COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Members present:

Ms LE Donaldson MP (Chair)
Miss N Boyd MP
Ms AM Leahy MP
Mr MF McArdle MP
Mr MJ McEachan MP
Mr RJ Pyne MP

Staff present:

Mr S Finnimore (Committee Office Manager)
Ms L Manderson (Principal Research Officer)

PUBLIC HEARING—CORONERS (DOMESTIC AND FAMILY VIOLENCE DEATH REVIEW AND ADVISORY BOARD) AMENDMENT BILL 2015 AND CRIMINAL LAW (DOMESTIC VIOLENCE) AMENDMENT BILL 2015

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 30 SEPTEMBER 2015

Brisbane

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Committee met at 10.30 am

CHAIR: Good morning and welcome. I declare open the Communities, Disability Services and Domestic and Family Violence Prevention Committee's public hearing on the Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill and the Criminal Law (Domestic Violence) Amendment Bill. I am Leanne Donaldson MP, the committee chair and member for Bundaberg. With me today are Mr Mark McArdle MP, the deputy chair and member for Caloundra; Miss Nikki Boyd MP, member for Pine Rivers; Ms Ann Leahy MP, member for Warrego; Mr Matt McEachan MP, member for Redlands; and Mr Rob Pyne MP, member for Cairns.

Today we will hear from witnesses who made submissions on the bills and from the Office of the State Coroner. After that evidence, officers from the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services will respond to issues raised by witnesses and any questions from the committee.

The bills were referred to the committee on 15 September 2015, and the committee is required to report to the parliament by 9 October 2015. Submissions accepted by the committee are published on the committee's inquiry web pages. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. I remind those present that these proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders. In this regard, I remind members of the public that, under the standing orders, the public may be admitted to or excluded from the hearing at the discretion of the committee.

Mobile phones or other electronic devices should now be turned off or switched to silent. Hansard is making a transcript of the proceedings. The committee intends to publish the transcript of today's proceedings, unless there is good reason not to. Those here today should note that these proceedings are being broadcast live on the parliament's website and the media might also be present, so it is possible that you might be filmed or photographed.

BUDDEN, Mr Shane, Manager, Advocacy and Policy, Queensland Law Society

FITZGERALD, Mr Michael, President, Queensland Law Society

CHAIR: I welcome the representatives of the Queensland Law Society. Mr Fitzgerald, would you like to make an opening statement?

Mr Fitzgerald: Thank you, Madam Chair. The Queensland Law Society supports the action taken by the government in relation to domestic violence and is keen to contribute to the government's response to our community's problems with domestic and family violence. The society genuinely appreciates being consulted on these important pieces of legislation. The society has been directly involved in this response through embracing the recommendations from the *Not now, not ever* report and is currently progressing the best practice guidelines for lawyers working with people who have experienced domestic and family violence through its domestic violence working group. In relation to the legislation under review today, we have nothing further to add to the submission that we have put in, and we are open to questions from the committee.

Mr McARDLE: In your submission in relation to the domestic violence amendment bill 2015, do you support the Evidence Act being amended to incorporate a special witness status to cover an individual who is claiming a breach of an order?

Mr Fitzgerald: We do.

Mr McARDLE: I want to give you an example and perhaps also the departmental officers behind you. If there is a charge of sexual abuse or rape by a woman, or a male for that matter, and that person appears in the Magistrates Court in a committal and then in the District Court or Supreme Court for the trial, that witness is in fact giving their evidence behind a screen or by a TV monitor. That same principle applies if the Evidence Act is amended in regard to a breach of a domestic violence order.

Let me go back to the actual granting of the order in the Magistrates Court to begin with. You can have a lady or a male who is alleging domestic violence who may appear two or three times in a Magistrates Court. First of all, there might well be the initial interim hearing where both parties turn up and both people are in the court at the same time, whether it be the police being with the complainant or the aggrieved. They may then come back for a second mention—the person who is alleged to have committed the domestic violence may be seeking legal advice—and they are both in the court at the same time. They then go to a hearing two, three or six months down the track and that could run for three or four hours or even a day, and they are both in the court at the same time.

If the intention is to protect witnesses who are making certain claims of domestic violence or otherwise, do you see a problem with the special witness status existing only with regard to the breach but not with regard to the initial application for the domestic violence order when the exposure is very extreme—in fact, they are sitting five or six feet apart at the bar table? There may well be an argument that no order has been made at the relevant time of the application for the DV order, but the same point can be raised that there is no conviction at the trial for rape or sexual abuse. Do you see a problem with that applying in terms of the proximity of the witnesses?

Mr Fitzgerald: Can I let Shane answer that?

Mr McARDLE: Absolutely.

Mr Budden: Thank you for the question. The issue in relation to the special witness status covers a number of things, but one of the reasons we think it should be extended is to allow the witness in the actual trial—wherein you have pointed out a conviction may follow—to be as forthcoming and open giving that evidence. One of the difficulties is that they can be intimidated, and it does not require physical proximity to have that intimidation. They are also going to be cross-examined and give actual evidence, whereas it is not, I suppose, as intimidating an issue when the initial order is granted. It is simply the case that, when you go to the final hearing and the consequences are so much more dire, you can expect that the giving of evidence is going to be a lot more complete. It is going to get a lot more in-depth and the cross-examination is going to be more extensive. It is at that point where the protection of the witness is important but it is also important that they feel comfortable enough to give full and frank evidence and they are not intimidated by both the occasion and the proximity of the accused, if you can see where I am coming from.

Mr McARDLE: I know what you are saying. My concern is that you have the capacity for a special witness at a trial for a breach, but we are allowing the two parties to sit at the table for the domestic violence hearing. I am not saying that you should go to a special witness status for both matters. That might be impractical, but I am concerned that we are looking at the special witness application for a breach. The exposure to the other party and, with respect, I believe the trauma associated with giving evidence in cross-examination would apply in relation to a hearing of whether an order is given or not as opposed to a trial. They are quite at odds. You are saying that you do not see a problem with that?

Mr Budden: It is not that we do not see a problem with it. I think that practically you have to realise how this is likely to occur. You will note that we have talked about in our submission the facilities available in various courthouses. The actual trial is likely to take place in a courthouse which has far better facilities to do this sort of thing. There are courthouses across this state or buildings that serve as courthouses that in the most remote of locations are nothing more than a donga. In a practical sense those services might not, at least in the short term, be able to be delivered across the state when you are dealing with the actual implementation of the order. But for the most part trials take place in more well-equipped courthouses.

Mr McARDLE: The other problem you have is that, on a practical level, a Magistrates Court may have 50 applications on a Tuesday morning for an interim order. That makes it very difficult to pursue that process. There may well be three or four trials listed during the day that may start at various times.

Mr Budden: Certainly. I have not been to the Beaudesert courthouse for a while, but I do recall some years ago that there were two very small rooms and there were a lot of people spilling out into the car park outside. It would be very difficult to achieve that kind of protection with facilities like that.

Mr McARDLE: The bill looks at increasing the penalties from three and two years to five and three years, as you know, and penalty units are increased as well. Does the society have an opinion on whether or not increasing penalties is going to be a deterrent, or is that perhaps a premise that is open to some challenge?

Mr Budden: I suppose this is a difficulty with almost all penalties in that what we would much rather do, and I am sure what the committee and the government would rather do, is prevent the incident from occurring in the first place. Penalties do have an element of deterrence both for the person who has perpetrated the actual offence and for anyone else who might be contemplating it. There is always a difficulty in an offence like this which probably comes outside of a rational frame of mind. Therefore, the person is probably not thinking about the deterrence or the consequences of their actions. I think we can certainly concede that. In our justice system, in addition to a deterrent aspect and a rehabilitative aspect, there is a punitive aspect to penalties. There is a need in society, I think, to see that a particularly heinous crime is given a particularly appropriate sentence. You do not want that to go too far to ridiculous retribution, but there is a retributive aspect to penalties. It is important, I think, that the penalty reflects the significance of the offence.

As to whether or not increasing the penalty has a significant deterrent effect, perhaps it does in a secondary sense in that, if a person commits an act of domestic violence and they realise that if they do it again the consequences will be more extreme, they may seek the sort of help that will actually prevent the offence from occurring in the first place which, as I said at the start, is what we are really trying to achieve. It is probably similar to the ‘one punch can kill’ laws that came in a little while back. What you really want to do is stop the punch being thrown and not deal with the consequences of that punch being thrown. If it is the case that after the initial offence another offence might be much worse, if that pushes an offender to seek counselling and address whatever underlying problems they have that put them in this situation, then, yes, it is going to have a deterrent effect.

Mr McEACHAN: Do we have empirical evidence to back that assertion, or is it possible that it could go the other way—that, instead of acting as a deterrent, it could equally cause a potential offender to offend more violently? To me it seems anecdotal rather than empirical.

Mr Budden: Certainly I cannot give you chapter and verse on that. What I am saying is that the deterrent effect of any penalty in relation to something that is an ‘in the heat of the moment’ issue is more complex than in relation to a commercial breach in the sense that you know that if you steal enough money it is going to be worse. You may be able to make a rational decision in relation to that. It is hard to say how much of a rational decision you can make in relation to the actual incident while it is occurring. It would be very difficult to say that people are thinking straight at that particular point in time. If they are reflecting on their behaviour, it would seem logical that the fact that it is going to be worse if they do it again might push them that way. I do not see any way in which it would make them more likely to offend unless they made some kind of decision that if they were going to do this they may as well do a good job of it. I do not see how it would push people towards offending more.

Mr McEACHAN: The reason for raising the question is that, as a member of this committee, I would like to be very confident that anything we do will be effective in making the situation better, not worse.

Mr Budden: I appreciate that. I think it is worth raising. As Michael said at the start, we do appreciate the level of seriousness that the government has given to this particular form of deterrence.

Mr McARDLE: You raise clause 18 in your submission and the retrospective nature of the penalty provision. Could you explain that a bit further? I have read your submission.

Mr Budden: Sure. One of the issues in relation to reclassifying offences that have occurred in the past is that the elements of the new offence probably were not explored at the original time. I am not suggesting that someone would be encouraged to plead guilty because they are going to get a lesser sentence. They would only be advised to plead guilty if their lawyer said they have made the case against you. What they might not explore are the terms of this offence. For example, if it is an assault occasioning bodily harm from two years previously, the question of whether or not it occurred inside a domestic relationship may not have been explored. The two parties involved in the offence may have a different view as to whether or not that did occur in a domestic relationship. It will be too late at the later offence for that to be explored given that what has likely happened in those circumstances is a plea of guilty has been made on an agreed statement of facts and a very brief statement of facts, probably through a QP9 or something of that nature.

The danger we see is that you have pleaded guilty to an offence which can be turned into a different offence or a greater offence and the elements of all of that have not been addressed in the initial phase. However, if you move forward from this point—if any offence could be reclassified after this bill comes through—then you are well and truly aware and your legal advisers can say, ‘Are you in a relationship with this person, because this may be something that comes down the track and we need to explore this now?’ whereas that opportunity is denied with an offence that happened two or three years ago.

Mr McARDLE: But you would have a clear date proclamation et cetera relevant to the starting of the provision?

Mr Fitzgerald: That is correct.

Mr McARDLE: I take you to the Bar Association submission. They are not here today but as you are sister and brother, shall we say, I am going to plug you with it.

Mr Fitzgerald: I have not had the benefit of seeing their submission, so that will be my excuse.

Mr McARDLE: At least you are honest, put it that way. Of course, all lawyers are honest; I know that for a fact! The Bar Association raised a concern that the chairperson of the review board is in fact the Coroner or Deputy Coroner and those bodies are quite distinct but have similar charges of obligations. They believe a conflict could arise in that position. Do you share that concern? Is it an issue that you can see with a body where the Coroner is the chairperson of a review board?

Mr Fitzgerald: I heard the chair say that you will hear from the Coroner later today and it may well be an issue that he himself will directly raise with the committee because—

Mr McARDLE: It will not be the Coroner.

Mr Fitzgerald: It will not be the Coroner?

Mr McARDLE: No—from the Coroner's office but not the Coroner.

Mr Fitzgerald: Okay, because in a meeting at the department that the Bar Association and we attended the Coroner did raise a potential conflict issue as to why it may not be appropriate for him to be the chair.

Mr McARDLE: Was that the Coroner himself who made that comment?

Mr Fitzgerald: It was the Coroner, Mr Ryan.

Mr McARDLE: Okay. Without breaching a confidence, could you elaborate on those circumstances, or maybe you would prefer not to do so?

Mr Fitzgerald: Could I leave it to the department perhaps at the end of the session to raise that with you, because I think they are aware of the issue raised by the Coroner and I do not want to get my facts wrong.

Mr McARDLE: Okay; not a problem. If we can just very quickly go to the board in the second bill, you raise the question of—I will call it—the review unit and the board. You raise in point 1 that they appear to have similar roles and obligations and that will be investigated further with the department and JAG as well. How strident are you with that point of view and how strident do you feel you need to be to clarify the point in the legislation?

Mr Fitzgerald: I do know that in our discussions with the department they have endeavoured to explain to us how they are different in terms of one being public servants performing a role for the Coroner whereas the board, as the department have pointed out to us, would have the ability to engage people to provide them with analytical detail on the functions that the board has. I guess we are just pointing out that there does appear to be a similar role, but the department have endeavoured to explain to us that the intention is that they would have different roles.

Mr McARDLE: It would seem to me that the unit is a secretariat role to both the board and the Coroner. Is that how you perceive it to be?

Mr Fitzgerald: I think that is correct. Whereas the unit would be providing perhaps reports and the like to the Coroner, it may not necessarily be the unit providing those reports to the board because the board would be able to engage other people to perform the analysis.

Mr McARDLE: With regard to the board act, you also raise the proposal of division 7 relating to accessing information at point 2. Can you talk me through that again, if you do not mind?

Mr Budden: I have had some further information from the department and I think they have considered this issue quite fully. The issue basically arises in that when information is collected for one particular purpose there is a limitation on its use for another purpose, subject to specific exemptions. Perhaps I should have led with this: when we look at legislation like this we try to anticipate what problems may be raised, even if they are not raised by our members, to inform the committee of a way of fixing something before it creates an issue. This is one of those things where, with an issue as important as this, we do not want it to be the case that at some point someone can argue that information cannot be used for a particular purpose when in domestic violence situations lives literally hang in the balance and the argument about whether or not the information can be used for that particular purpose can take up time in a court which could be very important time. We have

suggested that an amendment be in there to say that the authorisation under this act is specifically within a particular exemption in the information privacy principles but, as I have said, I have had subsequent discussion with the department when we initially raised this and they have gone to some length to assure themselves that this will function as they want it to.

We have raised it because I am sure that, given an opportunity, someone will attempt to raise it unless it is very clear that, yes, that information could be used for that purpose. The reason we bring it to mind is that we have seen it in other less serious areas where a regulator might license a certain professional trade and also do debt recovery against them and the information they collect for the licensing is not allowed to be transferred to the debt-recovery people because it is not for that purpose. That is the sort of situation we wanted to make sure was avoided. As I said, it would appear that advice has been sought and a great deal of thought given to that, so it is not something we would pursue with any particular stridency. It is just one of the things we thought worth raising to make sure that it is right the first time. As I said, that is how we see our role when we are asked to comment on these pieces of legislation. We are not just out for the best deal for our members; we want this legislation to function and to be just, fair and workable. That is why we raise these things.

Mr McARDLE: So you are saying that as it stands it is fine and we do not need to amend the bill at all to cater for the society's concerns?

Mr Budden: We have raised those concerns. The drafters of the bill feel that they have got it right and I do not think it is anything that should delay the implementation of this bill. Certainly, it is too important to be hung up on this. It is just something where we thought if you want to avoid the argument altogether then you put in the amendment that says 'this specifically allows the use of the information for the purpose'.

Mr McARDLE: Looking at both bills and the legislation generally speaking in this arena of the courts themselves and the act, do you think there are other matters the committee should be alert to or we should take into account in strengthening the legislation to provide the protection you refer to?

Mr Budden: In terms of the protection of witnesses and that sort of thing, we are aware that the government is undertaking an audit of courthouses across the state and we think that these considerations should be included in that. We appreciate that that is not going to be completed and implemented in the next two weeks and we do not think this bill should be held up by virtue of that, but those are the issues that will need to be worked towards. I think what needs to be considered is having funding available if, for example, a hearing or trial needs to be moved from a courthouse with insufficient facilities to one that does have those facilities. There will need to be some kind of funding available for that purpose and those sorts of things.

In terms of the legislation itself, given that we have not really had the opportunity to give it the normal full consideration—and we fully understand that; this legislation is lives-in-the-balance type legislation and we know it needs to go through—based on what we have seen we have raised all of the issues that we think are really urgent. I suppose it is like any other piece of legislation: if we or the committee miss something, it will come out in the wash. But as it stands and, given the time we have had to look at it, other than the issues we have raised, we think it is very workable and we hope it will have the desired effect.

CHAIR: Thank you, Mr Fitzgerald and Mr Budden, for your time this morning. We do appreciate you taking the time to come along.

Proceedings suspended from 10.55 am to 11.12 am

MEYER, Dr Silke, Postdoctoral Research Fellow, Institute for Social Science Research, University of Queensland

CHAIR: Dr Meyer, thank you for being here today. Would you like to make an opening statement?

Dr Meyer: Yes, thank you. Because I made two submissions on each bill, I am going to start with the Criminal Law (Domestic Violence) Amendment Bill. I am mainly going to speak to recommendations 1 and 3 because I am in agreement with the second point around enabling charges from criminal offences to indicate whether offences occurred in the context of domestic violence. I have no concerns regarding this.

For the first one, increasing the maximum penalty for breaches of domestic violence orders under the Domestic and Family Violence Protection Act from two to three years and the general offences, and from three to five years for repeat offenders who have offended or breached an order in the previous five years, while I generally see no issues with increasing any penalties, my main concern is that it clearly indicates that we need to review current practices. I think that was made clear by the Taskforce, because the Taskforce recommendations question whether current penalties are sufficient and for government to review that. The Taskforce did not specifically state an increase in sentences.

While Queensland has not done a review since 2008 of domestic violence order breaches and sentences, New South Wales has similar maximum penalties for their domestic violence breaches. Last year they released a report on 3,500 cases they reviewed which clearly show that those maximum penalties are never exhausted. The question remains why? Is it because breaches are being treated leniently, or is it because the punishment does not seem to fit the crime? In the New South Wales review, for example, while the maximum penalty for the breach of a domestic violence order is two years imprisonment or a $5,500 fine, the average custodial sentence handed out for breaches is four months, which clearly indicates that the two-year maximum penalty is not being exhausted. The same questions will be raised for Queensland. Is it really solving the problem if we increase the maximum penalties from two to three years and from three to five, if a review shows that the average sentences handed down are so much lower than what we actually have? We are not exhausting our current legislative frameworks and powers that the magistrates courts have, so I think that is the main concern in relation to that one.

Any increase in penalties I believe needs to come with a review of current practices, and that was stated in the Taskforce recommendation as such. I think the other thing we know from an empirical evidence base nationally and internationally is that the deterrent effect of punitive measures responding to domestic violence orders is very limited, if any. Simply increasing the sentences is probably not going to solve the problem of perpetrators breaching domestic violence orders that are in place, and it is certainly not going to make victims safer if that is the only measure that comes with it.

The other thing that needs to be raised in that context is that we need to start looking at holding perpetrators accountable beyond that punitive sense. Any kind of punishment, as with any other kind of criminal response in a punitive sense, needs to come with a rehabilitative or an intervention mechanism, which was also clearly stated in the Taskforce report. There was a clear emphasis on having greater intervention programs available, having a larger number of intervention programs available and doing a thorough evaluation on the current practice and how it works or does not work for perpetrators that we are encountering in Queensland.

The third point is about amending the Evidence Act to provide that protection for special witnesses may apply to victims of domestic violence, In general, I fully agree with that, but I think that recommendation raises exactly the same questions because under the current Evidence Act domestic violence victims are not excluded. The Evidence Act does not state any particular type of victim. It does not say a victim of rape or a victim of a particular type of crime needs to have these considerations. It states that victims who are vulnerable and who are at risk of being intimidated or traumatised by having the perpetrator present in the same court proceeding should be given special consideration and should be able to provide evidence via video link, for example. The same has already been amended in the Domestic and Family Violence Protection Act 2012. Under the protection act victims of domestic violence can, if the magistrate agrees or orders, provide evidence via video link or a screen can be put in the courtroom and arranged in a way that the victim does not have to face a perpetrator and does not see any intimidating gestures or looks that the perpetrator might give the victim.

In general, I think this is important, because we know from the empirical evidence base that perpetrators do use intimidating non-verbal tactics in court proceedings and also leading up to court proceedings, which is why research has always made policy and practice recommendations around separating victims and perpetrators leading up to the court hearing in terms of waiting areas as well as during the court proceeding. The risk is that we see an outcome that is unsatisfying for both victims and the court proceedings, because victims end up being intimidated and are not enabled and empowered enough to give sufficient evidence, which leads to frustration on the law enforcement side as well. Police have initiated all these proceedings, and then the court process leads to nothing because the victim in the end is no longer able to provide sufficient evidence that needs to be considered in a court hearing.

Given that we technically have these provisions under the Domestic and Family Violence Protection Act and under the current Evidence Act for Queensland, the question again is whether we need to review current practices. If the Evidence Act is to be changed to specifically include victims of domestic violence, again it needs to come with a review of what the current practices are. If the provisions are there and have been since 2012, and this is a recommendation made to government that it is willing to implement, the question is why these provisions are not being implemented.

Mr PYNE: Dr Meyer, people look to governments to fix everything these days. To what extent can changes in legislation fix a problem that appears to me to come a lot from societal values that treat women in advertising, music and TV as objects? Can you speak to that?

Dr Meyer: I absolutely agree with that. I think the implementation of any of the Taskforce recommendations needs to incorporate an approach to greater social change—awareness, education and early education. I think these were all things that were raised in the Taskforce's report. By the government saying that it is willing to consider all of these things for implementation, I think there is an approach to that larger package, but I fully agree.

I do not think we are going to achieve anything by increasing punitive measures, because we know from an evidence base that punitive measures alone are not going to fix the problem. We need to generate social change and a change in social attitudes. I assume most of you would be familiar with the 2014 findings from the national survey on community attitudes towards domestic violence. They are concerning for young people in Australia. They are concerning when you look at how many people are willing to excuse domestic violence. They are concerning when you look at the large proportion of people who still think the victim is partly to blame; the victim could leave if only he or she wanted to; and victims are not protecting their children if they are not leaving. I think our underlying long-term project should be generating social change and working on that through awareness raising, early education and proper role modelling for everyone to become involved. If we look at perpetrators still being primarily male, especially when it comes to the more severe types of violence that inflict injury, unless we get men involved in that education and awareness raising I think we are fighting a losing battle.

Ms LEAHY: Dr Meyer, thank you for being here today. I note that in your submission and in your opening statement you talked about the sufficient evidence base for the maximum penalties and you talked about New South Wales and its review. Is there any jurisdiction that you are aware of where the penalties are exhausted and there is some evidence base? I am wondering if there is some evidence that you are aware of that actually shows the penalties are fitting the crime or are being maximised.

Dr Meyer: No, I am not aware whether any of the Australian states and territories exhaust the penalties they have and whether anybody has done a review on whether that makes a difference in terms of subsequent breaches being noted. If you look at the US, where the approach is much stricter around mandatory arrest, mandatory prosecution and mandatory charges, again, it does not necessarily have the deterrent effect that we would like. That kind of punishment in itself does not have the deterrent effect that we would like it to have. Again, that is where it needs to come as part of a larger package.

I think there is nothing wrong with sending a message in general by criminalising certain acts of domestic violence and having certain penalties in place, because research and the women's sector and victims' advocates have fought for decades for it to be treated as any other type of crime where assault occurs in a non-domestic setting. But it needs to come as a package that also addresses the underlying issues. We know from statistical reviews within Australia, for example, that perpetrators do tend to move on and do tend to continue to offend—if not against the same victim, they do it against the next victim. We did a review in Caboolture of cases in an integrated response, and over 50 per cent of the perpetrators who were known to the program for domestic violence order breaches had a record for a domestic violence order breach against a previous partner. Unless there is an

intervention that comes with it that focuses on behavioural change, the domestic violence order and the harsher penalty is not going to change the perpetrator.

Ms LEAHY: From your research, can you explain to the committee or point the committee in the direction of where there are some successful interventions either in Australia or somewhere else in the world? What are some of the most successful intervention strategies?

Dr Meyer: Integrated responses. We know mainly from the international evidence base—because they have been implemented earlier in places like the UK, Canada and the US than they have been in Australia—that there is significant evidence showing integrated responses where agencies clearly work together. We have integrated responses in Australia. Some work well and others are labelled an 'integrated response'. As long as the individual parties still work in their silos without proper information exchange and without facilitating the transfer of victims and related information from one agency to another, the evidence base shows that individual responses cannot solve the problem. If you have an integrated response where you have a partner agency that does not act up to the same level of quality response, the overall integrated response is only ever going to be as strong as the sum of its individual parts.

CHAIR: When you referred to the New South Wales study and the findings on higher penalties never being used, did the report provide any information on the reasons or any thoughts about why that was the case?

Dr Meyer: They did a little bit around the custodial sentences, where it highlighted that perpetrators who receive a custodial sentence for a domestic violence order breach usually have the same kind of criminal risk factors that we see in any other offender who gets a custodial as opposed to a community based sentence. A larger proportion seem to be of ethnic minority status, including Indigenous status, and they seem to have a criminal history other than one relating to domestic violence. They had a larger number of prior breaches. It seems to be that usual escalation or accumulation of risk factors in perpetrators is not unique to domestic violence offenders. You will more likely see a custodial sentence as the severe end of law enforcement interventions for those that come with an accumulation of risk factors that are not related to domestic violence as such but that are related to their criminal history and then their other social risk factors.

Mr McEACHAN: Dr Meyer, is there any research that shows at what stage through the judicial process deaths occur? We are looking at changing the protection of witnesses through that judicial process. If there is a point, is it at the beginning, the middle or post judicial proceedings that women and children are particularly at risk of being killed by their former partner?

Dr Meyer: I think the primary evidence that we have on the risk of fatal domestic violence is around separation rather than victims engaging with the criminal justice system. I do not think there is particular evidence that suggests that engaging with the criminal justice system puts women at risk the further they proceed, let us say, starting with calling the police as opposed to making an order application or pressing charges. Studies which have looked at identifying risk factors relating to domestic homicide usually identify clearly that it is the decision of separation, the time of separation, where a highly controlling and a highly coercive partner loses control, where those things escalate by either killing the victim or killing the children or committing murder-suicide.

Unfortunately, there have been no findings published on that particular question that you just raised. Australia did a large homicide study conducted at Griffith University, but I think that has only just concluded. They interviewed—I could not tell you the exact number—I think over 300 perpetrators of domestic homicide in prison to backtrack from the fatal incident—things that have happened for both perpetrator as well as victim. As far as I am aware, they have not published anything other than their progress report on their methodology.

Mr McEACHAN: I think it is important that, as a committee, we understand that, because that is one of the things that we are trying to tackle. We are aiming to have no deaths—

Dr Meyer: Yes.

Mr McEACHAN:—from domestic violence. We need to understand exactly what the triggers are, where in this domestic violence time line there is the greatest risk and where we need to invest in protection.

Dr Meyer: I think in that context the investment in integrated responses, again, is highly crucial, because at the time that somebody might consider separating they might not necessarily be involved with the criminal justice system. They may have called the police once before. They have more likely approached a domestic violence support service and discussed those particular concerns or plans. I think the whole safety planning process needs to involve everyone in that integrated response.

The other crucial point is that information sharing needs to be facilitated to have more of a wraparound protective service for victims. Otherwise the risk is that victims will approach the services that they feel most comfortable with or where, either from personal experience or from hearsay, they think there is an understanding and there will be relevant support, they will not be blamed and they will not be questioned for their behaviours or decisions. It needs to be facilitated for these types of services that are part of a larger integrated response to adequately share information with other agencies or organisations and institutions like the criminal justice system to provide greater protection and respond in a manner when there is a high-risk scenario identified because a woman, for example, has just decided to leave and take the children with her.

CHAIR: We need to move on. Would you like to discuss the other bill?

Dr Meyer: Yes. With that one, as you would have seen from my submission, I strongly agreed with all of the different points. To give that a little more context, mainly because we know from an evidence base—primarily internationally because the UK, Canada and the US have had death review boards, or fatality review boards as they call them, for a much longer period of time than Australia has had any reference groups informing the coroner's office—what comes out of those reviews, the evidence seems to suggest that having that independent board act in an advisory and consultative role to the coroner's office but not falling under the coroner's jurisdiction is an important point. That independent board can review a number of cases and, therefore, identify trends and patterns that repeatedly occur or stand out from a number of cases rather than it just being treated as an individual case in a death review, as it is in the coroner's office. That independent mechanism is one of the important points. Reviews of what has been happening in international locations have shown that the multidisciplinary approach is relevant to maximising the level of expertise that you see on those boards.

The other reason a multidisciplinary approach is very important is that we need to get people who are in a position to generate change and in a position to generate protection for victims to be involved in the dialogue. I do not think that we are doing ourselves any favours if we have a whole lot of specialised services from the women's sector involved if the police, other law enforcement agencies or Child Safety remain on the outside. It always ends up being a blaming and shaming process because they tend to be the ones where those reviews identify most frequent gaps in the system. So the organisations that have those gaps identified for themselves need to become part of the dialogue in order to improve systematic responses to domestic violence and to protect victims and their children. Those are really the main supportive arguments or reasons that I would put forward.

Mr McARDLE: Thank you for being here today. To go back to your earlier point in the DV bill itself and the review process, under this bill the board has the right under its functions to review a lot of things. Do you think it is the role of the board under the current bill before you at the moment to look at the effectiveness of jail terms? Would that be part of its role, do you think? Would that be the appropriate body to look at that?

Dr Meyer: I think it would certainly be a part in terms of the individual case if that mattered, if we reviewed a case where a perpetrator received what may seem for the type of breach committed a relatively lenient sentence. If it questions whether that put the victim at a heightened risk, for example, then I would say certainly that is something to be reviewed. I do not think that the board should or would have the capacity to review whether in general exhorting maximum penalties would make a difference. I think this would only be relevant in cases where you might have a fatal incident where the perpetrator was held in custody for a short period of time and if the evidence suggests that the type of breach and the type of risk indicated by that breach was so severe that a harsher or a longer custodial sentence would have made sense.

Mr McARDLE: You also commented that the coroner and the board should be separate bodies—distinctly independent. What do you think of the concept here where the coroner is the chair of a board and the deputy coroner is the chair of the board? Does that guarantee you the independence that you were talking about?

Dr Meyer: Probably not. I think the board itself needs to be independent and have a chair that is not part of the coroner's office. Simply an order to provide an independent review that will then inform the coroner's practices, decision-making and further reviews or outcomes of the review, if the argument is to have an independent review with expertise that is brought and sits outside the coroner's office, I do not think that the coroner should be the chair of the board.

Mr McARDLE: Okay.

Dr Meyer: I think the coroner, or the board, should act as a consultative agent to the coroner's office rather than having the coroner's office chairing their review.

Ms LEAHY: Dr Meyer, in your research is that what happens in other jurisdictions: there is separation between the review board and the coroner's office?

Dr Meyer: It is in some. I believe that New South Wales and Victoria have a model where the board is an independent reference group that has an advisory and consultative role. I could not tell you to what extent someone from the coroner's office might be on that board, but at least they sit differently in that the reference group is an advisory board, not part of the coroner's office. In most of the international jurisdictions, they sit separately.

CHAIR: Dr Meyer, thank you for taking the time to be here with us this morning. We appreciate it.

Dr Meyer: Thank you for giving me the opportunity to do so.

ANNE, Ms Stephanie, Manager, Zig Zag Young Women's Resource Centre Inc.; and Secretary, Queensland Sexual Assault Network

BERRIE, Ms Leona, Manager, Working Alongside People with Intellectual and Learning Disabilities, Sexual Violence Prevention Association

CHAIR: Thank you for being with us this morning. Ms Anne, would you like you to make an opening statement?

Ms Anne: Firstly, I would like to thank you for the opportunity to present today. I have a note in relation to QSAN, the Queensland Sexual Assault Network. It is a statewide network which comprises 20 non-government services that provide specialist sexual assault support and prevention services around Queensland. We are committed to working collaboratively to ending all forms of violence against women and particularly to provide specialist knowledge in this area. I will be talking in relation to a couple of points; namely, to the coroner's amendment bill and the criminal law amendment bill.

In relation to the coroner's amendment bill, I would like to make a couple of recommendations. We would particularly like to see that the Domestic and Family Violence Death Review and Advisory Board must include at least one member who has expert knowledge of sexual violence, in particular, intimate partner sexual violence. This is particularly in light of the fact that there is substantive evidence that indicates that sexual violence is a risk factor for intimate partner homicide. Men who use physical as well as sexual violence against their partners are more likely to murder than men who use physical violence alone. We also know that 75 per cent of women whose partners have attempted to kill them have also experienced or been subjected to sexual violence in these relationships. In fact, Campbell found that the risk factor in relation to sexual violence was probably the fifth most predictive risk factor in relation to homicide. There is quite a high likelihood that sexual abuse, in fact, may pose a greater risk for homicide than other known risk factors. This is crucial information for emergency services and support service providers. It is also really essential that members of the Domestic and Family Violence Death Review and Advisory Board have a high level of expertise in this area. Our recommendation would be that at least one member have expert knowledge of sexual violence, in particular, intimate partner sexual violence.

In relation to the draft criminal law amendment bill, we particularly would like to note the provisions to amend the Evidence Act to ensure that availability of protections for special witnesses is applied to all victims of domestic violence. This provision is aimed to ensure that victims of domestic violence who are giving evidence about the commission of an offence by the perpetrator automatically fall within the definition of 'special witness' under the Evidence Act. We really support the proposed expansion of the definition of 'special witness' to automatically include victims of domestic violence but we also seek a commitment from the Queensland government to ensure that the same protections are available to all victims of sexual violence who are giving evidence in criminal proceedings.

Currently, the special witness provisions apply automatically only to children and young people under the age of 16 years who are victims of sexual violence who are giving evidence in criminal proceedings. Under section 21A of the Evidence Act, special witness provisions are made available only to adult victims of sexual violence upon application to the court. These applications are not always successful and many victims of sexual violence aged 17 years and over face significant disadvantage, unnecessary and prolonged trauma, and substantial intimidation when giving evidence about the commission of sexual violence.

Our recommendations include a commitment from the Queensland government to ensure similar protections are available to all victims of sexual violence when giving evidence in criminal proceedings, and this could be achieved by enacting additional provisions within the Evidence Act. We also recommend amendments to ensure that those provisions are made irrespective of the age of the victim of sexual violence and with respect to their informed choice. A commitment is needed from the Queensland government to fund appropriate upgrades to all regional Queensland courts to ensure the availability of required video technology for special witnesses when giving evidence in court. They should not be provided to witnesses residing in the Brisbane area only. Those are my main key points today.

Ms LEAHY: Stephanie, thank you for coming today. When you mentioned 'irrespective of age', what exactly were you talking about?

Ms Anne: Currently special witness provisions apply only to children and young people up to the age of 16 years automatically. We would like to see that expanded so that all witnesses giving

evidence in criminal proceedings relating to sexual offences over the age of 16 are able to access special witness provisions.

CHAIR: When you were talking about the top five, you mentioned sexual violence as the fifth leading cause of homicide. Are you able to tell us what the other four are?

Ms Anne: Sure. I can mention two in particular: escalating physical violence and drug use are quite high. When Campbell found that risk factor, which in her risk assessment table is the fifth item, she found that it was ahead of physical violence and a partner's drug use. They were seven times more likely than other abused women to be killed when there was sexual violence in conjunction with physical violence. Her research suggests that sexual abuse may pose a greater risk for homicide than many of the other known risk factors.

CHAIR: Is that Australian research?

Ms Anne: Yes. I can provide you with the details and references.

CHAIR: That would be great, thank you.

Mr PYNE: You talked about victims of intimate sexual violence and it sounded like an escalation. Is there a way that there could be more intervention and support services prior to the tragic loss of life?

Ms Anne: Absolutely. Unfortunately, with intimate partner sexual violence, as a risk factor in terms of homicide it does tend to be a risk factor that is most underreported by women, it is most denied and minimised by men who are using violence, and it tends to be most avoided by workers, police and the criminal justice system. There is a lot of work that we need to do in terms of providing resources and training to front-line staff and to police to be able to look at how they are undertaking assessments to be more comfortable and confident to ask questions in relation to intimate partner sexual violence.

Mr PYNE: It sounds like this is another area where societal and cultural change needs to take place.

Ms Anne: Absolutely, yes.

Mr McARDLE: Thank you very much for coming; it is much appreciated. Can you comment on the prevalence of domestic violence in the Indigenous community throughout the state?

Ms Anne: Of domestic violence or sexual assault?

Mr McARDLE: Both.

Ms Anne: From my understanding, it is quite high. It is also relevant to note that domestic violence occurs across all societies and communities. We know that sexual violence is also quite high in Aboriginal and Torres Strait Islander communities. It is also one of the areas that is the least resourced across the state. There is only one specific sexual assault support service in Queensland that is dedicated to working with Aboriginal and Torres Strait Islander communities.

CHAIR: Ms Berrie, would you like to expand on anything or make a further statement?

Ms Berrie: I would in relation to women with disabilities, more specifically. While there is an organisation that is funded by the department of communities and by the department of justice, we have a couple of programs. One is a sexual assault support service and the other part is a more broad victim of crime support service. I guess some of my comments are a little more related to the nature of violence against women with disabilities in the domestic and family violence context.

In relation to the amendments to the Criminal Code, I would strongly recommend and WWILD would strongly recommend that the committee look at some of the amendments made to legislation in New South Wales to include paid care relationships in the definition of domestic and family violence. By including those relationships it, firstly, acknowledges the kind of abuse and control that can happen in those contexts within people's homes, that it is a domestic setting and that it is happening in people's homes. It then also frames the service responses, allowing domestic and family violence services to have a greater ability to respond to the question of violence occurring in residential and institutional settings, where perhaps people are being forced to either live with people whom it is incredibly unsuitable for them to be living with or perhaps where there is abuse, control, intimidation or exploitation occurring between a paid staff person and somebody with a disability. By affording people that kind of access to legislative tools to improve their safety, it would hold both service providers and funding bodies to far higher account; encourage people to come up with better solutions and more appropriate cotenancies; and stop people being forced to continue to receive support from people who are being abusive or controlling or intimidating.

An example I can give is of a woman who is in a state funded disability support service at the moment. She receives support. Her family comes in on a Sunday to meet with her. They are unsure when she receives showers. They can tell, when they meet with her, that it has been some time, but nobody can tell them when. That is an example where the withdrawal of care is something that is quite specific to people with a disability in terms of controlling and abusive behaviour, which can be a particular form of violence that is more common in that kind of setting. There is the issue of people not providing her with the care that they are supposed to but then also her being beaten up fairly regularly by somebody she is being forced to live with. Following complaint mechanisms, essentially the message is that this is as good as it gets. If this young woman, with support, were able to say, 'No, this person is in my home and this counts as a domestic relationship under the legislation. In my home I am entitled to feel safe and I have a protection order against this person. They are either to be of good behaviour towards me or they cannot be near me,' I think everybody in that system would be compelled to come up with better solutions to say that it is simply not good enough that somebody ought to live with that kind of violence in their home.

In relation to that, I would say that with the coroner's review board it would be important to make sure that in the legislation the definitions of domestic and family violence in the Criminal Code and the review board are the same. I think there have been some examples in New South Wales of some strange findings and things occurring because there are different understandings and definitions between the Criminal Code and the review board. It suggests in terms of making a recommendation that those were married. Within the review board, I do not know whether it is necessary for somebody to be sitting permanently on that board with knowledge of disability, cognitive disability, mental health systems or whether it might be more useful for it to be required that those elements are looked for and identified when things come to the death review, and where those things are identified perhaps expertise is sought around how those systems have either worked or failed or exacerbated the violence that has occurred.

The only other thing I would say in relation to expanding the definition to include paid care relationships is that it then also provides police with a greater tool to respond. With those who would be informed around this, what we see happens is that closing of ranks. Perhaps somebody is trying to access that system, but a disability service provider says, 'No, no, no, there is nothing to see here,' or it is very easily passed off as, 'This is something that is happening between people living in that home and it is not of a similar magnitude.' But this then gives responders a better way to respond.

Mr PYNE: I am guessing that, if intimate sexual violence against women is under-reported, then intimate sexual violence against women with intellectual disability would be under-reported to a far greater extent.

Ms Berrie: Absolutely.

Mr PYNE: Could you talk to that? Also, to what extent is part of the answer better funding existing services, whether community, visitor or other services, that could have not only increased funding but also greater awareness of people in those roles?

Ms Berrie: I will talk to that bit first. At WWILD, we work specifically with people with intellectual and learning disabilities. That is where the majority of my experience is from. In that context, people need support to access us. It is not often that somebody self-refers, that they identify that there is a problem, that they identify that something is occurring and that maybe something could be done about it, and then having the wherewithal or the access to make that contact. It might just be literally the support to physically get the assistance or physically, literally, having the voice to be able to tell somebody what is going on. For that fact alone, of course, it is further under-reported than in the broader community. I think a lot of violence occurs in residential and in supported accommodation settings because of the closed-off nature of those environments and that also acts as a barrier to people getting support.

Mr PYNE: That is why I mentioned it, because we know that, when there is one service provider in someone's life, abuse is far more likely to happen. Therefore, in having community visitor and other programs, at least you have someone else coming in.

Ms Berrie: That might be something that is useful in the meantime, but ultimately it is about cultural change, which is a really tricky thing to achieve. It is about people having a more active and valued role in the community so that they are less shut off—perhaps not necessarily more service providers but people having the support they need to live a meaningful life, which for most people usually means connection, social inclusion and all of those things. Some of what we see is that withdrawal of access to community. It is the thing that we heard last week: 'If you don't put your hearing aid in before we go down to WWILD, I'm not going to take you'.

That is a really small example, but there would be plenty of examples across the community of some of the disabling attitudes—infantilisation of people with a disability, asexualisation of people with disability. A whole raft of things can contribute to people's vulnerability and the discrediting of people's voices. Sexual violence as a general concept is so often boiled down to a person's word against another and the credibility of somebody against somebody else. I think it is further exacerbated in this instance.

Mr PYNE: You mentioned asexualisation. If you are dealing with a victim with an intellectual disability, how does a third party assess whether consent exists?

Ms Berrie: That can sometimes be incredibly straightforward. It might be that somebody has a fairly profound disability that is fairly easy to assess. It is usually by talking to people in whichever way they communicate and finding out what they have to say about it. People often have ways to communicate and nobody has really asked. I guess it depends on the context. In a criminal context there are ways to assess that kind of thing, but from our experience the barriers to justice in relation to sexual violence, in particular, are at every point—getting to a police station; getting a police officer to take your statement; if that is agreed upon, getting the right kind of statement, ideally, a 93A; a video recorded interview so that can be presented as their evidence if it gets to court. Then, once you do that, getting an investigation, getting evidence and then if it gets to the DPP people deciding whether you are a credible enough witness to stand trial or the likelihood of success. I have worked for WWILD for three years as the manager, and I have also consulted with a colleague who was there for two years prior to that and just now somebody will be giving evidence this week in a trial. That is the first time we have ever seen somebody through to that point. That is not to say it doesn't happen in other places around Queensland, but the barriers to getting to that point are so high that—

Mr PYNE: That the likelihood of anybody being held to account for a victim of sexual violence with an intellectual disability is pretty low, would you say?

Ms Berrie: It is pretty low. In that time we have seen some people plead guilty, and that is usually where the evidence has been so incredibly straightforward and damning that it was obviously in the person's best interest to plead guilty. It is not unheard of, but it is pretty minimal. I am not aware of statistics that are kept on that. We get a real snapshot of people who access our service, but what is happening beyond that is really hard to tell because I do not think that information is being collected systematically anywhere.

CHAIR: Are there any further questions in relation to the two bills?

Mr McARDLE: The Bryce report does recommend a review of DV matters involving disabled people. We have a snapshot of what the figures are year per year but not a breakdown, to my knowledge, at this point in time. Do you have any data that we can look at as to those who are disabled and are subject to domestic violence, for instance?

Ms Berrie: Obviously we have our own service data on who has come in contact with us who are experiencing those issues, but I think the best people to talk to would be People with Disability Australia and Women With Disabilities Australia. They probably have some of the most up-to-date statistics more broadly. I do not believe they are Queensland specific; they would be more national rates. That would be from individual pieces of research. I do not think that is necessarily something that is collected systematically nationwide. Again, it is more specific to sexual violence. The data will tell you that there are higher incidences of experience, that the experience is often more prolonged and that people are more likely to have multiple experiences of that sort of interpersonal violence over their lifetime. That is what we do know. In terms of rates, I cannot speak to that exactly at this point in time, sorry.

Mr McARDLE: You would say that data is under-reporting the true situation?

Ms Berrie: Absolutely. Again, it is a question of knowing that there is an issue, then knowing that there is something you might be able to do about it and then having the support to access that support or to make that report or to raise that issue. If then you add people who physically cannot tell you, I would say that it is highly under-reported.

Mr McARDLE: My colleague, the member for Cairns, posed the question that the evidence rules do not really cater for those who are disabled. Was there work being done in South Australia on the Evidence Act down there to try to deal with the issues you have raised?

Ms Berrie: My understanding of what has happened in South Australia is that there are some witness provisions to allow for communication aids—for example, to allow deaf interpreters and facilitated communication boards to be used. Where somebody does not speak clearly and there is

somebody who knows that person well, it may even extend to people being able to offer a level of interpretation for what that person is saying.

In terms of domestic and family violence legislation, I would say that the New South Wales model is probably the best at this point in time within Australia in terms of inclusion of those other kinds of domestic relationships that may include that sort of paid care relationship but which can be just as insidious, just as violent, particularly considering some of those really insidious forms of violence including withdrawal of care. Putting somebody's wheelchair just out of reach falls under withdrawal of care and the withholding of showers or medication that might be required and so on and so forth.

Mr McARDLE: But New South Wales is addressing the issue you raised about evidence of disabled people?

Ms Berrie: Yes, that is my understanding; with the review board as well. I was speaking with a counterpart this morning just to try to get my head around it. There were some issues between the review board and the Criminal Code. There was not an equal definition of domestic and family violence that included disability across both of those systems that then meant that there were difficulties with that in terms of the kinds of things they were identifying and reporting, and some fairly strange sorts of recommendations may have come from that because of that lack of consistency across the two systems, I guess.

Mr McARDLE: We had a witness who proposed that the increase in penalties should be reviewed to see whether or not we are actually achieving the outcomes we need under the current regime before we start putting more penalties on top of what we have at the moment. Do you have a sense of where you sit with that concept?

Ms Anne: I am inclined to agree to some level. I think we currently do have provisions within both the Domestic and Family Violence Protection Act and in our Criminal Code to respond in relation to criminal offences. I think one of the challenges is in the implementation of that legislation, so the access to that. We frequently see with intimate partner sexual violence that criminal offences are not being charged. Women might be encouraged and supported to apply for protection orders in a civil space, but there is not being adequate investigation into the criminal offences that might have taken place, whether that be physical assault or intimate partner sexual assault. I do think part of it is about the implementation of existing legislation that we have.

Ms Berrie: And in relation to that breaches as well. It does not matter how high the penalty is, if nobody is taking action when those things are breached then the system will not get a chance to apply those penalties.

Mr McARDLE: It might be outside your jurisdiction, but would you rather see the penalties incorporate more requirements for the perpetrator to attend different courses as opposed to other penalties, monetary or otherwise, to try to get a bit of balance?

Ms Berrie: I think holding perpetrators to account and behaviour change is an extremely important part of the puzzle, but I guess from our perspective those are not accessible to men with intellectual or cognitive disabilities. That is not to say that they cannot be perpetrators or use violence inappropriately. I would be recommending that there is consideration given to how adaptable some of those programs might be or looking at more tailored or specific programs for men with disabilities or men with particularly cognitive or intellectual disability more specifically. When I talk about intellectual cognitive disability, there is a wide spectrum of abilities captured in that. There are people with mild or moderate disability who are functioning relatively well and independently in the community with some support or no support who then come into contact with criminal justice, mental health, homelessness services right through to people with more profound disabilities, and how violence is handled in that space may be different to men living more independently in the community.

Mr McARDLE: The Bryce report, as we know, said to review the issue of those who are disabled. You have opened up large areas that need to be considered, particularly the evidence aspect. Do you have a paper or some documentation that the committee could look at, if we were given that charge, and we could refer to by way of a reference document?

Ms Berrie: Absolutely, particularly drawing on some of the reports that have also been written by colleagues interstate. We can certainly provide that.

Mr McARDLE: That would be good.

CHAIR: You talked about service providers. Are there current mechanisms for people to complain if there is sexual violence, what forms of violence are occurring and does that happen, in your experience?

Ms Berrie: I do not want to tar all disability service providers with the same brush. We obviously do encounter some really good and appropriate responses. However, the responses vary pretty wildly in some instances, particularly in relation to when it is cotenancies, perhaps in a group home type of setting. Those settings, I would say, are an injustice generally. The injustice plays out in violence in all sorts of different ways and people often do not have a choice of where they are or who they live with.

Again, there would be—I am talking about some of the worst cases obviously—some really lovely examples where people live together really beautifully and they have had a lovely choice over who they get to live with and the way that they do that. In the situations where people do not have that choice, people are lumped together without any real consideration of what people's needs are. In those settings it shows itself in violence—sexual violence and physical violence—and because of the nature of that it is not just between the people who live in that house but often from service providers to people with a disability as well.

There are some really excellent responses and people who have really good policy and procedure around that. Of course, everyone is required to meet disability service standards and human services quality standards, but, again, it is in the practice and in the implementation and how seriously your voice is taken, how powerful that voice is and whether it is easy to not write down that disclosure. We are a bit staff pressured. If I have to respond to that then I might have to take that staff person out of that house and then what is that going to mean for staffing issues? It is complicated, but there are some very poor responses.

CHAIR: Are they required to report on incidents regularly to the funding body or to—

Ms Berrie: I cannot say that with 100 per cent certainty. I am sure that everybody is required to have policies and procedures around what steps are taken when they receive a disclosure about violence. I am sure that would be required as part of the Human Services Quality Frameworks and things like that, so everybody would be required to have those policies and procedures but how—

CHAIR: Whether they are policed or enforced or—

Ms Berrie: Policed, enforced and how well staff are trained in those things.

Ms Anne: If I could add to how disclosures are even recognised, particularly for people with intellectual learning disabilities, they may make disclosures in varying ways. I think the level to which staff are trained to perceive and recognise that a person is disclosing an experience of assault or abuse or non-consensual touch can be quite challenging.

CHAIR: Good point. Thank you.

Ms LEAHY: Ms Berrie, if you were able to highlight one particular prevention strategy for sexual violence in the context of domestic violence, what would that be?

Ms Berrie: I think people with disabilities, and particularly people with intellectual disabilities, are denied healthy relationships and sexuality education across-the-board. There is no compulsion on schools to necessarily do that. What I would say from the cohort of people we see is that it is not readily accessible when it is needed. By 'accessible' I mean obviously being able to physically get to it and all those sorts of things but being accessible in terms of the time that is allowed, the way it is presented, the kind of support and follow-up that happens and also cost.

Our capacity is pretty limited around that sort of stuff. We have some guidelines in terms of the sexual assault responses and the victim-of-crime responses more broadly and we do endeavour to do some healthy relationships style education. There is another provider in Queensland that does a lot of that kind of thing, particularly around some of the perhaps borderline offending sexual behaviours or concerning behaviours of a sexual nature where people say, 'If this continues, this person is probably going to end up in the criminal justice system if something is not done about this.' They can provide six or seven sessions for $1,500. They are not funded to do that—it is fee-for-service—and that is out of the question pretty much for most people, and we are finding that Disability Services are not funding those things. For families that is often beyond reach, and somebody on a DSP choosing to then spend their money on that kind of thing is unlikely as well.

We then somehow need to translate that into a disability sector that takes healthy relationships, sexual violence and violence in relationships a little bit more head-on and sees it a little bit more as part of their core business about how we build this into the kind of support that we offer people. That is tricky because it can be really skilled work. I do not say that to make it exclusive. Lots of people do a really great job of supporting people around that kind of stuff, but it does require a certain level of thinking and education and input and planning, particularly at a service level, but there is a real reluctance we find. Often the way we like to practise is to say that we might support someone and

then think, ‘Okay, their vulnerability could increase ongoing and we’d really like to do something with the people around them who are supporting them so that they can help give these messages going forward,’ but there is often a reluctance to engage in that way, and that might be for a wide range of reasons. So, yes, if there is prevention it is around appropriate education. That was a really long answer to your question, I am sorry.

Ms LEAHY: That is okay.

CHAIR: However, we are out of time. Thank you both for attending this morning. I have certainly learned some things this morning and it has been very informative, so thank you.

LYNCH, Ms Angela, Community Legal Education Lawyer, Women's Legal Service

CHAIR: Welcome and thank you for attending. Would you like to make an opening statement?

Ms Lynch: Thank you. We commend the government for taking strong and decisive action in response to the domestic violence issue. Women's Legal Service is particularly supportive of the establishment of a domestic violence death review board. It is actually something that we have assisted in the lobbying for over a number of years. Perhaps the government should also consider—I know they are considering all of the recommendations but in particular in light of recent events—recommendation 76 of the Bryce report which called for the establishment of interagency high-risk cases for intervention early in matters of high risk. In terms of how that is different from a death review board, a death review board would importantly learn from domestic violence deaths in relation to making systemic changes whilst these high-risk interagency responses are about preventing death and murder and high levels of injury. They are currently operating in Victoria, they are being rolled out in New South Wales at the moment and we know that they have been operating in the United States as well.

As the public conversation concerning domestic violence continues, it is also very important that there are services on the ground that can provide advice, assistance and support to the women as they come forward. Separation is the most dangerous time, as we as a community have been sadly reminded recently, and women are coming forward because of the public discussion. They are having confidence that the system is going to listen to them and act on their issues. I suppose what we are saying is that we have to have specialist services there for them as they come forward. Women's Legal Service has had a 40 per cent increase in client contacts since the release of the Bryce report and we would say that legal advice is an essential component in relation to safe outcomes for women and children.

I am really just now happy to talk to the issue of our submission. In summary, we basically have asked for a more clearly articulated purpose clause and getting community buy-in on those issues in that the board will be about identifying systemic gaps and achieving systemic reform rather than individual blame. We have made some recommendations in relation to thinking about court involvement and how to obtain court involvement as in getting court files at necessary times and also thinking about the state-federal issues, because federal agencies will be involved in these deaths, and how with a state based system we are going to be able to engage and make those federal agencies accountable in relation to what has occurred and make systemic changes at that level. You have seen the submission, so I am happy to take questions in relation to that.

Ms LEAHY: Ms Lynch, thank you very much for being here today. You mentioned that legal representation for women in domestic violence circumstances is quite critical. Can you recap on that for me, please?

Ms Lynch: Yes. We believe that the earlier women can get that legal advice the better. It is really quite an important component in relation to safety planning for women. If they can get legal advice early, they can get the safety component which is how to physically get out of the house. That would be what DVConnect and the DV services do—how do you physically get out of that house safely? At the same time, the legal component relates to whether or not they should be applying for a protection order. Sometimes in really high-risk matters it may be that a protection order could be a more dangerous thing to do.

Also, what is really important is all of the family law advice. Getting that as early as possible can really get women on a better medium- to long-term trajectory in relation to safety for themselves and their children. Many women in domestic violence believe that they have to give contact and that they have to give fifty-fifty care to the perpetrator of violence. If they start entering into those kinds of agreements, it can become quite difficult. If they can get that legal advice early, you can avoid trying to unpick that stuff at a later stage. That is what we see in relation to the importance of that. I would think most domestic violence services and DVConnect would be referring women at that point of separation, when they are able to, to get legal advice because they know the importance of those issues for women.

Ms LEAHY: Can regional women access some of those services through your service?

Ms Lynch: Yes. We have a 1800 number that operates four days a week and we have a specialised rural, regional and remote telephone line that only operates on a Tuesday. We do not have funding for that for a longer period of time, but we do have a specialised rural and regional lawyer who can provide specialised legal assistance to those women. We have been quite successful in getting corporate grants and other grants to go out to communities and we do provide legal advice out in those communities. There are also other legal service providers such as Legal Aid and other

agencies and other community legals. We provide a statewide service, so we would be a fairly key contact.

Ms LEAHY: So would community legal centres actually provide some of that early intervention legal advice?

Ms Lynch: Yes. We are a statewide service, but some of those community legal centres just provide services to the regions where they operate out of or exist and if you are outside of those regions they perhaps cannot. The difference with Women's Legal Service is that we operate on a statewide basis so women can call us from anywhere and get that assistance.

Ms LEAHY: However, the regional service that you offer is only on that particular day.

Ms Lynch: Yes.

Ms LEAHY: I have a large regional electorate—larger than the state of Victoria—and we unfortunately have some fairly high rates of breaches and domestic violence as well.

Ms Lynch: There is a 1800 number that does operate four days a week and women can call that, aside from the specific rural-regional line where you get through to the rural and regional lawyer on a Tuesday. Of course, we would love to have an expansion of that service. We think there is a great need.

Ms LEAHY: Do you think there is a good awareness in rural and regional areas and even in Aboriginal and Torres Strait Islander communities about that regional service?

Ms Lynch: No, probably not. That is why it is really important for us to do these regional trips. This year, through the assistance of the Brisbane Women's Trust and also through Stanwell Corporation, we went to Mount Isa, Brisbane Women's Trust went to Hervey Bay and Bundaberg, we have just been to Rockhampton and we have made arrangements to go to St George this year. By going out to the communities, we try to do a bit of media out in the communities when we go to try to raise awareness of that different option for women, and it is a really important option because it can be a very private thing, they do not have to go into a local lawyer in town which can be an issue in rural and regional communities. They can contact us and get that specialised advice without anyone in the community knowing that or knowing those private issues.

Mr McARDLE: You referred to recommendation 77 in the Bryce report.

Ms Lynch: No. 76, I think it was.

Mr McARDLE: Which is a SCAN model, is that right, which you suggest might be a way forward to look at serious cases?

Ms Lynch: A SCAN model in the sense that it is a multidisciplinary team that operates. I think they operate on the basis that there can be a referral in from the police—or any of the agencies that sit on that actual team—but invariably it is the police who are called out to an incident. They do a bit of a risk assessment, risk identification, in relation to working out high risk and referral of the case into the high-risk team that provides more wraparound services in relation to how to keep this family safe. That is basically what they are looking at. They would have agencies there that can work—it is with the woman as well. It just is a much more coordinated way in relation to dealing with that issue and maintaining safety.

Mr McARDLE: Looking at that model, you would have Education, Housing, Health and Justice involved in the process?

Ms Lynch: Yes.

Mr McARDLE: Would it be very similar to the current SCAN model in the composition of the organisations involved?

Ms Lynch: Yes. You would have also domestic violence services I suppose having a key role. You would have a perpetrator program. It is more a domestic violence focus. I am not completely familiar with who is sitting on SCAN. It is a similar kind of concept of those referrals coming in and then really working out basically how to keep this family safe. There was something in the *Sydney Morning Herald* on the weekend—I forgot to bring it along, actually—about this being rolled out in New South Wales at the moment. I know that they do exist in Victoria as well. So there are models in existence at the moment. It would really be building on the coordinated responses that exist already in the community. Down at the Gold Coast there is a coordinated response already in relation to how they respond to domestic violence. It is kind of that whole-of-community response, but it is really attaching onto that a high-risk team dealing with cases on an immediate and urgent basis and who are at high risk.

Mr McARDLE: You comment in your submission that there needs to be a protocol around our cousins at the federal level and in the courts as well. Can you give me an idea of what you mean by 'protocol'? What sorts of things would need to happen between the Magistrates Court here in Brisbane and the federal Magistrates Court or federal Family Law Court here in Brisbane?

Ms Lynch: I am not an expert in relation to how governments talk to one another and interact, but some sort of memorandum of understanding, some level of understanding that the federal courts know about the existence and that these federal agencies such as mediation services and the child support agency know of the existence and the role of the Queensland Domestic Violence Board when it is established and some level of cooperation—if they do have a case that they are considering that involves those agencies that those agencies will cooperate fully in relation to the conduct of the investigation. Importantly, if a recommendation is made, if the board sees a gap at a federal level in relation to how an agency has responded to a case, how is that federal agency going to deal with that? It is a recommendation of a Queensland domestic violence task force that has been made to a federal agency. There is no real requirement for them to comply with that. I suppose it is some sort of arrangement in relation to how to make them accountable in relation to a recommendation for a policy change or how they deliver their services or something like that and that they need to take it seriously and to properly deal with it. Does that make sense?

Mr McARDLE: Yes, it does—trying to get the federal bodies to disclose information.

Ms Lynch: Yes, to get them to disclose information.

Mr McARDLE: And receive information and act upon it.

Ms Lynch: Yes, because the board can make recommendations that, for example, the child support agency should do this or the child support agency should do training in relation to whatever or mediation services should change their policy; there was an issue in the death that was before them in which the mediation should not have occurred—I am just using examples obviously—and therefore that has implications at a federal level for all the states because those agencies operate in all states.

We could be picking up on issues at a federal level where we have no power. I suppose we cannot impose it upon them, but we can ask them to enter into some sort of agreement or a memorandum of understanding that they will consider seriously those recommendations—that somehow it perhaps goes to the federal parliament for them to consider or some sort of mechanism that those issues and recommendations are considered and taken seriously and that they may have to make changes. I mean, they may not. The board also may not have taken account of all issues or whatever and there may be a reason that they cannot implement the change that has been recommended, but they have to seriously consider what is being put up by this Queensland domestic violence death board.

Mr McARDLE: COAG might be an appropriate jurisdiction to deal with that issue, through the Attorney-General potentially?

Ms Lynch: Yes, maybe.

Mr McARDLE: You also make comment about access to court files and documents: recommendation 3. Would you talk me through that, if you do not mind?

Ms Lynch: I think there can be cases where the parties may have separated for a period of time and there is a death and the parties may have actually been involved in Family Court proceedings. An example would be the Darcey Freeman case down in Victoria, where the young child was thrown from the bridge by her father. They had been involved in Family Court proceedings. I think it is important that the death review board also has access to those documents, as all information comes before them. Were there points of intervention that could have taken place in the system? Could there have been changes? Why did the judge make a decision in that matter? 'Oh, she was unrepresented.' 'Why was she unrepresented?' 'Oh, she doesn't get legal aid.' 'Why can't she get legal aid?' 'Oh, it's really difficult to get legal aid.' You can see that those court files can be important also in relation to the whole information about the death that goes before the death review board for them to have a look at and consider.

Mr McARDLE: There are a lot of documents filed in those courts and reports being prepared that would give a significant history of a family and reports prepared by experts assessing the members of the family. That is the documentation you say would be quite important to access on the day?

Ms Lynch: Really, really important, absolutely.

Mr McARDLE: I will talk to the department about that later, too.

Ms Lynch: Yes, really, absolutely, yes.

Mr McARDLE: Do you find that cooperation between the state and federal jurisdictions takes place now on any level or a level?

Ms Lynch: Maybe I can ask you that.

Mr McARDLE: I can't because I am not in the Attorney-General's office. I will ask the department a bit later on. I am keen from a layman's point of view, if you do not mind, but from the Women's Legal Service perspective.

Ms Lynch: I do not think I can, from my work perspective. I am sure that on this issue in particular there is a public sentiment for cooperation. I think in many ways it would be quite difficult for them to not cooperate in these circumstances or enter into some sort of arrangement in these circumstances, but I do not know. I cannot really comment generally in relation to that, but I would think there is some public pressure for the federal government to cooperate in these circumstances.

Ms LEAHY: I note in the Women's Legal Service's submission—recommendation 9, increase penalties for breaches—that the Women's Legal Service supports the increase in the maximum penalties for domestic violence breaches, but the reality is that the current provisions are not being utilised so the amendment will have little immediate practical impact. I am keen to explore the reasoning. The breach requires the police to take action, and women constantly complain about the failure of the police to do so. Is that because there are not sufficient domestic violence trained officers in the service or is that because women are not getting access to legal information early in a domestic violence situation? Could you perhaps expand?

Ms Lynch: It can be a range of issues. We do not know what goes through the mind of the police necessarily when they decide not to take breach action, but what we guess, I think, is that the breaches are not necessarily taken very seriously by the police—not all police. It is throughout the Bryce report that there are major issues culturally in the police and their response to domestic violence, and I think the response to breaches is the extension of that. Women have been in court, they have a court order, they have a protection order, they have been told by the magistrates in front of the court, 'If there is a breach, this is a criminal penalty. You need to go to the police.' And when they go to the police the police fob them off and say, 'It's your word against his.' I suppose perhaps what we find is that there is a bit of maybe not taking it too seriously, maybe a lack of wanting to investigate more fully to see whether you could really establish some sort of breach action. It is quite frustrating.

What we know from perpetrators is that they will push and push and see what they can get away with. If they can get away with a small breach then they can try for a bigger breach and if they can get away with that they will try for another one. It is really important, for the whole system to operate properly, for that breach action to be taken, even on small transgressions. I suppose the police are under pressure. They are under funding pressure themselves. They have to deal with and prioritise work. If somebody comes forward to the police with what seems like a small transgression, it is really important to take action. I suppose they are sort of pushing it off because of maybe a whole range of reasons—because they have workload issues, because of cultural issues, about how important they think this work is et cetera. It is quite a common concern and has been a concern for probably the lifetime of this legislation—since 1989.

Ms LEAHY: I suppose that begs the question: is there something that needs to be addressed in relation to breaches? Obviously, if you cannot get the breach investigated and pursued then you cannot ever get to the increased penalty situation.

Ms Lynch: That is right.

Ms LEAHY: Is there something systemic there that maybe needs some further work?

Ms Lynch: I think part of the Bryce report recommends a range of training mechanisms to take place with the police and also more specialised domestic violence liaison officers and perhaps some more oversight in relation to the structure of the police in relation to lifting standards and accountability. Perhaps over time with the implementation of this report we may see a change in relation to those responses.

CHAIR: Thank you so much for your time this morning. We appreciate your attending.

Proceedings suspended from 12.46 pm to 1.15 pm

BEATTIE, Ms Susan, Manager, Domestic and Family Violence Death Review Unit, Office of the State Coroner

CHAIR: Welcome and thank you for attending this afternoon. Would you like to make an opening statement?

Ms Beattie: I will keep it brief. Essentially, I am responsible for the management of the Domestic and Family Violence Death Review Unit within the Office of the State Coroner and will also be responsible for supporting the activities of the Domestic and Family Violence Death Review and Advisory Board when it is established. We provide assistance with coroners in the investigation of domestic and family violence related deaths.

CHAIR: One of the questions asked has been about the difference between the unit and the board. How would you explain the differences?

Ms Beattie: Essentially, in its current state the Domestic and Family Violence Death Review Unit provides assistance to the investigating coroner around deaths that are identified as domestic and family violence related. There are seven coroners across the state and we are providing advice on individual deaths. The intent of the domestic and family violence death review board is to look at these deaths systemically.

Currently, the unit works with coroners and provides assistance, and the power comes under the Coroners Act. Coroners are empowered to investigate the context and the circumstances of an individual death as opposed to a systemic review function, which is the intention of the board. This also means that the information that is obtained through the Domestic and Family Violence Death Review Unit only becomes publicly available if a matter proceeds to inquest, and it is only a small proportion of cases that are investigated by a coroner that proceed to inquest. I think it is roughly almost five per cent.

In terms of our reporting function, the death review board will be required to table a report in parliament which will contain that information which is of significant benefit to the community, and that is not currently available.

Mr McARDLE: Thank you very much, Ms Beattie, for coming here this afternoon in the hot seat, shall we say. If we go to 91D, the functions of the board, it lists (1) (a) to (e) and then (2) and (3). Taking 1(a) to (e), it talks about analysing data, undertaking research, using data and research findings et cetera. Isn't that what the unit does now?

Ms Beattie: In terms of the unit's capacity to collate data, that data is gathered under the Coroners Act. For that to be released, it needs to be released by the State Coroner or the investigating coroner.

Mr McARDLE: I did not know you did not have a copy of the bill; my apologies for that.

Ms Beattie: The research that is conducted by the unit is predominantly around informing case investigations. For example, in terms of an individual case if issues are identified and the research is conducted around that in terms of what that means from a domestic and family violence perspective, that research is not publicly available. It is not published; it is used to inform the coronial findings.

In terms of the maintenance of the database which would still be a function carried out by the Domestic and Family Violence Death Review Unit, that database contains a range of information around the context and circumstances of different deaths, perpetrators and victims. Some of that is publicly released in the annual report of the Office of the State Coroner. That relates very much to informing the work of the Domestic and Family Violence Death Review Unit but also providing information to different stakeholders around the statistics side of things as opposed to research.

Mr McARDLE: And that research cannot be released unless the coroner allows—

Ms Beattie: Yes, because it is covered under the provisions of the Coroners Act. There are genuine research provisions under the Coroners Act that guide the release of information.

Mr McARDLE: We would potentially have the unit doing research and the board doing research, but the board cannot access the unit research without the coroner's consent. Is that what you are saying? I am not trying to put words into your mouth here.

Ms Beattie: No. I was speaking to the current function of the Domestic and Family Violence Death Review Unit in terms of the research it conducts which is very much focused on assisting the coroner's office to understand the context and circumstances of individual deaths. Part of the function of the death review unit currently is maintenance of a database. We have a database dating back to 2006 in relation to these types of deaths.

Mr McARDLE: What does the database contain?

Ms Beattie: Type of death, characteristics of the perpetrator, characteristics of the deceased, common risk factors in relation to that system contact, broadly whether there was a protection order in place at the time of death, whether the deceased had contact with the Police Service before that death, whether there was any evidence of controlling or obsessive behaviour et cetera.

Mr McARDLE: And you have built up a fairly wide database under the unit heading—

Ms Beattie: Yes, that was the original intention of the establishment of the Domestic and Family Violence Death Review Unit: to gather that type of information and to provide a more nuanced understanding of the different types of deaths and the differences between intimate partner and family homicides.

Mr McARDLE: And that information cannot be released to the board without the coroner's consent?

Ms Beattie: It is the intention, as you would be aware, that the secretariat function is to be held by the Domestic and Family Violence Death Review Unit. There is a provision in the bill that allows the State Coroner to enter into an agreement with the board, and that will be part of the consideration of when that information becomes available but it is the intention that they would have access to that, supported by the provisions that are developed when the board is established.

Mr McARDLE: Do we need a unit and a board? Can't they be combined into one body that has secretariat support, much like this committee has here, to undertake that research that you are looking at that would inform both the coroner and the board?

Ms Beattie: The recommendation for the board stems from the Special Taskforce on Domestic and Family Violence in Queensland obviously and the identification of certain limitations in the systemic review function of the Domestic and Family Violence Death Review Unit in that, essentially, it is a departmental unit within the Office of the State Coroner and very much focused on assisting coroners in their investigation. Part of that is recognising that many of those cases do not meet the provisions to go to inquest and there is a loss of valuable learnings from those reviews because there are no opportunities to disseminate that publicly. There are many different types of mortality review mechanisms and domestic and family violence mortality review mechanisms supported by a board function. The difference here is that this will be a multidisciplinary board which has significant value in the identification of systemic shortcomings across cases which the unit is not able to do at this point in time because we are restrained by the powers of the Coroners Act. We do not have the power to make recommendations that are made by a coroner, and it can only be made for matters that proceed to inquest. We are a support function for a coroner as opposed to a death review.

CHAIR: I think you have answered all of our questions. Thank you very much for appearing today and taking the time out of your busy day no doubt.

Ms Beattie: Thank you.

MOORE, Ms Victoria, Acting Director, Strategic Policy, Department of Justice and Attorney-General

PARKER, Ms Natalie, Acting Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney-General

RYLKO, Ms Julie, Acting Director, Strategic Policy, Department of Justice and Attorney-General

TAYLOR, Ms Cathy, Deputy Director-General, Child, Family Community Services and Southern Regions, Department of Communities, Child Safety and Disability Services

CHAIR: I welcome the representatives from the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services. We have asked officials from the departments to assist the committee by commenting on issues raised in evidence today. Ms Parker, would you like to start with comments on any of the evidence we have heard today about the bills?

Ms Parker: I would again like to thank the committee for the opportunity to assist you on both bills today, the Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Bill and the Criminal Law (Domestic Violence) Amendment Bill. I would also like to thank all the people who took the time to make submissions. I know that both the Department of Justice and Attorney-General and the Department of Communities, Child Safety and Disability Services took the time to review each and every one of those submissions and consider their content.

I believe you have been provided with the full details of the department's response to each and every issue, and I hope that assists you in your deliberations. I would also like to thank the people who took the time to come along today and provide submissions to you. I really enjoyed listening to the witnesses today, and I think the issues they raised were very broad in their scope.

Today we are really talking about, as I understand it, the two bills that have been introduced into parliament. However, I and I am sure my colleagues took very detailed notes on the comments made by the witnesses, and many of those comments relate generally to the recommendations of the Bryce report, of which the Queensland government has committed to implementing all 121 recommendations directed at government and also to assist the non-government bodies and the Chief Magistrate where we can in delivering on the other 19. If the committee agrees, I was only going to focus today on those issues that relate to the bills.

CHAIR: Yes, if you could just comment on the matters that were raised in relation to the bills.

Ms Parker: For some issues where the witnesses agreed and commended the government on their approach, I was just going to leave those alone, if that is all right with you, and only focus on where there may be some issues that it would be good to clarify with you where those comments appeared as if they did not agree with the content of the bill or they had some queries as to how it was going to apply.

CHAIR: Yes.

Ms Parker: I felt there have definitely been, from the QLS in particular and also perhaps Silke Meyer, some issues firstly with the board—and even though it is the Domestic and Family Violence Death Review and Advisory Board, we will just call it 'the board'—about its role as compared to the coronial system and also whether or not there is any conflict between those two jurisdictions.

In our policy development and with the way that the bill is written, we definitely see that there are two very specific roles both with the unit, with the board and with the coronial system. We see and we agree that the Domestic and Family Violence Death Review Unit can support both the coronial system and an independent board and that in those two roles the outcomes are going to be different. The unit can support the individual coroners in investigating individual deaths and deciding who, when, where and how those deaths were caused; however, the board is going to use the same information from the unit and will leverage off all the information of the coronial system through the information-sharing provisions in the bill to be able to report to government on the systemic issues underlying those deaths and the causes for those deaths with a view to preventing future deaths.

I found Silke Meyer's presentation enlightening because she really gave the committee some in-depth ideas already about the risk factors involving DV deaths. You can see that that rich information being synthesised through all the information available through the coronial system will

be of great benefit to the board, and that is why this board needs to be separate from the coronial system, however leveraging off all the information of the coronial system.

I would also like to clarify the comment made by Michael Fitzgerald in relation to comments allegedly made by the State Coroner in a consultation session. Having sat in on that meeting, I do not recollect the same issues that Mr Fitzgerald recollected. According to my notes made from that meeting, the issue that was raised generally by the participants in a consultation session was: could there be a conflict in a person who was a chair of a systemic body, which is the board, also being a coroner for specific matters relating to a DV death? The issue raised by the participants was that, yes, there could be a conflict. The issue also raised by participants was that that conflict can be handled; for example, if the State Coroner was appointed as the chair of the board, the State Coroner could not hear DV related deaths. That is a way the conflict could be handled. This is a matter that the judiciary deal with every day. They are equipped, by the very nature of their role, to deal with conflict, and they are independent and able to do that with great sophistication. I think it is fair to say that that is my recollection of the discussion, and I would not want to attribute the discussion to any one particular person.

Lastly, one of the issues raised by Silke Meyer was about whether we should have the chair of the board also being the State Coroner and whether that allows the board to be independent. There are several ways you can cut this. The clear policy decision of government was that the board should be able to leverage off the coronial system. That means that the best person to bring these two bodies together in investigating individual deaths and also providing a systemic view is someone who is an expert in the coronial system—that is obviously the State Coroner or the Deputy State Coroner—and that that independent person can bring both systems together. That does not mean that the board will not be independent. The State Coroner is an independent judicial officer and has very specific roles and responsibilities in relation to the legislative functions and powers of the board. That is the way this government decided to deal with who should be the chair of the board.

Silke Meyer indicated that in some jurisdictions the two bodies were separate and that the chair in some jurisdictions was not the state coroner or deputy state coroner in those jurisdictions. We cannot confirm or deny her statements at this point in time; however, if the committee would like us to do so we are happy to do a further cross-jurisdictional analysis for the committee.

Mr PYNE: I thought we had that somewhere already.

Ms Parker: Yes, have we already provided that?

Ms Moore: I do not think we have provided it. We have done some work certainly in terms of Australia and New Zealand, and we are happy to provide that.

CHAIR: I think we already have that information.

Ms Parker: From my perspective, they were the main issues relating to the board questions that were raised—unless the committee has any other specific issues in relation to the board that they want answered.

CHAIR: I might allow other invited witnesses to make a statement or provide information before we get to general questions.

Ms Taylor: I will keep my comments brief because I suspect that it will be the questions that you would most like to direct to us. There are probably three areas that I thought we should specifically talk to. Obviously there was a commentary, both in submissions and in subsequent discussion today, about the increase in penalties. I should declare to the panel that, like a lot of my colleagues, I am a practising lawyer and spend a lot of time practising in both criminal law and family law—and obviously domestic violence—so I absolutely get the criticality of balancing those considerations of keeping victims safe and holding perpetrators accountable.

The thing I would probably remind the board is that, even where you increase what is the maximum penalty that can be set, that is always a discretion retained by the sentencing magistrate or judge and I do not think we would ever seek, or want, to influence or interfere with that. It is purely about increasing maximum penalties. I think there is a lot of information that Natalie already provided from JAG, but certainly in terms of the evidence about the level of penalties already imposed they do not go anywhere near the maximum penalties.

Secondly, there was some discussion about the special witness provisions. I can confirm that they are already covered by the Domestic and Family Violence Protection Act, so it is not setting up one to deal with one way and the other to deal with another way.

Thirdly, I think there had been a question about whether the definition of 'paid carers' should be included within the definition of relationships. One of the things that I am delighted to advise the committee is that of course we are undertaking a wholesale review of the entire Domestic and Family Violence Protection Act, and that is certainly one of the issues. We know that New South Wales already deals with that. I know that at the time of the development of the legislation in 2009 that I worked on before it was introduced in 2010 we had a lot of discussion about where you go in terms of intimate personal relationships and where a paid relationship started and ended, but I think we should absolutely pick that up in the broader review of the Domestic and Family Violence Protection Act. I think that is probably all I would say.

Mr PYNE: The chair of the board was spoken about there, and I do see that that is the case in New South Wales and Victoria as well; however, in New South Wales it says 'the convenor or chairpersons, the state coroner, deputy state coroner or former state coroner or deputy coroner'. Could that last bit—former state coroner or deputy coroner—be included in the Queensland system? It would seem to me to deal with the conflict while retaining that institutional knowledge.

Ms Parker: The policy behind the bill is that it is essential for the chair to be an acting and present state coroner or deputy state coroner so the board will be able to have a clear pathway between all the information held by the coronial system as controlled by the State Coroner and get that to the board.

Mr PYNE: He would be the only person who could obviously do that.

Ms Parker: We could legislate without that bridge, if you would like to call it that, but in practice it is incredibly helpful to have that bridge between the two systems.

Mr PYNE: I understand. Thank you.

Mr McARDLE: Ms Taylor, you mentioned the issue of the special witness provisions and the DV act under 150. As I read that section, that only applies when the person is giving evidence; it does not apply at an interim hearing or a first mention date. Theoretically you can have an aggrieved person, male or female, acting on their own behalf actually in the courtroom and, as I understand the section, when it comes to a trial it refers to giving evidence. It does not cover the circumstances outside of that. I am not trying to be disrespectful; I am just trying to understand. It could well be that, as you are a practitioner, you could have a client in the courtroom for half a day sitting very close to the alleged aggrieved. When you read section 150, to me it says when they are either to give evidence or giving evidence. It is only when they are giving evidence that they actually have the protection.

Ms Taylor: Let us think about how a domestic violence application proceeds before the court. It is a first mention. An interim application is before the court. I would certainly be arguing that if you are the applicant it is likely you are to give evidence in the future, and I would certainly argue that the protection under 150 applies. The wonderful thing about lawyers is that we can interpret it every which way, but I think this is one of the issues that has come up. We actually need to ensure that the protection that is provided under the Domestic and Family Violence Protection Act is no lesser than what we are seeking to provide in the other areas.

Mr McARDLE: Could I say, 151 appears to me to define who. Paragraph 150(2) defines the circumstances where it applies in that it is fairly clear there (2) (a), witness give evidence outside. It is the actual physical action of giving the evidence. Again, it may be a point of interpretation, but I just see that issue between the two visions in the bill to give special standing circumstances in a breach but it may well not flow through in regard to an interim hearing or a trial. Legal Aid may ask for the client to be excused from attending, but if an aggrieved is there on her own behalf, and it happens on many occasions, they are in the courtroom. If they are not there the respondent may simply ask for it to be struck out because they failed to appear.

Ms Taylor: Absolutely.

Mr McARDLE: I note that the policy is to protect. I am just concerned that the policy seems to be slightly inconsistent in that we are giving protections in a greater manner at one level but not at the other. I accept, of course, that the financial impact of doing that is astronomical because many courts will have 50, 60, 80-odd DV application cases on a Monday or a Tuesday morning.

Ms Taylor: This is one that we have identified. We need to, I think, revisit whether the protections that are currently provided in the Domestic and Family Violence Protection Act actually are sufficient. At the moment, 150(2) (g) would probably be where I would be arguing 'or any other alternative arrangements that the court considers appropriate,' but I think it just highlights the criticality of having consistency.

Mr McARDLE: Agreed—as much in place to protect the aggrieved.

Ms Taylor: Absolutely. You are certainly right about the number of self-represented respondents to applications. We need to ensure we are not going to inadvertently put a victim in harm's way.

Mr McARDLE: Thank you very much. I appreciate that. The Queensland Law Society and the Bar Association raise the issue of retrospectivity in regard to the prior convictions of what now would be called a domestic violence offence. Is there any comment about that from either of you ladies?

Ms Parker: I might refer to Julie Rylko, who has done a lot of analysis into this issue since we received the QLS and BAQ submission.

Ms Rylko: If I could refer you to the new section which is inserted by clause 18, new section 12A of the Penalties and Sentences Act, it is subsection (6) that allows the court to make an order in relation to a person's previous convictions, so that would be those on their criminal history that have been dealt with before an offence is able to be noted as a domestic violence offence under the amendments in the bill. However, if you refer to subsection (3) earlier in that provision, before the court can make that order in relation to past convictions they must be dealing with an offence that is currently before the court for which the person has been convicted and they were charged on the complaint or the indictment having been noted that that is a domestic violence offence. In essence, that trigger to examine the criminal history of previous convictions only arises when that other offence which they are dealing with and make an order about under subsection (2) is noted already as a domestic violence offence. There is no power for the court to just examine a person's past convictions.

The other key points that I would note for the committee are the fact that the application in relation to those past convictions is made by the prosecution. Also, subsection (4) it talks about the information that the prosecution has to provide in making that application about the past convictions. Then very clearly in subsection (6) the court must be satisfied that the previous offence is a domestic violence offence. That same threshold applies as with the substantive offence that is before them at the time they are making the initial notation.

Mr McARDLE: So all parties are informed of the application being made and the grounds on which the application would be sought; is that right?

Ms Rylko: That level of detail is not specified in the provision, but certainly subsection (3) provides that the application is made by the prosecution and then in subsection (4) the application may be made in writing or orally. That oral application allows them to make the application during a sentencing proceeding or when the person is currently before the court. Then importantly paragraph (b) provides that it must include enough information to allow the court to make a decision about whether it is appropriate to make the order.

Mr McARDLE: But it still allows a former conviction to be retrospectively changed to a domestic violence conviction, does it not?

Ms Rylko: That provision does allow that, yes.

Mr McARDLE: That is the premise on which the Law Society and the Bar Association raised their question: retrospectively we are making what was an offence for aggravated assault or GBH, as the case may be, a domestic violence conviction and thereby, if I understand the argument properly, enlivening a higher penalty being imposed. That is right, is it not?

Ms Rylko: The higher penalty issue under section 177 of the Domestic and Family Violence Act is a separate issue. Proposed new section 12A deals with the notations on the person's criminal history. Those notations do not change in substance the offence that they have been convicted of, so it is an assault occasioning bodily harm. The purpose of the provision is to identify that that assault occasioning bodily harm occurred in a domestic violence context.

Mr McARDLE: But am I right in saying that if that reclassification occurs it could then enliven a higher penalty because of the number of convictions of domestic violent offences that occur? It gives scope for a larger penalty, does it not?

Ms Taylor: Perhaps I can respond to this. Do not worry: we have all had the code out and we have all been going back to tors on this one and also talking to our colleagues in New South Wales. Currently, for a breach of domestic violence order we know what the penalties are and if there is a further breach we know what the proposed increase in maximum penalties is. You are correct: it does enliven, but it brings the criminal offences into line with the breaches of domestic violence orders because otherwise you could end up with this really contrary area whereby a person has been charged and convicted—and let us use assault occasioning bodily harm as an example. It happened three years ago. It was not noted, obviously because the legislation was not in place, as a domestic violence offence. Subsequently there is a further charge and conviction for assault occasioning bodily

harm. The sentencing magistrate is looking at it and goes, 'I'm going to note this also as a domestic violence offence.' It would enliven, then, the question of what is the upper level of the maximum penalty that could be imposed.

I have looked at the Law Society submission and the Bar Association submission and have talked to a range of defence lawyers. Quite rightly, defence lawyers will argue at the time of either pleading guilty or being sentenced on being found guilty they may not have been aware that it was going to be dealt with as a domestic violence offence; however, they were aware it was a criminal offence. They were aware it was a criminal offence directed against another person. They were aware it was a criminal offence directed against another person with whom they were in an intimate personal relationship, either then or at a previous time. So it absolutely does enliven the maximum penalty, but it brings it into line with breaches of domestic violence. What we would not want to do is have an arrangement whereby a breach of domestic violence order actually gets a higher level of penalty than multiple and escalating offending under the Criminal Code of assaults occasioning bodily harm or GBH or whatever it is. I think that is the issue. Yes, it does really challenge fundamental legislative principles, and certainly we are saying that on this occasion we believe it is justified. We are not pretending that it does not. We are saying that we believe it is justified.

Mr McARDLE: Would the department agree with that—that it is a breach of the FLP, as Ms Taylor just has, I think?

Ms Parker: In my view, the way we have looked at it is, with that proposed section 12A, we saw that the criminal notations on the convictions, in fact, the fact that you could have a notation on the criminal conviction that related to past convictions, was not, in fact, an FLP in itself because all you are doing in that notation is providing a greater amount of detail and a richness about the context of that offending. So that particular provision has no effect in itself to increase a penalty. It is only when you link it back to section 177 of the DFVPA. That is when you can use that past offending to consider whether or not there have been offences that have been committed—at least three in five years. So that is where you can use it.

My view is that, as it stands itself, there is no particular negative impact directly as a result of the provision in the Penalties and Sentences Act. It is giving more detail. So is it really retrospective? Well, in the criminal history we are able to provide more detail. For the offences, as Julie said, it is only going to be applying the richness of the criminal convictions to offences that occurred post commencement, not pre commencement. We are not going to go and review the sentence provided or charge someone differently as a result of previous offences. It is only for those offences post commencement and then we can have a look at the charges and convictions that were back in time. The QLS submitted this morning that being able to provide more detail on the offending should start from now or when the clause commences. If you did that we would be waiting five years, if you relate it back to section 177. If someone offended tomorrow, to use section 177, unless it was a DVO breach, how could we actually get the benefit of the provision by being able to describe offending more specifically as DVO offences? I mean, is that what parliament intended: for the full effect of the law to only be secured after five years? With this, as soon as the provision commences we can use the detail for previous convictions. Would you agree, Julie?

Ms Rylko: Yes, certainly. I guess there is just one comment that I would like to make to the committee relating to the amendment to section 177 of the Domestic and Family Violence Protection Act. There is a definition of a domestic violence offence in there which is the expanded application in relation to convictions. That is not reliant on the notation being made under the new section 12A, so there is scope still for the court to examine the nature of those previous convictions.

Ms Taylor: So the history is still the history. I think that is the point Julie is making, regardless of the notation. Certainly you would use the Penalties and Sentences Act. You would look at all of the history as to whether it is an aggravating factor or not.

Mr PYNE: Say there was a questionnaire, 'Have you ever committed a domestic violence offence?' and I do not tick it. Bearing in mind the richness of previous convictions, could it be that I should have ticked it? I am just a bit lost. Have I now committed a domestic violence offence in the past, taking into account, as you referred to, the richness of the offending?

Ms Taylor: I think it is more about categorising past offences as domestic violence offences. They were previously categorised as simply convictions under the Code.

Ms Rylko: That is right.

Mr PYNE: And we are recategorising offences that have taken place in the past?

Ms Rylko: I would not say 'recategorising'; it is more information about that offence. The example, again, of the use of assault occasioning bodily harm, that may well have occurred. Just to give a scenario: the person is subject to a domestic violence order but they go and assault the victim in breach of that order. The police may well charge them with the substantive offence of assault occasioning bodily harm, not necessarily also the breach of the domestic violence order. So it allows the court to identify the true circumstances of that assault occasioning bodily harm. On a criminal history, normally that is all it would say—assault—and there is no other information about that.

Mr PYNE: Yes, that is the perspective that I was coming from—from a criminal history point of view. That is interesting.

Miss BOYD: I have a question in relation to the board bill that we have in front of us at the moment. We have heard previously from Ms Beattie, who is the manager of the Domestic and Family Violence Death Review Unit at the Office of the State Coroner, about a database that they keep and have kept since 2006. I understand that this legislation has a provision to review deaths prior to its inception date. I just wondered whether it would rely on that database in those instances of previous deaths and if there is a knowledge or an understanding at this point around what other components or information would be relied upon also in terms of having a look at those systemic issues?

Ms Moore: Certainly when we last appeared before the committee we explained that we had thought that much of the information held by the unit would be made available to the board through the arrangements negotiated with the State Coroner. That would extend to access and information from that database as appropriate and as authorised under that arrangement. Certainly our concept of what the board can look at is very broad. We envisaged that the Office of the State Coroner will make available the broad range of information that the unit has gathered—very valuable information—over the years that it has been operating since 2011. That would include that data from the database. They may wish to undertake further research in relation to some of that data and some of those previous deaths. That might, in fact, be something that they look at as part of their initial work. Certainly it would be up to the board to set its own work program with respect to the functions set out in the Act under section 91D.

Mr McARDLE: I think it was the women's legal advice network that raised the issue about federal and state jurisdictions—about access to court documents in regard to both the board and generally in relation to the activities of the board. Can you comment about, first of all, the state courts? Do they fit under the category of an entity that can be compelled to produce documents? Secondly, what are the federal jurisdictional issues that that would face?

Ms Parker: In terms of the court documents, the Women's Legal Service seems to be asking whether the board would be able to access court files, the reason being that if court files were accessed there would be very rich data in relation to the escalating violence and the criminal justice response to that violence. One of the members commented that court files are very big. It would appear that it is up to the board as to where they would get the best information and whether those sorts of trends would be best available through court documents. That is obviously a matter for the board but, in terms of the provision that provides for information, under the bill—

Mr McARDLE: 91Y.

Ms Parker: As to exactly whether or not courts are covered, there is no specific provision. The courts are not seen as a prescribed entity under 91Y. It is then whether or not having access to court files is available through the coronial system. Today I am not able to tell you whether that is available under the coronial system. Are you aware, Victoria?

Ms Moore: I am not. I can certainly confirm that with the Office of the State Coroner, though. I think there has been mention of them accessing on occasion Family Court files, for instance.

Ms Parker: As a side issue, I would just like to make it clear that the use of court files, if they were available, would be only for that purpose. It would not ever be to review the actions of the court. In our democracy, the court is one of three arms of government and courts' actions need to be reviewed by courts. There would be never any suggestion that the board would take on that role and that would be against the principles of our government.

Mr McARDLE: It appears, though, that the network we are talking about—the board—is accessing court files, not the coroner. There are two levels here: the state jurisdiction and the federal jurisdiction. I pose this question to all of you ladies on the panel. There may be a legal argument to do so, but for a state jurisdictional body to access federal documents would be highly problematic, I would have thought, without a very clear referral of jurisdiction by the federal government to the states. The Magistrates Court, the District Court and the Supreme Court may well be subject to it—and I do

not know whether that is true or not at this point in time—but I would have thought that for any federal jurisdiction it would be very difficult to access any documentation on state based legislation. I am just really dealing with the point they raise about whether you can access it.

Ms Moore: It would have to be under existing information-sharing principles. It would have to be, for instance, under the Family Court rules—the current provisions there—if you are talking about Family Court documents.

Mr McARDLE: Child support, for that matter. It could be child support as well.

Ms Moore: Yes, so it would be subject to existing legislation. I think the Women's Legal Service was saying that it could be useful to negotiate some protocols around that so that it is really clear to the board and to the court, or other agency, or registry, or whoever is concerned—Child Support Agency—under their current provisions what sort of information can be released in what circumstances.

We were thinking that any information gathered by the unit from those federal agencies could be used in terms of the investigation reports that the unit prepares. That information might be provided to the board. Certainly, there may be some value in negotiating those sorts of memoranda of understanding once the board is established, but it is certainly an issue that we are conscious of and certainly you have raised it in others. So we will certainly be raising it with the board once it is established.

Mr McARDLE: Thank you. Two or three days ago the coroner in Victoria released its findings into Luke Batty and they are fairly extensive. Is the department looking at that to maybe supplement the bill before the House or at some point in time take on board the recommendations? There is a range of recommendations across judicial issues as well.

Ms Taylor: I can certainly say that, looking at it from the broader review of the Domestic and Family Violence Protection Act, absolutely we are having a look at that. In relation to your previous question, we are awaiting the receipt of the Family Law Council report, which is due later this year or early next year. The Bermuda Triangle that is the state, the family jurisdictions and then quite legitimately the privacy considerations is an issue that the Taskforce grapples with themselves about how multiple systems operate together. Similarly, we look at other jurisdictions. We have followed the coronial inquiry in Victoria closely. I think we will certainly take it on board as to whether there is anything in there that we should absolutely pick up in the broader review of the Domestic and Family Violence Protection Act.

Mr McARDLE: It deals with the Bail Act in a little bit of detail as well.

Ms Taylor: Yes.

Mr McARDLE: Thank you very much.

CHAIR: Thank you. On behalf of the committee I thank you all for your time today. I know that you have sat very patiently in the room and heard all of the previous witnesses. Thank you so much for taking notes and sitting here and giving us your feedback on those witnesses. We appreciate it very much. The time allocated for the hearing has expired. I would like to thank the departmental officials and all of the witnesses who have appeared before the committee today. I declare this hearing of the Communities, Disability Services and Domestic and Family Violence Prevention Committee closed.

Committee adjourned at 2.13 pm