence is that we are criminalising children for the causal factors that are beyond their control such as poverty, disabilities, complex needs, trauma, maltreatment and homelessness.

In my national consultations for our project, I have spoken to many children across the country, including in Queensland and in Queensland children's prisons. One of the things I ask when I talk to kids who are in prison is whether being in jail helps them in any way to stay out of trouble with the police when they leave. In response, some kids spoke to me positively about the food that they get and the school. Some kids really like the school when they are in prison, and that is because they are getting intensive one-on-one learning support—not everywhere, but in some of the better children's prisons they receive this. The majority clearly told me that when they are in prison they are learning from the older kids how to do worse crimes.

I have asked children to tell me why they think some kids get involved with Youth Justice, and while other kids manage to stay out of trouble with police. I will share a few of the things that the kids told me. I hear about the fact that when young kids are stealing, it is often because they are hungry and there are problems at home like inadequate housing, violence and addiction. Later on, they need money for food and clothes. They are starting to drop out of school by about year 5 or year 7 because they say they do not feel they belong. Sometimes kids are bored and they are looking for something to do, and some kids say they steal cars later on because they know they will never have enough money to buy one.

**CHAIR:** Ms Hollonds, is it possible to table some of the information you have there? Obviously, you have so much to share with us.

**Ms Hollonds:** I am happy to table it. I will send it to you later.

**CHAIR:** That would be wonderful, because we would like to have a record of the content.

**Ms Hollonds:** Finishing up: some of the kids I have met have a deep sense of hopelessness about the future. They talk, in their own words, about feeling shunned by the society around them. They do not want to end up in the adult jail, but they simply cannot see another pathway forward other than crime. These kids are lost. They have no safe place to live when they leave detention and no way of engaging in school, training or employment in the community. They have no support and no-one to back them. They have no hopes or aspirations for the future. The deep sense of hopelessness and loneliness that I have heard from some of these kids is, frankly, chilling.

I understand that the community is fed up with crime—no-one should be living in fear—but the research shows that the younger we lock up children, the more likely they are to continue doing crime. This is what seems to be happening here in Queensland right now. Thank you very much.

**Ms BUSH:** Thank you, for that fantastic opening address. Queensland is a signatory to the UN Declaration to the Convention on the Rights of the Child and to OPCAT. How important is it for our reputation and otherwise that we uphold our responsibilities under those declarations—domestically and internationally?

**Mr PURDIE:** Is that in relation to watch houses?

**Ms BUSH:** It is a broad question. She can answer it how she likes.

**Ms Hollonds:** We were a signatory to the Convention on the Rights of the Child in 1990. Of course, that is an important obligation, and we are facing a reputational issue right now. I would like to say that what we need to understand is that the principles in these international conventions—let's talk about the Convention on the Rights of the Child for a minute—are a really good compass to help us make better decisions that will reduce crime. That is what we are talking about here. In Australia, I do not think we understand how valuable these sorts of principles are.

What I have observed in my time in this role is that often government reacts to incidents that cause a lot of pain in the community and for individuals, understandably, without any compass to guide those decisions—we need some principles. I am hoping that the project I am working on will come up with some principles that will underpin a road map for reform across the whole country, recognising that every state and territory is in a different place. I am more interested in how those conventions can be a practical benefit to what we are trying to achieve, although there is an external reputational problem.

**Ms BUSH:** We have heard from submitters that when we have perhaps run against those protocols and principles, children have noticed that and that has had an effect on them and how they feel about adults and decision-makers generally. What are your views on that?

**Ms Hollonds:** That they are aware that we are not applying those principles, well yes, of course. It is a loss of trust in government and in how we are running things in this country. In response to your earlier question, OPCAT is about providing external monitoring and an oversight of what we are doing, which at an arm's length perspective we absolutely need to ensure governments get the best information to to make the best decisions. A framework that goes to the human rights of children is really important.

**Mr McDONALD:** Thank you very much for your thoughtful presentation. I don't know if you watched the inquiry yesterday.

**Ms Hollonds:** I did, as much as I could. I did not see every single moment.

**Mr McDONALD:** I was very concerned to hear yesterday from the AWU that detention facilities here in Queensland are not providing services 30 per cent of the time and because of a shortness of staff they are going to night mode. Is that in line with the human rights convention?

**Ms Hollonds:** Absolutely not. I have had personal experience of that. When I visited two of the children's prisons here in the last six months, on both visits they were in night mode. The only time the kids had out of their cell was when they came to talk to me. You can imagine how cranky those kids were. It is also harmful to kids who have come in—I know you have heard—with pre-existing trauma and complex needs and then we are locking them in their cells for 22 or 23 hours a day. It is not acceptable.

**Mr McDONALD:** No. We are charged with looking at the full system. What is very clear is that kids with hope and support in their world have very low recidivism rates. The concern for me is the increase in the cohort of high-risk serious repeat offenders, the increase in victims across the state and serious crimes. Do you have advice for us regarding that? What sort of facilities could we provide to that high-risk cohort to take them away from being a risk to the community? Obviously, resi houses are not working.

**Ms Hollonds:** Do you mean the resi care that the child protection system provides? I have definitely heard a lot from kids about how that is failing them, as well. You touched on that with my colleagues. We are only halfway through our project. The evidence, as I understand it, very much points to small units that enable that relationship to be built—the relationship of trust between the child and who I call carers. There is an idea of them being just custodial officers, wearing uniforms and dangling keys. In a lot of ways, we are in the dark ages in Australia. The rest of the developed world has moved on and is trying these other approaches with great success. We need to really step up as a country.

It is not just Queensland, if it makes you feel any better. I know that there are particular issues here, but the reason I am doing this as a national children's commissioner is because a number of jurisdictions are struggling and we are not geared up to help each other to ensure everyone's boat lifts and we do this better. The evidence is showing that a kid needs a relationship with someone that can be sustained beyond detention. We cannot just let them fall off the cliff when they leave because that is when they come back again. That is what is happening. We need to ensure their needs are met, they are getting therapy for whatever trauma, disabilities and learning needs they have and that we sustain that on departure from their detention.

**Mr HARPER:** I have a similar question to one I asked of earlier witnesses in regard to the tension between community safety versus a just response. Do we follow what is being portrayed in the media as tougher sentences? Should we remove youth detention as a last resort?

**Ms Hollonds:** No, I do not believe that it is warranted given that Queensland already has the toughest youth crime laws in the country. It is patently obvious it is not working. I think we need to have a big rethink about the approach that we are taking. Based on what I have heard yesterday and earlier, there are other approaches that we could be looking at that would reduce youth crime and keep the community safer.

**Mr HARPER:** You said that it is not working; is that because of the 90 per cent reoffending rates when they come out?

**Ms Hollonds:** Absolutely. The reoffending rates in Queensland, which has the toughest laws, are the worst in the country as far as I understand it. Every jurisdiction has a problem with reoffending, do not get me wrong, but we do have a particular problem here and so, we need quite a radical rethink—that would be my advice.

**Mr HARPER:** In terms of your point on a whole-of-government approach, I am not sure if you are aware—I will ask the Queensland Human Rights Commissioner—of what we adopted in Townsville a number of years ago. It was a whole-of-government Stronger Communities Early Action Group. It was a big driver of keeps kids in education. I can rattle off flexi schools pathways, Clontarf Foundation, the Street University project, Silver Lining Foundation, Transition 2 Success, youth foyer. Is there an easy answer, or do we need a suite of programs that can perhaps take a cohort of kids here and there? Is there an easy solution?

**Ms Hollonds:** No, of course there is not an easy solution. That is an easy answer. It is also not just about programs. I think we need to look at how these public services, across health, education, social services et cetera are working together. One of the things I am quite interested in is the idea of using the school like a community hub, pulling in the services that kids and their families need and also looking at the model of schooling and the way that the school operates so that kids and their families can feel they belong. We push them out and then where are these kids going to be? They are going to be on the streets doing crime. We all know that. The school is a perfect site for that.

There are examples now around the country where the school is operating like a community hub with a range of, if you like, programs or approaches or services that help kids and their families with a range of needs. It does need to be whole of family. You cannot just be focusing on kids in isolation either. I would really encourage consideration of seeing schools as community hubs and not just as a place you go to from nine till three for academic learning. Let us be sensible about this: that is a place you can go to without any shame or stigma, but the kids we are worried about are dropping out and they are not going and their families do not feel they belong. We have to turn that around.

**Mr PURDIE:** I have two quick questions. The first picks up on the question of the member for Lockyer about incarceration, essentially. I am referring to your national role. You were saying earlier that Queensland has a similar issue to the rest of the country. Are there other states where young offenders are kept in watch houses, essentially indefinitely, and also kept in their cells for 23 hours a day? Is that something that is happening around the country or is Queensland unique in that aspect?

**Ms Hollonds:** Queensland is pretty unique with the watch houses. By the way, I visited a couple of them and I have to say they are much worse than the prisons. I was truly horrified at the conditions in the watch houses. There are other jurisdictions that have a problem with staff shortages and, therefore, they are using operational reasons to lock kids down. Western Australia is one and, as you know, we recently had a tragic suicide in youth detention there. You do not want to go down that path. That is a really big problem. It is not good enough and it is not consistent with the human rights of children to be locking them in for 23 hours a day.

**Mr PURDIE:** Secondly, you mentioned before that Queensland has the toughest youth crime laws in the country. I am wondering on what parameter you are assessing that. I understand that the Children's Court New South Wales can only deal with a small number of children-type offences. For major offences, even sexual offences, firearms offences and more serious offences, the Children's Court has no jurisdiction to hear those matters. They are treated as adults in a normal court, as I understand it. Here we know that 95 to 96 per cent of all offences committed by children are dealt with in the Childrens Court, which can only impose a maximum sentence of 12 months. I am just wondering—

**Ms Hollonds:** What I based it on?

**Mr PURDIE:** Yes.

**Ms Hollonds:** I based it on what the Premier has said. On many occasions she has admitted that. I have not done a full analysis or a direct comparison. It is quite hard to do. I have not done that at this stage in the project. Yes, your government itself is saying it is the toughest.

**Mr TANTARI:** I will defer to the deputy chair for questions.

**Ms BUSH:** Commissioner, you used the words 'radical rethink' about the system. Could you expand on what the governance model might look like that sits over that? I know our commissioner, who is sitting behind you, has referred to perhaps the need for a dedicated minister to have oversight

of the welfare of children and young people, to be able to reach into various departments and get them moving and get them coordinated. I am interested if you have views or seen examples of where having a stronger, clearer governance model might help that kind of framework?

**Ms Hollonds:** I would agree that if there were a minister responsible for the wellbeing of children and young people it would be that point of accountability. Part of the problem we have at the moment, across Australia by the way, is that children's policy is widely scattered and there is very little accountability for evidence-based reforms. I have just done an analysis of 12 years worth of royal commissions and inquiries into child protection and youth justice. There are over 3,000 recommendations. It is fine to do an inquiry, but where is the accountability for action?

Yes, we have to look at what levers the government has to be able to coordinate and to build the accountability and I think a dedicated minister is a good one. It does need to be a requirement then to see that with these systems there is that connection between all of the portfolios that have a role to play and for us not to be sidelined as just a justice issue or a youth justice issue. That is way too late. They do not kick in until the kid has committed the crime. We know that there are four- and five-year-olds patently out there now on that pathway and they are being ignored because they are not at risk enough.

**Mrs GERBER:** I have some quick questions. When is the work you are doing available? I am sure you already said it but I cannot remember.

**Ms Hollonds:** We are hoping that it will be tabled in about June next year.

**Mrs GERBER:** I have a question around watch houses. I know you have addressed it there but I want to get your expanded view in relation to the Queensland government's move to declare watch houses detention centres. I want to briefly ask you to provide us with a bit more context. You said you have visited the watch houses.

**Ms Hollonds:** Yes.

**Mrs GERBER:** Can you provide the committee—

**Ms Hollonds:** Do you want to know what I saw?

**Mrs GERBER:** Yes, I do.

**Ms Hollonds:** I saw cells with no windows, no natural light, no fresh air. I was told there was no education, no rehabilitation, no recreation provided and that kids were being held in there for about six weeks at that time, I think. That was a really long time. With all of those things I was really shocked, but probably the thing that shocked me the most was when I asked about the training of the people caring for them. Of course, they are police officers. I was told they are doing their best. Some of them are dads and they really care and they are trying to do their best, but they have been given no training to care for these really traumatised children.

**Mrs GERBER:** Does any other state do this?

**Ms Hollonds:** Not to my knowledge.

**CHAIR:** I am mindful of time but I do have a couple of questions. We have heard a lot, not just in relation to this inquiry, about staff shortages in multiple realms, regardless of efforts to secure staff. Nobody is in any way enjoying seeing what is happening regarding watch houses or any other realm, including police shortages because of not being able to get staff. COVID seems to have been a real trigger point for a lot of what we are experiencing now. If it is difficult to get staff for detention, are there any examples anywhere, in any other area across the world currently, where they are experiencing these types of shortages and something has been put forward or trialled? As you said, sometimes we have to do a paradigm shift in our way of thinking. If we cannot access staff, what options are there?

**Ms Hollonds:** I will answer in a couple of ways. Yes, there are examples around the world that I think we could be looking at. In fact, there are children's prisons that are run with the human rights of children at the centre of them. We should be looking to those. What those facilities also do is they prioritise the wellbeing of staff. In my view, you cannot expect people to look after kids well if their wellbeing is not looked after. Why that is important is because that changes the whole culture of the facility.

The reason we have staff shortages in this country in a few jurisdictions is because of the cultures in those facilities. They are terrible places to work. Why would someone want to go there? I have heard stories of big recruitment drives and the training of staff, but then they come and stay for three weeks and they are gone. We are always playing catch-up. I think we need to again look at how we are running these facilities. If we put the human rights of children at the centre and we have the

principles in our operating model to support that then that would include looking after staff. I know you have had a pay rise here in Queensland. I have spoken to unions across the country and I know that they are really behind that. I agree with them. We have to do everything we can to support the staff if we are going to change what happens in youth detention facilities.

**CHAIR:** At the moment, obviously, the government is building two facilities to alleviate the situation. Is there opportunity to retrofit or change designs to create the types of smaller models internally in a facility or do those smaller units have to be place based in communities? Is there any option to make better what is currently going on with the buildings?

**Ms Hollonds:** I think ideally it would be small units near where the kids have come from, for sure. I also do not think that we should hold off looking at the operating models in the larger facilities now. What is it that we can do to ensure that while the kids are there their experience is as if they were in a small therapeutic unit? Again, I have heard lots of different governments around Australia saying, 'We are building this fantastic new jail and it will be ready in 2027' or whenever. My question to them is: 'What are you doing today to change the experience of these kids so that they are better off when they leave but then also what is the model of sustained support after they leave?' You cannot just talk about what goes on in the time they are there; you have to talk about what happens afterwards. We also need to look at the fact that so many of them are on remand. That is not consistent with detention as a last resort, going back to your question, sir. That is part of the problem. We are exposing them to that criminalising environment when they are not even sentenced, often for months on end because of the backlog in the courts.

**Mrs GERBER:** Thank you so much.

**CHAIR:** We have a question taken on notice. It was the tabling.

**Ms Hollonds:** Yes. Can I send that through to your secretariat afterwards?

**CHAIR:** Yes.

**Ms Hollonds:** If there is anything else, let me know.

**CHAIR:** Thank you so much for your time. It is deeply appreciated. Travel safely home.

**Ms Hollonds:** Thanks for the opportunity. I wish the committee very well.

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

**CHAIR:** I now welcome the Queensland Human Rights Commissioner and Ms Sarah Fulton, principal lawyer.

**Mr McDougall:** I apologise that Ms Fulton is unable to join me today.

**CHAIR:** I apologise for the delay but we needed to ask those questions. They are important questions. Would you like to make an opening statement before we hand over to questions?

**Mr McDougall:** Thank you, Chair. I did prepare a statement but in the interests of time and as I will be restating what the other commissioner has said, frankly, I will not read that. I did jot down some points while sitting in the back. I would like to congratulate the parliament for establishing this committee because I do see this as an opportunity for a circuit breaker and to disrupt the trajectory that Queensland has been following for a period. In our submission, we attached a chronology of the policy development in this area. I hope that is beneficial for the committee. I wanted to acknowledge that the rights of victims are a primary consideration in this area and, in fact, they create positive obligations on the government to protect citizens but those responses must actually be effective. The current policy settings have clearly been shown to be otherwise.

A lot of our focus at the commission, as you will see from the work that we have done in recent years outlined in our submission, has been focused at the tertiary end of the problem. Unfortunately, in reaction to various tragic circumstances, the focus of the government has been at that tertiary end and I think it is fair to say that the service systems have been struggling to meet the demands that the existing policy settings are driving and that is why we have the human rights disaster of children being held in watch houses for prolonged periods.

Clearly there needs to be a shift in the focus to prevention. The role of education and health really needs to be elevated. I have not had the benefit, unfortunately, of observing any of the evidence before the committee in the last couple of days, but I would like to think that in the course of your deliberations you will be receiving detailed briefings from both of those portfolios as regards how they do fit into this picture.

Engagement with First Nations communities is fundamental in any solutions that are going to be developed in this area. In my view, there needs to be a clear mechanism of accountability for outcomes and that mechanism must involve First Nations leadership. They are my opening points. I am happy to take any questions.

**Ms BUSH:** Thank you for coming in today and for all of the work you have done in this space for quite a long time. I want to pick up on something that the member for Thuringowa said, and it is something that we might disagree on in some ways. There is this view that the community expectation is that there are some people who must be detained to a custodial sentence. That is a common thread that runs through and we see it all the time and I get it. In my experience I see it a little bit differently: that there is a community expectation that offenders are held accountable, that communities are kept safe and that victims have some kind of recognition, agency and support in the process. I am interested in your view on that, particularly around this idea of holding offenders accountable and that we are really only at times given quite a binary model of what that looks like and what that then does to us as a society. It is a big question.

**Mr McDougall:** To be frank, there would be a lot of other witnesses who will come before you who will be much better placed than me. I never practised as a criminal lawyer in youth justice; I practised as a criminal lawyer in adult justice. I would defer to the professional expertise of others, but I will say this: the heart of the Human Rights Act and the framework for human rights is realising that rights can be limited, but only when they are reasonable and justified. Part of that process of assessing whether a limitation on a right is reasonable and justified involves looking at what are the other alternatives. Coming out in the submissions that I have seen is the frustration—I heard this from Ben Cannon on the radio yesterday—at the lack of options available at the various critical points, whether it is the health system intervening early, police intervening, teachers intervening, the lack of judges, magistrates. The lack of options available to each of the authorities at those critical moments in the life trajectory of a child, that is what is really stymying the system. We do need the whole issue of children's wellbeing elevated so that there is a comprehensive coherent plan. I know that I have suggested a minister being appointed, but that is just one option. Another option would be, for example, the Department of the Premier and Cabinet taking a lead role, but, whoever it is, they need to have the authority to work across the silos and hold agencies to account. That was a very long answer, but I hope I addressed it.

**Ms BUSH:** If I could ask it in a different way: the lack of options, particularly from a victim's perspective, is what I see forces this pressure and victims pursuing a very narrow idea of justice. How important is it that we explore what justice looks like?

**Mr McDougall:** I think it is fundamentally important. Restorative justice options, and there is a lot of screening that is required to ensure that it is appropriate to conduct them, but they would offer victims a lot more potential to find peace and to move on. There is absolutely room for improving the services that we offer to victims.

**Mrs GERBER:** I want to give you an opportunity to talk a bit further to the committee about the impact of the Queensland government's decision to declare watch houses a detention centre. We heard from the national commissioner around the actual physical condition of those watch houses, but I am wondering if you can speak to the committee about the impact of that on a child in those watch houses and whether it changes over the course of the days. We have cases of children being in watch houses for weeks. Does the impact change on day 1 as opposed to day 13?

**Mr McDougall:** I did visit a watch house with Commissioner Hollonds, I think it was earlier this year. They are really confronting, disturbing places to go to as an adult, even just to visit for an hour or so. The watch house—and I have been to several—at Ipswich, their preferred food supplier—so, the caterer that had the business for supplying food to children at Ipswich watch house—I do not know whether it is still the case, but at that point was Red Rooster. Children were getting Red Rooster for lunch, Red Rooster for dinner, and for breakfast cornflakes, a juice and some milk. If you are on that diet for nine, 10 days—which at the point that we visited I think was the average length of stay—can you imagine the impact that that diet has on behaviour, let alone the psychological damage. When I visited the Brisbane watch house back in 2019—and at that stage there was one child who had been held for up to five weeks—the police in charge of the station would describe how generally after about two to three days there would be a noticeable difference in the behaviour of a child and it started to really impact on them psychologically, and then at about day 8, 9, 10 they would actually experience a full breakdown.

**Mrs GERBER:** When you say full breakdown, what do you mean—a mental breakdown?

**Mr McDougall:** I am not a psychiatrist, but I would imagine that that would be the equivalent of a mental breakdown of sorts. There would have to be a serious question about whether there is perhaps even permanent psychological harm being occasioned to those children who were subjected to prolonged detention. We have advocated for research to be undertaken to follow-up on those children who have been exposed to prolonged detention, and I still think that is something that should be done by relevant authorities.

**Mrs GERBER:** What follow-up is done? Is there anything?

**Mr McDougall:** I am not aware of any, but I could be wrong.

**Mr HARPER:** I put a similar question to the national commissioner. Is there an easy approach to fix this?

**Mr McDougall:** If there was it would have already been done.

**Mr HARPER:** Thank you. I look back at that time line from 1990 and all the amendments that have been made. This has been going on for decades.

**Mr McDougall:** I do think it is a question of political will and fidelity to policy. In this area there will always be tragic incidents and the *Courier-Mail* will always have them on the front page and will always be screaming for the resignation of whichever minister is seen to be responsible. That will happen. What is needed is the fidelity and the commitment to a long-term strategy to improve, like I said, not just the lives of children but community safety.

**Mr PURDIE:** To that point—this was not going to be my question—I think it is a bit different in Queensland from a legislative perspective because in 2018 we put all of our 17-year-olds under the Youth Justice Act, 60 of which were in prison at the time. Youth detention facilities were already at capacity at that time and there was nowhere to put them. Subsequently, shortly after that, we had 90 kids in the Brisbane City watch house. That made *Four Corners* and here we are today. The president of the Police Union at the time said more planning went into building the local McDonald's than that transition. You talk about this being a holistic issue and it is a problem elsewhere, but this was a legislative decision that potentially has created this problem. We all agree with the long-term solutions: early intervention and prevention. That is fantastic.

You have previously stated that youth justice in Queensland is in crisis. Do you agree with Ben Cannon on the radio that maybe we need more points of intervention before incarceration? Would the Human Rights Commission be open to someone being compelled to do a program or, and I hate saying detention—I am not talking about maximum security incarceration—go on country, have

cultural training? There might have to be some compulsion for detention around that. Surely the Human Rights Commission would prefer that than 23 hours in a cell or in a watch house. Is that something that the Human Rights Commission would be more supportive of?

**Mr McDougall:** The first point you made as part of the question about the 17-year-olds, that decision was made after a long campaign by the community sector to have 17-year-old children removed to ensure that we were complying with the Convention on the Rights of the Child, and that was the right decision. It does seem to me that there were some heroic assumptions made about the effectiveness of some of the programs that were going to divert children from the system so that they did not encounter the lack of detention centre beds. I just wanted to make that point.

In terms of interventions, intervention could mean anything. Absolutely there needs to be earlier interventions. I have had a lot of conversations with Commissioner Hollonds about how we need to reimagine our education system and stop viewing schools just as workplaces for teachers. They are one of the few remaining pieces of our social infrastructure and it is critical that we leverage off them to achieve better outcomes for children. I think there are a whole host of interventions that could occur around the education system and the health system that would enable us to shift the focus towards prevention and away from the current policy settings which are at the tertiary end, as I said, driven by police, and extremely expensive.

**Mr TANTARI:** How long have you been the Queensland Human Rights Commissioner?

**Mr McDougall:** Just over five years.

**Mr TANTARI:** You know the history of the Commission for Children and Young People and Child Guardian and that it was abolished in 2014 and what the impacts of that may have been to the whole program from that point on. You are well aware of the history of the legislation that has gone through over the last 10 years or so.

**Mr McDougall:** Yes.

**Mr TANTARI:** Can you comment on the impacts of it all?

**Mr McDougall:** Of the children's commission?

**Mr TANTARI:** Yes, the chops and changes.

**Mr McDougall:** Actually, I do not think I would be in a position to make any real observation. I have not followed it particularly closely. I obviously know that it was previously responsible for blue cards and that responsibility was taken out and placed with DJAG. I would not be in a position to make any comment about its role in this current discussion.

**Mr McDONALD:** In your submission you make reference to the Human Rights Commission and the Human Rights Act. Can you explain how sections 26 and 33 relate to the issue of children in custody?

**Mr McDougall:** I do not have the act in front of me. Is that the rights of children and families?

**Mr McDONALD:** Section 26 is the rights of families and children. It states—(2) Every child has the right, without discrimination, to the protection that is needed by the child ...

Subsection (2) is the one referred to in your submission. Section 33 of the Queensland Human Rights Act talks about rights of children in criminal proceedings. It is about children in the criminal process. It has three subsections, which state—

(1) An accused child who is detained, or a child detained without charge, must be segregated from all detained adults.

(2) An accused child must be brought to trial as quickly as possible.

(3) A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

It does not say anything about detention as a last resort.

**Mr McDougall:** No. It does not, but that does not mean that Australia is not obligated to ensure that children are detained as a matter of last resort. I think the rights set out in section 26 that children are entitled to special protection by virtue of being a child really do cover—

**Mr McDONALD:** Would you agree section 33—children in the criminal process—has a place?

**Mr McDougall:** Sorry, I missed that.

**Mr McDONALD:** Section 33 talks about children in the criminal process and sets out the three standards that we should comply with.

**Mr McDougall:** Except that it does not say explicitly 'as a last resort', but that is a fundamental principle that does bind Australia internationally.

**Mr McDONALD:** I am just bringing attention to this. We have heard during this inquiry—I am not sure if you have heard—some really concerning things, particularly for me as a former police officer or officer in charge, that when kids are reported as homeless they are actually taken into the youth justice system and kids who are transitioning from detention are only given 72 hours of support. Do you have any comments around the human rights of those children and that lack of support?

**Mr McDougall:** Yes.

**Mr McDONALD:** Obviously they are the most vulnerable kids at that point in time.

**Mr McDougall:** I have heard terrible stories about children being released from detention and in one case being provided with a tent because of the housing crisis that we have at the moment. This is where I think this committee has a really important role in educating the Queensland public. You will often see the view expressed in letters to the editor et cetera, 'If only we had responsible parents taking responsibility for their children then these issues wouldn't exist.' The reality is that there are children on the street whose parents are not alive or are in jail or are otherwise in absolutely no state to parent the children, and it is the responsibility of the state to be caring for those children.

**Mrs GERBER:** I want to ask you about the interaction between child safety and the Youth Justice Act. Recent data has revealed that 30 per cent of the serious repeat offenders are under a child safety order. How integral to the application of the Human Rights Act is that connection between child safety and the state's responsibility for that child and them being caught up in the youth justice system?

**Mr McDougall:** They are the most vulnerable, powerless individuals in our society.

**Mrs GERBER:** Further to that, recently we have seen in the state government's reshuffle of the cabinet the separation of the child safety portfolio and the youth justice portfolio. Do you think that that serves the holistic approach that we need? Do those departments need to talk to each other?

**Mr McDougall:** I have said before in radio interviews that I do not think the current machinery-of-government arrangements are well adapted to address the youth justice issue. I think that is pretty plain; hence our recommendations.

**CHAIR:** My apologies, Commissioner. From when you thought you would be able to finish, do you mind if we continue on a little bit longer?

**Mr McDougall:** I have about five more minutes, I am sorry.

**Ms BUSH:** You have touched on media and public commentary on young people. Tom from PeakCare has called this week for a crackdown on vigilantism and some of the public commentary that is made. I think in your submission as well you talk to the importance of building confidence in the community for when people do make mistakes—and they will, and some of them are horrendous. How important is that education piece, do you think, and how important is that bipartisan political leadership?

**Mr McDougall:** It is fundamentally important. The tone of the conversation that we have seen in the last few years—let's be frank, the demonisation of a lot of these children, I think, has led to the dehumanisation of children that makes it acceptable to detain a child in a watch house for weeks and weeks. It is important to remember—and forgive me if I have said this before to the parliament—that I came across a newspaper article from the *Rockhampton Bulletin* I think it was in 1991. An Aboriginal boy who was 14 years old had been kept in the watch house for a night or maybe two nights at the most, and it was on the front page of the *Rockhampton Bulletin* and there was outrage expressed. The minister for communities was jumping up and down. That is where we were as a society back in 1990. Now in 2023 we seem to think that it is acceptable that as of today there are children who are going to spend the weekend in the watch house—I do not have the latest figures, but I imagine some of them will have started their stay in the watch house on Monday or Tuesday this week. We go home and think that is acceptable.

**CHAIR:** If right now there were to be assessments done on everybody in watch houses and detention centres, do you believe that there would be a proportion who would be safe to refer into some kind of diversionary or other facility that would alleviate the current overcrowding that is leading to this situation?

**Mr McDougall:** Others would be better placed to respond to that, but yes would be my short answer.

**CHAIR:** Earlier the member for Ninderry said that you had said—I do not know whether it was in a report or in the media—there was a youth crime crisis or a youth justice crisis. Which part or all of it? This is a very broad inquiry. Are there any specific parts?

**Mr McDougall:** Clearly I would have to look at the record to see whether I said there was a youth justice crisis. Clearly there is a crisis within our accommodation of children in the youth justice system.

**Mr PURDIE:** I can help you with that. I was on that committee back in February 2023 when you said—

> … recognising the serious situation we have in Queensland with the crisis that is exposed both in our housing and in our child protection and youth justice systems.

That is in *Hansard*.

**Mr McDougall:** It is a beautiful thing.

**CHAIR:** Over the last three days we have heard these comments about the youth justice system. Is there anything specific you can point to when you made that comment about the crisis within youth justice? Is it within the processes including the transitions from when someone is in remand—

**Mr McDougall:** I had a quick look at the briefing from the department of youth justice—and I do meet quite often with Bob Gee. It is clear that there are a lot of people working extremely hard right across the system. It is very difficult to point the finger of blame at individuals working in the system when they are fighting such a difficult set of circumstances. That is why we do need a committee like this to look at the structural reform, the resources and the redirection of resources required to ensure that all that effort that people are putting in is actually effective and leading to improvements and being held to account.

**CHAIR:** Wonderful. Thank you so much. That concludes the hearing. Thank you to everyone who has participated today. Thank you to Hansard, to our secretariat and to everyone. Thank you.

**The committee adjourned at 1.26 pm.**