LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into Family Violence Legislation Amendment Bill 2022)

Members:

MR P CAIN (Chair)
DR M PATERSON (Deputy Chair)
MR A BRADDOCK

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 18 MARCH 2022

Secretary to the committee:
Dr D Monk (Ph: 620 50129)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 1.16 pm.

MACLEAN, MS CLAUDIA, Principal Solicitor, Women's Legal Centre ACT
ROWE, MS MARGIE, Special Counsel, Women's Legal Centre ACT
WEBECK, MS SUE, Chief Executive Officer, Domestic Violence Crisis Service
GUMLEY, MS MELISSA, Program Support Manager, Crisis Intervention and Legal Advocacy, Domestic Violence Crisis Service

THE CHAIR: Good afternoon, and welcome to the public hearing of the Standing Committee on Justice and Community Safety inquiry into the Family Violence Legislation Amendment Bill 2022. The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of the city and region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

Today's proceedings are being recorded, and will be transcribed and published by Hansard. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used the words, "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

The committee welcomes representatives of the Women's Legal Centre and the Domestic Violence Crisis Service to the hearing. Could you each confirm that you have read the privilege statement and that you understand its implications?

Ms Maclean: Yes, I have.

Ms Rowe: Yes.

Ms Webeck: Yes.

Ms Gumley: Yes.

THE CHAIR: Thank you very much. Since this is a joint session, we might give each of you a short time, if you would like it, to make an opening statement. I ask the Women's Legal Centre: is that something you would like to do?

Ms Maclean: We have prepared a joint statement. Firstly, we would like to thank you for the opportunity to appear today and to comment on these legislative reforms. The Women's Legal Centre is grateful to appear alongside our partners at Domestic Violence Crisis Service to discuss improving responses to domestic and family violence in the territory. As our partnership demonstrates, we advocate for an effective systems response that promotes community safety; that is at the heart of what we do.

Both of our organisations work on the front line of family violence, and both of our organisations have been part of the fabric of the Canberra community for decades, and help people to live lives free of domestic and family violence. Both organisations are

often the first port of call for people who are contemplating reporting family violence to police. Both organisations provide practical, holistic and targeted support which is tailored to victim-survivors' need, vulnerability and trauma histories.

We also understand the risk to victim survivors if our laws are not enforced adequately. This can include victim-survivors being wrongly identified as perpetrators and wrongly charged, ongoing family violence not being referred for prosecution, charges not leading to convictions, and maximum sentences not being enforced, as is currently seen by our services and the clients we support in navigating this system.

However, the Women's Legal Centre ACT and Domestic Violence Crisis Service recognises the importance of legislative reform as an educative tool for the community. Recognising family violence offences as aggravated offences recognises the serious, long-term impacts of family violence and what effect that has on women and children. We know it leads to homelessness, intergenerational trauma, poorer physical and mental health outcomes, unemployment, and economic instability.

However, with any legislative reform, we need to assess the ongoing implications and effectiveness. Ultimately, a law only works if it is enforced consistently to ensure a fair and transparent process and that it promotes community safety. Increasing maximum penalties may in part be seen as a mechanism for deterrence before offences occur, but they must be applied when responding to incidents. We continue to be concerned regarding the potential for disproportionate impacts, particularly for Aboriginal and Torres Strait Islander women, and women more generally who are charged with violence offences and wrongly identified as perpetrators.

Whilst these measures likely reflect community attitudes, we must ensure we have a robust system to ensure the efficacy of the proposed laws and that they indeed work as intended, and that that is evaluated. This is one measure in a series of service-level responses which are required. Without effectively resourcing these alongside this legal reform, our community will still lack confidence in the criminal justice system ensuring that perpetrators are held to account.

THE CHAIR: Thank you for that statement on behalf of both organisations. Can we take it that the written submission from the Women's Legal Centre is something, Ms Webeck, that the crisis service also aligns with?

Ms Webeck: Absolutely. We stand alongside the representation made by the Women's Legal Centre in that regard.

THE CHAIR: I will lead off with a question. There is some criticism in the submission about the effectiveness of the criminal justice system. Obviously, it is only addressing family violence once it has occurred. Do you think there is a need for an accompanying support package to go alongside this bill? Not infrequently, when new legislation is introduced, there are also funding measures to, in a way, support the policy intent of the new legislation.

Ms Maclean: Yes, absolutely. We know that when you make legislative reforms, there is a whole effect on what we call the ecosystem. Legislation, as we know, forms a critical, yet, in some cases, small part of a systems response to family violence and

what is a very complex problem. Absolutely, there should be additional resources to acknowledge and promote sustainable outcomes, because everyone wants Canberra to be a safer place, particularly for women and children.

With respect to how these laws are implemented, it requires training of the profession, it requires training of the judiciary and it requires better police responses, so that we can evaluate whether these laws actually make any difference. We know that evaluation can be very tricky and technical, but it is also very under-resourced most of the time when programs or developments are made. It is absolutely crucial to look into that whole system effect that these changes have, and the accompanying resources.

THE CHAIR: Does the Domestic Violence Crisis Service have any other thoughts on that?

Ms Webeck: Part of the extension of that statement is also around the monitoring of the utilisation of the aggravated offences and the impact on sentencing that may flow through from that. What we know as a jurisdiction is that we do not see the application of maximum penalties frequently here in the ACT. We also know that the number of proceedings that go through to criminal responses is minimal. We need to keep an eye on how those aggravated offences are being applied in relation to the judicial process, alongside what has been said, which is: how do we implement these responses with training, support and service delivery response right through from policing to the judiciary?

MR BRADDOCK: Forgive me if this is a simple question, and I totally agree with you in terms of systemic surrounding elements needing to be in place as part of legislative change. Stripping all of that back, do you support the aggravated offences being in this legislation or not? I am trying to understand that perspective.

Ms Maclean: From the Women's Legal perspective, and from what we have said in the submission endorsed by DVCS, we do support the aggravated offences. We submit that legislation is a very important educative tool for the community. It says that, as a society, in Canberra, we accept that family violence is a serious crime and that its impacts are long-lasting—not just in this generation but for generations to come. As always, there is a caveat, though: that is great, and good laws are good, as long as they are enforced. We see an inconsistent approach to enforcement of current laws, let alone future laws.

MR BRADDOCK: Thank you for clarifying that for me. I was not exactly clear on what the position was.

THE CHAIR: With respect to inconsistent application, is this regarding the sentencing by the courts, the prosecutions or perhaps the police treatment of these situations?

Ms Rowe: It is probably all of those things, but predominantly what we see is an inconsistent approach to charging, in relation to both criminal offences and the offence of a breach of a family violence order. The experience of the clients that we have seen over many years—and nothing much has changed, despite legislative

changes—is that it can be very dependent on the police officer in the particular police station that the victims have first engaged with, as to whether they treat her seriously and whether they form the view that what she is saying is sufficient to activate a criminal prosecution. Part of our reservations about this is that getting into the criminal justice system in the first place can be unpredictable.

THE CHAIR: Do you think the legislation addresses that concern at all?

Ms Rowe: No, I do not believe it does. The inclusion of aggravated offences is not necessarily going to have any impact on the entry point assessment of whether this is a matter that is going to be charged.

The other point is that reference is made to the victim, about whether she wants charges laid, and that puts quite a heavy burden on victims, and it is contrary to the criminal justice system standing as the authority of the state in condemning conduct and recognising it as a crime. That is not to say that some victim-survivors do not want a criminal justice response. The point being made is that this is part of the ecosystem, and I think there has to be attention on non-criminal justice responses as well.

Ms Webeck: Nor does this legislative reform build community confidence in the criminal justice system. For a frontline service delivery agency, that is something that we are acutely aware of. Survivors of domestic, family and intimate partner violence often make a decision about coming into the slipstream of the criminal justice system prior to making contact with police. It is about the perception of the value of entering into that system.

We know we continue to have an issue with it being under-reported, under-prosecuted and under-investigated. We need to build community confidence in the system so that, when somebody enters into that court process and system, and goes into a police station, there is a chance that the aggravated offence will be applied, and that the system will actually result in an outcome for that individual.

The conversation that we have been having is that, absolutely, we do support the aggravated offence, but the application of this will be really key in changing the landscape in the ACT in order to bring people into that system before they count themselves out of it. We must raise confidence in the system.

DR PATERSON: If we are saying that maximum sentences are not being enforced currently, can you speak further on what value you see in increasing the sentences?

Ms Gumley: From a community perspective, we are saying that family violence is unacceptable and, by raising the maximum sentence, we are saying to our community that we take these matters seriously and that the penalties applied will be of a serious nature.

Ms Maclean: Building on what our colleagues from DVCS have said, at a technical level and where there is quite a bit of discretion in sentencing—and I would say that that is appropriate—by giving a maximum sentence, you also possibly increase the chances of an appeal, because they can appeal on the basis that that sentence was

manifestly excessive. In some ways, increasing the maximum might actually give magistrates and judges a bit more wiggle room; however, that is purely speculative.

DR PATERSON: What about the idea that this creates a two-tier system?

Ms Maclean: It is a very interesting question, and it is one that we at the centre have grappled with. This has been an ongoing conversation in family violence circles for a long time: why do we differentiate family violence offences? Why are they different from an assault and so forth? I think it goes back to supporting the idea that the long-term impacts of family violence are so pervasive that there is a difference between these and other types of offences, and recognising how serious and long-ranging those effects are. That is where the value of a two-tiered system presents itself.

DR PATERSON: Will this align our maximum penalties with those in other jurisdictions or will they be harsher? Where would we sit with respect to other states?

Ms Rowe: I do not know the answer to that.

Ms Maclean: I do not think it would differ too broadly. I do think, though, that there is a difference. I know, particularly on the ground, that there is that perception—we get clients, of course, who live across the border in Queanbeyan—that things will be dealt with more harshly in New South Wales. That is purely anecdotal. We also need to recognise that the ACT is a human rights based jurisdiction, so we are different to other jurisdictions in that way. I do not think it is completely out of the ordinary; I think the inconsistencies relate to how that discretion is applied.

THE CHAIR: With respect to that theme of sentencing, the ACTCOSS submission makes the point that, quite frankly, with a perpetrator in that situation of domestic violence, probably the last thing they are thinking of is what it will cost them, because it is an emotionally charged environment. I am not saying that you do not have penalties, of course, but is it a bit of virtue signalling to say that we are going to make these more punishable? In effect, the offences are probably committed in an environment where the punishment of that crime is probably not very relevant in the mind of the perpetrator.

Ms Rowe: I think that publicity about other perpetrators might end up filtering into the community and have an impact. You may be right in what you say. We have a case at the moment, for example, where a perpetrator was sentenced to 12 months imprisonment, and that sentence has had a significant impact on his behaviour now. That is not to say that it has corrected it completely, because there has been some recent harassment, but since our client has obtained a family violence order, that order is now working very effectively. I surmise that it is working effectively because of the previous sentence imposed on him. It might be a delayed impact, but I think the combined benefit of publicity about sentences of other people and an experience might prevent reoffending.

Ms Webeck: We are also talking about a prevention modality further downstream. This is about comprehensive respectful relationships education that happens throughout the life span of ACT children and young people, young adults and further

through. It is about trying to create a structure and a cultural competency about respectful relationships, which is really wanting to invite people into a more respectful way of conducting their relationships, but it is also transparent in needing to explain what the consequences of poor behaviour, violent behaviour and illegal behaviour in those relationships potentially can be, and what is enforceable in the ACT.

I would agree; while it is unlikely to play in the mind of a violent perpetrator in the moment, in order to think, "Better not do that because this could be the outcome of that," we are hoping to stop violence before it even becomes a seed in people's minds that this is permissible or possible behaviour to conduct in their world, and against somebody else.

I do very much believe in maximum penalties being part of that conversation. It can be part of a prevention conversation, but it is significantly further downstream than in the mind of somebody who is already using violence.

Ms Maclean: Just to build on that inference that when somebody is in the moment where they have lost all rational thought and reason and will not be able to think of the consequences, there is quite a bit of evidence that challenges that, actually. There was a really interesting outcome from the trial, I understand, in Tasmania. For perpetrators who had consistently breached family violence orders, they did electronic monitoring to see whether this would have any effect on further breaches. They found that it did. It really challenged that notion that it was a crime of passion: "I didn't know what I was doing." When there were real, transparent consequences for that perpetrator and they knew that there was follow-through, the trial did see a decrease in breaches.

I think that is a really interesting question. Something that we talk about all the time at the centre, as part of a trauma-informed approach, is that you need a range of options. There will not be the golden-ticket answer. I think that, at one end of the spectrum, you have strong deterrents, and the other end of the spectrum, as Sue spoke about, is that prevention side. We need to be adequately resourcing and taking a holistic view of that spectrum.

THE CHAIR: This committee is also inquiring into community corrections, and some of the things that you have all mentioned are very relevant in that space as well. That inquiry is still open, for your contemplation.

MR BRADDOCK: You were talking about when a victim makes the decision as to whether to come forward and engage with the criminal justice system. I want to understand a bit more in terms of the reasons why a victim may or may not make that decision, and how this bill or a subsequent package might assist them in that decision-making process.

Ms Webeck: From our perspective, that is the difference between the announcement of legislative reform and the implementation, around how that is actualised in practice on the ground—what training and skills development are given to general duties police officers in order to respond to victims of family, domestic and intimate partner violence, how we communicate that as a community, what our expectations are of the entire system and process that exists, right through to collecting statements,

investigation, charging, prosecution and the like.

As our colleagues at Women's Legal said before, it is an ecosystem. These reforms could very easily be a fantastic announceable, or they could be a fantastic package that creates a level of community confidence and trust so that the moment somebody engages in that process they are getting a consistent, clear, accurate, respectful and dignified engagement and approach through all of those phases. It would build on frontline service delivery from community organisations, agencies and individual people in the community who might be supporting that person who has come forward and said, "Something is not okay; this happened in my relationship and I need some help." It will build confidence in people saying, "Hey, this is a real, tangible opportunity and engagement in the ACT that has positive outcomes for victims and survivors who experience domestic, family and intimate partner violence." Part of that is about the inclusion in this package around the remediations for victim impact statements as well.

Ms Rowe: Fear of consequences is one of the biggest inhibitors of victim survivors making reports to police. The aspects of the rest of the system that we have talked about have to be in place so that they not only feel that they will be safe if they do make a report—the perpetrator, of course, will then be very aware that they have made that report—but that they are safe. That relates to, where appropriate, family violence orders being accessible, put in place and enforced, and that there are other resources in support agencies for crisis accommodation and the various other things that enable us to keep victims safe, particularly during a criminal justice process.

Ms Maclean: Building on what Margie said, the consequences also include the fear of involvement by care and protection. That is one of the biggest issues that we see with clients. We get those calls saying, "Do I or don't I report to police? If I report, will the person go to jail?" We say, "We don't have a crystal ball." There are all of these variables. It depends on the evidence, it depends on whether the matter is referred for prosecution by the police in the first place. There is also the fear that the police then do a mandatory report to care and protection, and how that will be dealt with.

There is a whole range of issues that women need to decide upon, usually in a very short amount of time. It is crucial that they have access to appropriate legal advice, obviously, as well as those social supports, including around housing, mental health supports and so on, to be able to receive that support in order to make the best decision for their family.

Ms Gumley: In relation to the victim impact statement, this bill allows for adjournment to occur when a victim impact statement has not been submitted. Actually, that demonstrates to victims of these crimes the importance of their voice being heard in the proceedings, and removes the ability for that to be cross-examined. We understand that the victim impact statement is one of the only ways in which victims are able to communicate how that crime has had an impact on them, but we know that this is a very constrained and structured process. It does not allow for the nuances of how family violence impacts them. I suppose this links into the changes proposed to the victim impact statement.

THE CHAIR: We are talking about a lot of the same things. As I said, the

community corrections inquiry is still open, and I note as an observation that the committee did not receive a submission from either of your organisations. One thing that came up was the idea that incarceration is really not working—it does not reform and it does not restore. The bill seems basically to still be head people towards incarcerated situations. Do you think there is any room at all for other community corrections options to be added to the current proposed legislation?

Ms Maclean: There is always space for options. We will always talk about there not being a one-size-fits-all for people. What I think needs to happen as part of that process, though, is greater input and opportunity for the victim survivor to have a voice in that process. One of the issues that some people call up about is that they are not aware that somebody is up for parole, that they think they are up for parole and they cannot access that information or that they want to present evidence to the parole hearing but there is no clear process or funded service to properly do that.

We do need to look, obviously, at not channelling everyone into the prison system, but I do think that, for some offenders, as we have discussed, that person physically not being allowed to come to a property is the only thing that has kept that woman safe.

DR PATERSON: My question is in respect of the addition to the definition of family violence around the harmful use of or interference with technology. I am interested in your thoughts on this addition and how much this comes into your work with victim survivors.

Ms Webeck: We absolutely welcome that addition. It is an ever-evolving but incredibly present space. We have seen recent reports out of WESNET around their articulation that roughly 100 per cent of people experiencing domestic, family and intimate partner violence have experienced some form of technology abuse. It does come with a caveat, which is our advocacy for and our commitment to ensuring that there is resourcing for training and support for those frontline response services, to ensure that technology abuse is able to be identified and able to be engaged with.

We continue to see clients of our service who receive communications that have undertones of threatening behaviour, that are coercive, that are designed to instil fear and intimidation into that survivor; however, that is not recognised by police when they attend, because they see that piece of information in and of itself and they are not identifying the other risk components to that or the other experiences around the power dynamic, the control, the abuse, the intimidation et cetera.

We absolutely welcome it, but we are very firm on the fact that there needs to be some substantial training and resourcing to ensure that we are picking up technology abuse, and keeping pace with it as well, because technological abuse is changing every day. We are astounded by the amount of clients that come to us who have a new or unique story; then there is a rapid fire of the same type of abuse being used for subsequent clients as well. It is fast paced and we need to keep up.

Ms Rowe: We wholeheartedly agree with that. The only other point to make is that the threat to publicly, in some way, publish intimate photos can have a devastating impact on women from culturally diverse communities, for whom shame and family

values are very much at the forefront of their minds. It can work very effectively to deter them from leaving, going to police or obtaining a family violence order.

DR PATERSON: Is there another aspect, in terms of the meaning and definitions of family violence, that you see coming through with victim survivors that you feel is longer term and needs to be on the radar, in terms of a definition of family violence?

Ms Rowe: This is not directly on the definition of family violence, but we raised in our submission the issue with the mis-identification of the person who most needs protection. I believe that in Queensland the legislation has been changed to give some guidance about how the person primarily in need of protection is to be determined.

The reason that is important and that it may be relevant to the way that family violence is defined is to encourage police and the courts to look at it as a whole pattern, usually in the context of coercive control, rather than the incident approach that, despite the definition, is often the one that is taken. You are probably very aware that ANROWS has released a report about this, but the information in that report was concerning to me. I thought I would not be surprised by anything anymore. It was that just under half of women who were killed and identified in the Queensland death review in 2006 and 2007 had been identified as respondents to family violence orders; and, in nearly all of the domestic and family violence related deaths of Aboriginal people, the deceased had been identified as both a respondent and an aggrieved person prior to their death. It is not a niche problem and we see it not infrequently. I think that is the experience of DVCS as well.

MR BRADDOCK: Whilst not directly related to this piece of legislation, I would be interested in your perspectives on coercive control and the applicability of current legislation to be able to respond to that effectively or not.

Ms Maclean: We did make some submissions about that when they were considering introducing a specific law around coercion and control. As Margie has said, it is about recognising that family violence is not incident based, that it is actually part of a wider pattern. Having a law which recognises that is valuable, and it will possibly pick up more of the nuances of family violence.

What we ultimately talk about sometimes is expecting a system to catch everything. Normally, by the time it is at the police stage, and by the time it is in the courts, it is too late. Whether it is the family law system, the criminal justice system or any type of legal system, we see that it really highlights the failures that have led up to people being at that point across other services and the sector more broadly. Yes, there is a place for a particular offence around coercion and control. Again, there cannot just be this constant focus on creating new laws; we have to look at that broader spectrum of responses.

Ms Webeck: We also, in light of that, have to do some deep listening, learning and working with Aboriginal and Torres Strait Islander community members and community-controlled organisations, to understand the very real concerns that have been expressed particularly by the Aboriginal and Torres Strait Islander community around coercive control. Again, that speaks to the core of the mis-identification of the person who most needs protection in the system. There is a significant amount of

development of cultural competency in that space that needs to be pursued in order for a reform like that to be effective and serve the purpose of protecting those most in need of protection within our community.

THE CHAIR: I will come back almost to how I started. As you are all aware, recently—it might even have been today—the federal government announced a $100 million family violence funding package. Put yourselves in the position of saying what happens to the ACT share of that. What would you be doing?

Ms Webeck: That is a really interesting question in the current climate, given that the Domestic Violence Crisis Service already receives funding under the Keeping Women Safe in their Homes initiative, and we are yet to have clarity about whether this funding announcement is a repurposing of the money that we already receive for a very specific purpose which is akin to but slightly outside what is being referred to in this announcement today. DVCS continues to be concerned about this announcement, with the lack of communication and clarity from the federal government in regard to what this $100 million is actually going to serve within our community.

What we have seen in the previous funding initiatives under Keeping Women Safe in their Homes is a lack of long-term commitment and investment in skills and capacity building across the sector to respond to, as I said, the fast-paced, evolving technology abuse that we are seeing in relation to domestic, family and intimate partner violence.

What is concerning in this announcement is that it is for technological infrastructure and skills. We know as a service that one of the integral parts of responding to and combating technology abuse is the safety planning, the case management and support, and the implementation of a skilled and experienced domestic and family violence frontline service delivery worker, alongside those technological infrastructure initiatives.

This current announcement does not mention case management, support or frontline service delivery. It does sound very much like a technology-based company or companies being able to contribute to particular sweeping of surveillance mechanisms and the like.

From where I sit, I am concerned that this is a very small sliver of a piece of an entire pie. Again, while this is a remarkable announceable, I am struggling to work out how this will increase safety in our local community. Our experience previously is that the ACT jurisdiction's part of these financial announcements generally is incredibly small. We do not have these types of private enterprise or business partnerships here in the ACT that other jurisdictions may have access to in regard to combating these types of surveillance and use of technology for abuse. Yes, we absolutely need something like that in the ACT, and the resource is greatly received, but at what cost? That is currently the question.

Ms Maclean: While we are talking about funding, the commonwealth government announced additional funding for women's legal centres in the May 2021 budget. The ACT Attorney-General provided two-thirds of that dedicated funding directly to the centre, yet the remaining funds were subject to a competitive process and were

distributed to other services, notwithstanding the original budget announcement where it was for specialist women's legal centres.

The funding received remedies longstanding underfunding in this sector and will allow the centre to maintain existing service levels but not to increase them to better meet need. To date the centre has not yet received those funds. It is great that there is extra potential resourcing for the sector, but we are still dealing with funding deficiencies from last year's budget.

THE CHAIR: On behalf of the committee, I would like to thank representatives of the Women's Legal Centre and the Domestic Violence Crisis Service who have appeared today. The secretary will provide you with a copy of the transcript of today's hearing, when it is available. I do not believe there were any questions taken on notice. It shows how well prepared you were. Again, I would like to thank you for participating in the hearing.

Short suspension.

BERRY, MS YVETTE, Deputy Chief Minister, Minister for Early Childhood Development, Minister for Education and Youth Affairs, Minister for Housing and Suburban Development, Minister for the Prevention of Domestic and Family Violence, Minister for Sport and Recreation and Minister for Women

WINDEYER, MS KIRSTY, Coordinator-General for Family Safety, Community Services Directorate

THE CHAIR: On behalf of the committee, I would like to welcome the Deputy Chief Minister and Minister for the Prevention of Domestic and Family Violence, Ms Berry, and Ms Kirsty Windeyer, the Coordinator-General for Family Safety in the Community Services Directorate. Thank you for appearing before us. Could you each confirm that you have read the privilege statement and that you understand its implications?

Ms Berry: Yes, thank you, Chair.

THE CHAIR: Ms Windeyer, do you understand the privilege statement?

Ms Windeyer: Yes, I have read and understood the privilege statement.

THE CHAIR: According to my papers, we do not have a submission from the directorate, so an opening statement would be most appropriate.

Ms Berry: I might start by talking about the Family Violence Act and the review work that has been put in place with respect to the Family Violence Legislation Amendment Bill, which is what I understand we are talking about today. Ms Windeyer might be able to give some more detail, if the committee finds it useful.

This bill, as you all know, creates a new aggravated offence scheme for offences involving family violence. The aggravated offence scheme is phase 2 of the ACT government's approach to sentencing family violence matters. However, while the Family Violence Legislation Amendment Bill is welcome, I would continue to say that we understand the complexity and complication of domestic and family violence. Having regard to implementing legislation or creating new crimes, we cannot simply continue to lock people up and think that we are going to arrest our way out of this. That is why we have such a comprehensive approach through our family safety levy and all of the different approaches that are made through that, as well as the response to sexual assaults through the sexual assault response and prevention program of work.

We do welcome this bill. We particularly welcome the review period, because we are concerned that this legislation could have a disproportionately negative effect on Aboriginal and Torres Strait Islander people, particularly because of their over-representation in the justice system. Having that review period to understand whether that is the impact of this legislation is a really important part of it. We are keen to see whether this does have the impact that has been a concern raised by members of the community in that space.

With respect to a couple of other things that are part of this bill, it amends the definition of family violence to include the harmful use or interference with

technology—for example, using electronic devices or social media to publish intimate images of a family member without consent. This is a particularly important change and reference in the bill. As part of that, the definition of family violence is also relevant to create that aggravated offence scheme.

Another part of this bill is the change or renaming of the offence of "persistent sexual abuse of a child or young person under special care". This bill changes that offence from "sexual relationship with a child or young person under special care" to "persistent sexual abuse of a child or young person under special care". The term "relationship" in the name of the offence fails to recognise that a child cannot give consent to sexual acts, which must be established to take out the offence. The term "relationship" carries connotations of consent, and that does not accurately reflect the offending behaviour involved.

Renaming that offence under the legislation is a move towards the national consistency that we have all heard about. I refer also, of course, to Grace Tame's recommendations in this space for that description to be changed so that it clearly identifies what the persistent sexual assault of a child or young person under special care is actually about.

Have I missed anything there, Ms Windeyer? Is there anything more we can talk about as far as the actual bill is concerned?

Ms Windeyer: No, I think you have covered it off very well, in terms of acknowledging where this bill sits in relation to the broader work in trying to move towards a more coordinated, integrated response to domestic, family and sexual violence in the ACT. While law reform is just one part of that coordinated response that is needed to help prevent and improve responses to domestic and family violence and better protect victims, it is an important part of that move and an important step towards building a stronger legal framework.

THE CHAIR: Thank you for those opening statements. What do you think is not working at the moment that necessitates the passage of this bill?

Ms Berry: It has been very clear over the last couple of years, particularly with Grace Tame and her very public role in advocating for changes around consent and the definition of relationships. The changes that are being made in this bill in that particular space make it clear that a child cannot possibly offer consent around any kind of sexual relationship. It is about making sure that is clear in this kind of legislation. That is a fairly obvious and probably a very much needed change to the legislation itself. It also sends a clear message to the community about what we are talking about here and the seriousness of these issues. With the bill itself and having regard to the aggravated offences, it makes it clear and sends that very clear message to the community about sexual assaults on young people.

THE CHAIR: Probably the headline aspect of the bill is the higher maximum penalties for offences committed in the context of family violence. We heard earlier today from the Women's Legal Centre and the Domestic Violence Crisis Service. They spoke of some inconsistencies in the administration and processing of these offences. What, to your knowledge, would need to be improved, practically speaking,

in processing these offender situations?

Ms Berry: That might be a question for you to ask of, and to get a more detailed response provided by, the Attorney-General. With respect to our office of the coordinator-general, in coordinating this response to domestic and family violence across a range of different areas, and making sure that it is integrated, Ms Windeyer, do you have any other comments to offer here?

Ms Windeyer: It is in relation to the issue that crimes arising from family violence in this context are not recognised as serious offences, and that the change in the law would encourage a systems review of how that system understands the dynamics of domestic and family violence.

DR PATERSON: I am really interested in the addition to the definition of the meaning of family violence with the harmful use of or interference with technology. One of the things that was pointed out in the last hearing was how this is such an ever-evolving, rapidly evolving, situation. I am interested, from the perspective of the coordinator-general, in how you will look at this from a broad range of aspects.

Ms Windeyer: In relation to the definition of family violence, it is welcome. It is amended to include the harmful use of or interference with technology. There are, as we know, expanding ways in which perpetrators abuse their intimate partners. Those ways are ever expanding. It is important that we keep up to date with them and, where we can, the legislation is amended to take account of those and make sure that they are included in the relevant definition. The bill allows for a review in three years, which is welcome, because we will be able to keep up to date with what is happening and what other amendments might need to be made in that period of time.

DR PATERSON: Going a step further, how will the ACT government be proactive, rather than waiting for three years to see what comes out of the courts, in addressing this issue of technology and its use in relationships?

Ms Windeyer: We do have some training with Care Financial in relation to technology abuse. That was rolled out last year. Our sector partners were involved in and received that training. So that we can keep developing those things, we will look at remaining in partnership with Care Financial to ensure that there is more education in relation to technologically facilitated abuse—so that there is more widespread understanding of the nature of it and the effects.

Ms Berry: Whilst we are talking here about this particular bill, and from the perspective of the office of the coordinator-general, of course, we have a responsibility—and we work very closely with the eSafety Commissioner within our schools—to make sure that our young people understand their responsibilities when they enter the online world, particularly around the use of Chromebooks, iPhones and the like. Part of that training is directed at parents, so that parents can participate, and understand the safety measures that can be put in place when a child first starts interacting online in that way.

This is the world that we are in; we have been in this world for a little while now, and we are still catching up with the digital technology, particularly around the use of

digital technology to facilitate gender-based violence. We are definitely in a space where all of us as a community need to understand the impact of that technology-facilitated violence and what it actually means. It is that kind of stalking behaviour, the sharing of personal details, photos or death threats. There can be a range of different ways that technology is used to perpetrate violence and control over someone.

MR BRADDOCK: In the previous session with DVCS and Women's Legal, they stressed the importance of the ecosystem that would be supporting the implementation of this bill, being NGOs, government, courts, police and so forth. What changes would the ACT government be making to that ecosystem to support the implementation of this bill?

Ms Berry: It might be useful, Ms Windeyer, to talk through the safety action pilot and how that works, with respect to an integrated response to domestic and family violence.

Ms Windeyer: The Family Violence Safety Action Pilot is run out of the Victims of Crime Commissioner's officer. The safety action pilot brings together a range of agencies to look at high-risk domestic and family violence matters, which includes those that operate outside the criminal justice system. It has been operating for 15 months and it has assisted approximately 266 families with a number of children. That pilot brings together those partners in order to enable them to share information so that we get the fuller picture and are able to assess risk to the victims and their children, and work out what actions should be taken next in relation to that violence, in relation to those particular people.

As well as the safety action pilot, there are programs available for perpetrators in the ACT. That is important, of course, because we do not want only to be looking at victim survivors; we also want to turn the lens onto perpetrators and their behaviour, because it is, of course, that which is leading to the violence itself.

We have the Room4Change program, which is delivered by the Domestic Violence Crisis Service, for men who want to stop their use of violence and controlling behaviours and build healthy, respectful relationships. That is a 30-week men's behaviour change group, along with individual sessions.

We also have in the ACT EveryMan. That organisation provides specialist support to men and others who have issues with violence and abusive behaviour towards partners and their families. There are two programs there—"working with the man" and "preventing violence, managing emotions". Relationships Australia also offers special family violence counselling for those who have suffered and for those who have used threatening, abusive or violent behaviour.

MR BRADDOCK: Will there be any new programs or changes to existing programs that will accompany this bill, if it is passed?

Ms Berry: Despite the decades of work that has occurred in this space around domestic and family violence, it continues to be an area that is ever changing and the response needs to be integrated. I expect that is what Domestic Violence Crisis

Service and the Women's Centre for Health—

MR BRADDOCK: Legal.

Ms Berry: said, when they were here earlier. It is so complicated and complex. That is why we have those programs in place, with Room4Change and EveryMan. We have moved our focus on to perpetrators as well, because what we have heard from domestic and family violence victim survivors is that they do not necessarily want the perpetrator locked away; they just want the violence to end. They want their relationship with their children and their families to continue, but in an amicable way.

That is why at the start I said that we cannot just keep thinking we can arrest our way out of this. We have to look at different kinds of ways that we can respond to this by listening to the experts on the front line. That is where that safety action pilot work has been so important. It is taking an individual and their family and making it safer for them by sharing across a range of agencies, non-government and government, the story of that person. You then wrap around the kind of safety supports and other different kinds of supports to keep them safe from the perpetrator, who will be at varying places on their perpetrator journey, if you like; they might be a new perpetrator, they might have been inside, or the person might be under threat because they are pregnant. There could be a variety of other reasons that that person and their family are not safe.

I think that is one way, and it is a relatively new one. Even the Room4Change and the perpetrator change programs are relatively new, so I think we are all still in a phase across the country, and indeed the world, of trying a range of different, innovative measures to nail how we stop this violence happening, from education to how we respond to it both legally and in services, and how we prevent it from happening from the start.

DR PATERSON: With that pilot study, I think you said it was for high-risk situations. I am interested to understand, for those that do not qualify as a high-risk setting, if this pilot is deemed successful, will this be something that is rolled out more broadly?

Ms Berry: It is definitely the intention to keep people safe in the first instance and get this information sharing across agencies and government directorate agencies working really well so that a victim does not need to continue to reshare their information, but so that everybody who has bits of information about an individual can put that together with a really good safety plan to keep them safe and they can get on with their lives. That is the intention of the program. There are assessments that are made along the way. Ms Windeyer might be able to talk to how people in those families get into the action pilot.

Ms Windeyer: There is an intake process that the safety action pilot undertake when particular matters are referred to them by partner agencies. They use a risk assessment to ascertain whether or not it fits within the criteria of the safety action pilot. If it does not then the safety action pilot will provide supports to agencies. They discuss next steps with them, they use mentoring practices, they engage with clients and they advocate, all in order to assist those families who are not brought into the safety

action pilot itself.

There are other services—obviously, the Domestic Violence Crisis Service and our other services—who continue to do the work that they ordinarily do, and it is those high-risk cases, I think, where there is particularly a risk of lethality. Obviously, where there can be coordination in relation to all cases, and integration between the various systems, that is a good thing. Where partners are able to do that, they do collaborate. We will be looking at the safety action pilot and its outcomes to see where it might evolve next.

What we have done in this financial year is to allocate some money for an Aboriginal and Torres Strait Islander worker and a worker from the culturally and linguistically diverse community to enable a broader reach of the safety action pilot, because we are aware that there are particular barriers that women and children may experience in those communities.

THE CHAIR: I have a supplementary, going back to Mr Braddock's question. Could you confirm whether additional funding will be accompanying this bill to support its policy intent?

Ms Berry: Those are decisions for budget, Mr Cain, should the bill pass. However, the continued work through the domestic and family violence safety levy, the work of the office of the coordinator-general and the government's future response to the sexual assault response and prevention program are all where funding has been provided or has been announced so far. We continue to work very closely with organisations like the Domestic Violence Crisis Service and the Women's Centre for Health Matters and others on how we respond to this really wicked issue in our community, across a range of different areas. It cannot just be one approach or one door; it needs many approaches.

THE CHAIR: Okay. I will start this as my fresh substantive, even though it is very much on the funding theme. As you are aware, today the federal government announced a $100 million family violence funding package. Do you have any early indications of where the ACT's allocation will be used?

Ms Berry: No, I do not think we have any detail on that or on the funding.

THE CHAIR: Okay.

Ms Berry: I understand the announcement; we just have no detail or information at all about it.

THE CHAIR: Thank you.

DR PATERSON: My question is: how have the lived experiences of victim survivors informed and shaped provisions in the bill, and also the government's response and action regarding family and domestic violence?

Ms Berry: Sorry, Dr Paterson; could you repeat the last part of that question?

DR PATERSON: Yes. How have victim survivors' input and lived experience informed and shaped the provisions of the bill, as well as the government's response more broadly to family and domestic violence?

Ms Berry: They have played a significant role. We have always wanted to make sure that victim survivors are front and centre and that their experiences and stories across every part of their journey in the domestic and family violence space are listened to very carefully. They were very much part of our co-design work in the development of the response to the family safety work, the implementation of the family safety levy, and, of course, they were involved very deeply in the sexual assault response and prevention program of works.

As I said at the start of this, what we have been hearing from victim survivors and services in the domestic and family violence space in particular is that we want to see the change behaviour programs working, but we really want to make sure that there are more suitable programs for perpetrators, rather than just locking them away. That is why we have Room4Change, which I think continues to be one of very few in the country of its kind. There is another similar program in Western Australia but, as far as I am aware, it is pretty much one of a kind here in the ACT, and around the country. Ms Windeyer, did you want to talk to the victim survivors' input into this work?

Ms Windeyer: Thank you, Minister. One of the things that we have heard from victim survivors is that they do not consider that the seriousness of what has happened to them is reflected in sentencing. That is something that is heard across the various services with whom we work as well—Victim Support, DVCS, the Women's Legal Centre and others.

In relation to going forward, we are proposing that there be amendments to the Domestic Violence Prevention Council. Under that, it is likely that there will be a more formal victim survivors voices reference group, but we will look very carefully, obviously, at how that happens, to ensure the safety of victim survivors, both their safety from perpetrators' violence and their psychological safety.

THE CHAIR: You have mentioned concerns about the sentencing. The sentencing theme is possibly one of the headline items for this bill. Are you saying that you are seeing inconsistent sentencing from the courts as a bit of a rationale for this bill?

Ms Berry: That might be a question for the Attorney-General.

THE CHAIR: It was something that Ms Windeyer mentioned, so she obviously has reasons for that view.

Ms Berry: We can provide a view from our perspective, but that might be a question, again, for the Attorney-General. Ms Windeyer?

THE CHAIR: That is fine. I am very happy to hear your perspective on that statement and why that was issued.

Ms Windeyer: That was in relation to what we have heard from victim survivors on their views of sentencing, coming from the services with whom we work, such as

Victim Support.

MR BRADDOCK: You have touched on this in a couple of your answers, but I was hoping for a more complete and structured answer about what the government would do to ensure that the over-representation of Aboriginals and Torres Strait Islanders is not adversely impacted by this bill.

Ms Berry: That is a really important question. That has been a concern that has been raised with us. We have noted that and, in our discussions with the Attorney-General on the implementation of the bill, ensured that there is a review period, to understand whether what we have heard is the case. Three years gives a time frame to understand if that is indeed the case and to understand whether it means that more Aboriginal and Torres Strait Islander people are impacted or whether it means that they have longer sentences.

That is why that review period is so important in this: to make sure that we understand whether it does have that negative impact. Through the review period, or in stages over the next three years, if we are seeing that then we can respond appropriately and make sure that that advice goes back to the Attorney-General. In the third year of the review period, it can be considered whether there need to be any changes to the bill, should it pass, in the future.

MR BRADDOCK: So there will be monitoring and the possibility of correction before that three-year review period date, if a concern is identified?

Ms Berry: I think the intention is that at three years you will have enough information to give a considered response, if that is required. Definitely, what we have been hearing from the sector is that there is that concern, and that is why we have made sure that the review period is in there. We will definitely be working with and hearing from the sector and others about whether that is the impact and, if we need to do something sooner, we can definitely take that up with the Attorney-General.

THE CHAIR: Minister, has your office identified any perhaps unintended consequences of the scheme to basically maximise penalties for offences committed in a family violence context? Again, the definition of what is a family violence context is something that we will hear argued, I am sure, in the courts, when offenders are presented. But do you have any suggestions for amendments to this bill or anything that can further advance it on a policy basis?

Ms Berry: From our perspective, the main thing that we wanted to be assured of in this bill was that there was a review period, keeping in mind the concerns that we have heard. There have been important changes to this bill that are required and should not have any negative impact, like the change to sexual assault on a child. That is a pretty significant change. This bill outlines the reasons why that needs to be in place, particularly around the perspective of a child and whether a child just cannot provide consent. That has been a very important and significant change that needed to be made in this bill.

There will always be an ongoing need for change in various legislation and support services as we tackle domestic and family violence holistically, which is what we are

doing in the ACT with our response. We will continue to listen to the sector about other changes that might need to be made to legislation in the future and make sure that we consult widely and listen carefully to all of the stakeholders that are impacted.

DR PATERSON: Minister, are you able to speak to where the ACT is at, as a jurisdiction, in criminalising coercive control?

Ms Berry: I might ask Ms Windeyer to provide a bit of detail around that.

Ms Windeyer: Thank you, Minister. The minister referred the question of criminalising coercive control to the Domestic Violence Prevention Council and sought its advice in relation to whether that was an avenue that the ACT should go down at this stage. A significant amount of work was done by both the council and affected and involved services, organisations and agencies who work in the domestic and family violence area. The advice that was given to the minister was that, at this stage, coercive control should not be criminalised but that the ACT should continue to look at what happens in other jurisdictions as coercive control is criminalised and, particularly and significantly, continue to consider what, if any, unintended consequences may flow from such criminalisation, particularly for Aboriginal and Torres Strait Islander people.

DR PATERSON: Is that report public?

Ms Windeyer: No, it is not. It is something that is given to the minister.

THE CHAIR: Related to that: to which minister in particular? Is it Minister Berry, in her current capacity?

Ms Berry: That is provided to me by the Domestic Violence Prevention Council, as part of their work and the advice that they provide to me as minister.

THE CHAIR: Are you planning to release that report?

Ms Berry: It is advice to me by the DVPC. I do not know that there is any issue with releasing it, but I might just get some advice on that. We have spoken to it publicly on a number of occasions, so there is nothing particularly new in what we are talking about now that we have not discussed publicly in the past. I will get some advice on that and we can provide it to the committee. I should say that I am providing a statement on the safety action pilot as well next week, so probably that will be available for the committee as well.

DR PATERSON: As a final question, Minister, with the Sexual Assault Prevention and Response Steering Committee report that came out at the end of last year, can you talk to the intersection between family and domestic violence and sexual assault and that crossover—the group of people that may be affected by both things simultaneously—and how we are supporting those women in particular?

Ms Berry: Thanks, Dr Paterson. You have pretty much nailed the complexity of this domestic and family violence and sexual assault prevention and response work and the interactions. Sometimes there are interactions between them both, and it is about

how we, as a government, and the support agency in the community can then respond to that. Ms Windeyer?

Ms Windeyer: Yes, thank you, Dr Paterson. There is obviously a clear intersection between domestic, family and sexual violence. That is not always the case, but where there is domestic and family violence, a component of that domestic and family violence is often sexual violence. One of the things that came through in the sexual assault prevention and response program report related to the inadequacy of sentencing where there is a clear overlap between sexual violence and domestic and family violence. That is why, in the work that is done, it is important to recognise both those who experience sexual violence as part of domestic and family violence and those for whom it is different. There are different things that operate in relation to that. It is expected that in relation to the SAPR report, as we call it, the report that was given to government last year, there will be a response this year.

THE CHAIR: Thank you. Minister, would you like to add anything, in closing, very briefly?

Ms Berry: Just to say that I think that is why it is so vital for the ACT government—or all governments but particularly ours—to have an office of the coordinator-general to coordinate the work across government in responding to these matters. Because they are so intersectional across government and the support services outside, it needs a coordinated approach. That probably did not exist very well before. As I said, we are doing pilots like the safety action pilot to get those coordinated responses around a victim and their family and also to see what other kinds of supports we can put in place for perpetrators to change their behaviour so that the violence ends.

That is the work of the coordinator-general, and having that coordinated approach across both of those areas, domestic and family violence and sexual assault, is really important. I thank the committee for giving us a chance to come and talk with you today about all of the other kinds of activities around responding to this, over and above the legislation and the legal response.

THE CHAIR: Thank you very much. On behalf of the committee, I would like to thank you, Minister, and Ms Windeyer, for appearing before us today. The secretary will provide you with a copy of the transcript of the hearing, when it is available. If witnesses have taken any questions on notice, could you please provide the answers to the committee secretary within five working days of the receipt of the uncorrected proof transcript of today's hearing. Thank you, everyone.

Short suspension.

KUKULIES-SMITH, MR MICHAEL, Chairperson, Criminal Law Committee, ACT Law Society

THE CHAIR: The committee would like to welcome the representative of the ACT Law Society Mr Michael Kukulies-Smith, who is chairperson of the criminal law committee of the ACT Law Society. Mr Kukulies-Smith, could you confirm that you have read the privilege statement and that you understand its implications?

Mr Kukulies-Smith: Yes, I have read the privilege statement and I am aware of the implications.

THE CHAIR: Thank you. Would you like to make an opening statement?

Mr Kukulies-Smith: Certainly. The Law Society acknowledges that family violence is a serious matter with far-reaching consequences for our community. It is very important that offenders responsible for acts of family violence be held appropriately responsible and be appropriately punished for their actions. However, the ACT Law Society does remain concerned about unintended consequences of this bill, in particular in terms of sentencing practice more generally, through the consequences of separating out family violence as a completely distinct body of sentencing law.

The Law Society believes that there may be unintended consequences that flow from that. The Law Society is also of the opinion that increasing statutory maxima for a number of offences, if the offence involves family violence, as the bill proposes to do, is based on an assumption that the maximum penalty will be a meaningful mode of deterrence and a meaningful way of addressing future behaviour. The Law Society relies on extensive literature that, in relation to maximum penalties and the nature of the criminal justice system in general, is a blunt instrument to change future behaviour.

The reality is that most people who commit offences do so on the assumption that they will not get caught. That is perhaps even more the case in a family violence offence than in a non-family-violence offence. Often it is the case that family violence offences arise in the moment and without appropriate pause for thought. It is, in that circumstance, particularly unlikely that a person is going to have regard to what is the maximum penalty and therefore desist from actions that they may otherwise have spontaneously engaged in. In that regard the Law Society is not convinced that simply increasing the maximum penalty is going to lead to what is presumably the aim—a decrease in family violence. That, of course, is an aim that the Law Society greatly supports. There is a need to address the issue; the Law Society is concerned that simply increasing statutory maxima is not a way of effectively achieving that.

THE CHAIR: Thank you. I will start with your closing comment there, even though there are several questions I have, based on your submission. Thank you again for providing us with a submission. The increased sentencing regime was something we discussed briefly with the Women's Legal Centre and the Domestic Violence Crisis Service, and is something I raised. Their view—and I am interested in your view—is that it may not affect the next event after the bill is passed, but with a track record of offenders having more serious sentencing regimes, perhaps that will assist the message to get out there that this is behaviour that will be very costly for perpetrators.

Mr Kukulies-Smith: That is always the assumption that underpins increasing the maximum penalty; but, as I said, it always makes the assumption that the person thinks before they act. With respect, experience in our court systems suggests that that is frequently not the case. That is the issue, in fact, in relation to a lot of offending, not just family violence offending. It is the thought process in the moment. That is why educative programs around learning to relate without violence et cetera—programs which exist now—are, in the Law Society's estimation, more significant factors in the reduction of future family violence and avoidance of people becoming recidivist offenders in this regard, and are better placed in a more general sense.

Obviously, those are programs aimed at people who have already offended. There can also be educative programs aimed at people who have not yet offended, to avoid them ever offending. Indeed it can be said that sentences are only ever imposed on those who have offended and been caught. So to the extent it does dissuade in the way suggested, it seems to be limited principally to those who have been before the courts, because the vast majority of people, I would suggest, are unaware of what the actual penalties are. People are already aware that you can face jail for committing an act of family violence. I think it would be naive to suggest that people in our community have anything other than that view—that they could go to jail if they commit an act of family violence. I very much suggest that they would not have any idea of what the numbers would be. And that would be true of almost any offence you could pick. People would not have any idea of the numbers involved. Indeed, you could ask me about a list of offences now. For some of them I would be able to give you an impression of, based on my 20 years in practice, but for many I would have to go and look at case law and numbers and come back to you in terms of what those numbers are—and that is as a person who practises regularly in this field.

DR PATERSON: I have a supplementary question on the sentencing. We have heard already that it is very troubling that maximum sentences, as they are, are not enforced. There is a bit of a perception, at least, that there are irregularities and inconsistencies in sentencing. There was a suggestion that raising the maximum sentence may actually bring things up a bit in sentencing for family violence. Do you agree with that?

Mr Kukulies-Smith: At a theoretical level, if you increase them across the board, yes, it should, because in the starting point set down by the High Court in relation to sentencing, we look to the maximum penalty first as a yardstick against which to measure offending. In that sense, yes, if the yardstick sets the bar higher then the bar is set higher. As to whether or not they are high enough, that is ultimately a matter for the legislature. The Law Society is not going to express an opinion as to what the exact numbers should be.

The Law Society's concern, though, is that if we raise them in relation to family violence offences, as this bill does, then what of people who have other special care relationships? The issues that are usually cited as the justification in relation to family violence offences being more serious et cetera are around the relationships that exist between the offender and victim, and breaches of trust et cetera. There are many other relationships that exist in our community where the same can be said. The same could be said for those who are under care—student-teacher relationships, and people who

are in care facilities where their carers assault them. Why should they not come under this? That raises the question: will we have a separate set of penalties for that et cetera? So it flows through the system.

One of the concerns the Law Society has is that there need not be a completely separate set of penalties in order to achieve that outcome, if that is the case. At least on an anecdotal basis, the overwhelming number of certain types of offences are committed in a family violence context. So if that is the case for that particular offence, and the issue that the Legislative Assembly sees is that the penalty is wrong for that offence, then the offence could be changed across the board rather than only in the circumstance of family violence.

DR PATERSON: I am interested to know what the Law Society would view as legislative change, from a legal perspective, that would reduce family and domestic violence or assist in prosecutions.

Mr Kukulies-Smith: They are not necessarily the same. They are separate questions, perhaps. But dealing with the first, in terms of legislative reform the Law Society always supports educative and rehabilitative approaches, particularly in relation to a matter such as family violence. One of the concerns the Law Society has in terms of simply raising the maximum penalty and reducing the issue to, "We want to see harsher outcomes," is that harsher outcomes are not likely to be measured in a good behaviour order being extended from 12 months to 18 months. I think that those who advocate for harsher penalties are not talking about having good behaviour orders but rather imprisonment or something of that ilk.

One of the issues we already face in the ACT is that our jail is overcrowded. That is a reality. Another reality is that an overcrowded jail is unable to properly deliver rehabilitative programs. The first thing that happens every time a jail goes into an overcrowded state is that programs get cut back within the jail because of the stress that being overcrowded causes on the jail. Therefore, you are not going to properly achieve the rehabilitative aims of the process by simply increasing maximums if what is being called for is imprisonment.

If what is being called for is more onerous good behaviour orders, and perhaps compulsory rehabilitative programs for anyone convicted of a family violence offence, then that is a different matter. That is the sort of matter that the Law Society believes would have some change. A legislative change, mandating that certain programs et cetera of a rehabilitative nature become mandatory could be the case even in circumstances where the court does not proceed to record a conviction, for example. I appreciate that those would be controversial circumstances for those advocating for higher penalties, but it could still be the case that the simple finding of guilt would mandate, for example, compulsory rehabilitation courses et cetera.

One of the other issues that can never be lost in relation to family violence offending is that, in the vast majority of the matters we see before our courts, the relationship between victim and offender is in fact still an ongoing relationship. So the imprisonment of the offender or the increasing of the fine that is imposed upon that offender is, in truth, having a direct impact on the victim as well, and that cannot be ignored. There are cases—and clearly I do not say there are not cases—where there

has been a separation, as a result of the offending or not, so that relationship does not exist. But I suggest that in a large number—the majority—of matters that come before our courts the relationship that is the subject of the charges is an ongoing relationship, and therefore the impact of any sentence is going to be borne by the victim as well as the offender in real terms.

DR PATERSON: Do you think, though, the increase in the sentencing speaks to taking it outside the victim-offender relationship and saying, "As a society, we do not tolerate this behaviour," and it is the behaviour that we are trying to engage with and stop, rather than going into the dynamics of the relationship?

Mr Kukulies-Smith: I am not aware of a suggestion, though, within the law, that we do tolerate family violence. I understand that there are some groups that make that suggestion, but I do not think they make that suggestion with reference to what is going on day in, day out, week in, week out, in relation to the majority of cases before our courts. I do not think it can properly be suggested that our courts and our policing system et cetera are tolerating or encouraging family violence at the current time. I think those days, if they existed, are long gone, in terms of what is being said in relation to our courts.

MR BRADDOCK: In your submission, you mentioned that the bill would create an inappropriate two-tiered sentencing system. Can you expand on that, in terms of what issues and risks are associated with such a two-tiered system?

Mr Kukulies-Smith: A lot of them are practical. I gave the example in my opening statement of a school student who is assaulted by a teacher. Why should that teacher have a lesser penalty than if it was the student's parent who assaulted them? There is still a special care relationship between a teacher and a student that is violated in that example, and the same offence would be committed, but it would be seen as less serious. That is being done on the basis that a stronger message is meant to be sent in relation to family violence, but whenever you send a stronger message in relation to one issue, there is the risk that you are tacitly saying that it is okay or less serious in relation to another circumstance.

MR BRADDOCK: In your answer to the previous question from Dr Paterson, you were saying that you do not believe that the current system implicitly allows family violence to occur, but in answer to my question you were saying that, by imposing stronger sentencing for one particular type of offence, you are tacitly allowing the other offence to be seen as less serious.

Mr Kukulies-Smith: No, I am saying how the person will perceive it. One of the difficulties and one of the tensions that exist in our court system is: what is the court system about, what is the trial and hearing process about and what is sentencing about, at almost a philosophical level? That is one of the great tensions in particular in relation to family violence that you will have to grapple with and that the courts even have to grapple with regularly. When it comes to a hearing, a court is actually determining not whether there was a victim; the court is simply determining whether it can be satisfied beyond reasonable doubt that the individual charged with the offence committed that offence. That does not change whether or not there is in fact a victim. There may be a victim and the person is found not guilty, and that does not

change that victim's right to feel identified as being the victim of an offence et cetera. That is a tension.

The other tension on the sentencing side is that, in truth, for a person who has been criminally wronged, it is unlikely any action that the court takes is going to correct that wrong for that person. It cannot turn back time, so it cannot change that, and that is a tension, because sometimes it is seen that that is where not enough is being done, but that is an inherent tension in the system we have that has to be weighed up.

You are correct; I did say, in relation to Dr Paterson's question, that I do not believe it is sending a specific message to those offenders, but when I am talking about the two-tiered system, you are going to have people who justifiably feel a grievance as a victim, pointing to, "This person suffered exactly the same as I did, but at the hands of a family member; why has this sentencing regime applied and this outcome applied to the person who did that to them, whereas the person who did that to me suffered a different outcome?"

That goes back to what I accepted with Dr Paterson's question earlier, which was that if we do change the statutory maxima, you would expect the water level effectively to rise, in terms of sentencing outcomes. But if it does not rise uniformly then you have that situation where a person who is a victim is looking at what has happened to them and comparing it to another victim who, in an objective sense, may have suffered and been a victim of the same offence in quite similar circumstances, but the relationship between them and the offender is different, and it becomes the only reason for the difference in outcome.

The Law Society questions whether that is something that the Legislative Assembly wants to do. The Law Society is not saying that the Legislative Assembly cannot do it; it is just asking is that something that is intended to be done or is that in fact an unintended consequence and therefore a reason to pause in relation to whether to take that step or not, or whether to look at an alternative measure to address the issue. That would perhaps allow for it to be focused on what underlies the family violence scenario—the relationship of trust et cetera. I understand that various expressions can be used and various characteristics can be focused on there, and they are broader than just that. I just give that as one example that would then perhaps make it a principle of more uniform and more general application, rather than simply of specific application.

THE CHAIR: Mr Kukulies-Smith, in your opening and in the submission you have mentioned unintended consequences. Obviously, you are a very experienced criminal lawyer and well placed to assist us in this way. Are there actual scenarios that you think may inadvertently attract either a higher penalty or a penalty at all, if this bill passes?

Mr Kukulies-Smith: One of the concerns that members of the society have relates to what are the non-stereotypical examples of family violence. The stereotypical example is, obviously, intimate partner violence, usually male against female. We accept that is not exclusive, but it still remains the dominant form of family violence, and certainly the one that would properly be described as a stereotypical example.

The society is concerned that the definition "relevant relationships" obviously goes far

beyond intimate partner violence and can include, for example, violence of teenage children against their parents. The society asks whether or not leaving it so broad in the definition, and raising the water level, as I have expressed before, by simply raising the statutory maxima, is an appropriate way to treat those examples. The real issues, in the example of teenage children in particular, or those in their early 20s, may in fact be drug or alcohol related rather than the family relationship issues and dynamics, which are more common in relation to intimate partner violence.

I am not saying that those cannot involve drugs et cetera; they can involve drugs and alcohol. But there it is about a power relationship and power dynamic, whereas a child against a parent is in fact an inversion of the classic power relationship, but still fits within the definition and would still meet the tests et cetera. It would meet the circumstances of aggravation and attract the greater penalty, and therefore greater sanction. It is principally those sorts of examples that the society thinks may be of some concern, and we simply raise: are they things that have been considered?

DR PATERSON: Wouldn't a child go through the Children's Court?

Mr Kukulies-Smith: They would, but the reference to maximum penalty and the starting point remains. There is no differentiation in this scheme. The penalty et cetera remains the same. Yes, they would if they are a child and under 18, but where they are a 19-year-old et cetera, no. The penalties in this act still apply, irrespective; it is just that, in sentencing a young person, the court has to give rehabilitation primacy. They still have to have regard to the maximum penalty, and if that maximum penalty is higher, that has to weigh heavier in the sentencing exercise. It is still an application of standard sentencing practice. In the Children's Court, the only real change is that in any sentence there has to be a primacy given to rehabilitation.

DR PATERSON: This is something that I will bring up with the Attorney-General. In respect of restorative justice, I think there is a limit; if you are sentenced for over five years then you do not qualify for restorative justice.

Mr Kukulies-Smith: Yes.

DR PATERSON: With respect to what you said before about rehabilitation, the Law Society views that as a primary prevention of family violence in our community. Can you speak to restorative justice or rehabilitation type of approaches that should be brought into legislation?

Mr Kukulies-Smith: The Law Society has always supported restorative justice and has been very keen for, and supportive of, its expansion. It is still not extensively used in relation to family violence. Obviously, there are some scenarios within the family violence sphere where the Law Society accepts that it is largely inappropriate. For some individuals, particularly where there has been a separation, and particularly where that separation has been around the issue of the violence in the relationship, it is simply not going to be possible, and nor would it be appropriate—and they are unlikely to want to participate. It would be absolutely inappropriate to make them participate in those sorts of scenarios.

There are many other areas, particularly where there is an ongoing relationship, where

a restorative justice approach may be a very good way of setting an offender on a meaningful path of rehabilitation. The restorative justice system, at its heart, is aimed at having the offender understand the effect of their actions upon the victim, and that is perhaps nowhere more important than in a situation where they will have an ongoing relationship.

THE CHAIR: On behalf of the committee, I would like to thank the representative of the ACT Law Society for appearing today. The secretary will provide you with a copy of the transcript of the hearing, when it is available. I do not recall any questions being taken on notice.

Mr Kukulies-Smith: No, I do not think there were.

THE CHAIR: Again, thank you, Mr Kukulies-Smith, for appearing on behalf of the Law Society.

Short suspension.

RATTENBURY, MR SHANE, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction
McNEILL, MS JENNIFER, Deputy Director-General (Justice), Justice and Community Safety Directorate
GREENLAND, MS KAREN, Executive Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate

THE CHAIR: I welcome the Attorney-General and his officials. Minister, we note that—cheekily, I might say—you have not provided a submission. I am assuming the bill and its explanatory statement are documents you are happy to rely upon?

Mr Rattenbury: Yes; thank you.

THE CHAIR: I would be surprised to hear otherwise. Would you like to make an opening statement?

Mr Rattenbury: Just very briefly, and I will mostly allow time for the committee. By way of background, these amendments have come from a review that the government undertook. In 2019 we initiated a review into the Family Violence Act 2016 to ensure that that act was meeting its intended goals. That review made a range of recommendations, but the bill also responds to the court case of R v UG, which identified that the courts did not have specific authority to take into account family violence when making their sentencing decisions. This bill is also part of the second tranche of the government's response to that. So that is the origin. There are obviously a number of different elements. I am happy to go straight to the committee's questions in terms of where you would like to focus.

THE CHAIR: Thank you so much for that. Just touching in the UG case, as you are perhaps aware, the ACT Law Society have just been before the committee and expressed a few concerns. Their view is that the UG case perhaps does not give the support for the policy driver of this bill as you have presented it. They suggest:

> The general sentencing principles that apply to other offences also apply to family violence offences.

Obviously, you have your own legal team and legal people working on this. Is the bill really an attempt to address a court decision that is open to interpretation itself?

Mr Rattenbury: Certainly, the advice I have been provided, Mr Cain, is that the court was quite clear in its decision in the UG matter. It found that, absent a statutory provision, there is no place for a separate sentencing regime that applies to offenders who commit family violence offences. On that basis, the government were of the view that we wanted to ensure that the courts could take family violence matters into account as part of the sentencing process. That is why we have now brought through these offences. So, yes, in that sense it is, in our view, a direct response to the government's interpretation of the UG matter.

THE CHAIR: Are you then acknowledging that the Law Society does not share that view?

Mr Rattenbury: To be honest, I did not hear the Law Society's evidence, so I am reluctant to make that point, but certainly, on your account of it, it does suggest so, yes.

THE CHAIR: It was in their written submission too, which is available—to the committee, at least.

Mr Rattenbury: Yes. Ms Greenland has now arrived. She has obviously had some technical issues. She is sitting there with Ms McNeill. I do not know if you want to provide any further comments on that?

Ms Greenland: Apologies for the technical issues. Yes, I can confirm that the legislation is a response to the R v UG issue. There is an awareness that the Law Society does not share the same view of the necessity for an amendment, but the legislation has definitely been drafted with the direct intention of addressing the R v UG decision, which found that there was no legislative basis to consider family violence as a specific issue in sentencing.

THE CHAIR: The Bar Association are a very wide group of stakeholders. Did the Bar Association express similar views to the Law Society or were they more supportive of yours?

Ms Greenland: I can confirm that we have consulted the Bar Association. As far as I am aware—and I would have to check—I do not believe we have received any formal comments on the bill since that consultation occurred.

THE CHAIR: Thank you for that.

DR PATERSON: My question is on the logic behind increasing the sentences. I do not know what a demand accompanied by threats is, or how that differs from threatening to kill and grievous bodily harm threats, but it is increasing the penalty from 20 years to 25 for one that involves domestic violence. I am just wondering: how do you determine whether the increase in sentencing goes up by one year, three years or five years in determining this bill?

Ms Greenland: Attorney, would you like me to take that?

Mr Rattenbury: Yes, thanks, Ms Greenland.

Ms Greenland: The process that we went through, firstly, was the issue of selecting the offences. The offences that were selected, to which a factor of aggravation applies, are those that potentially could be committed in a family violence context. Then, in terms of the factor of aggravation, what we did was to attempt to apply, effectively, a ratio for the aggravating circumstance in which the offence was committed, relative to what we call the basic offence, which is the current offence.

DR PATERSON: Does this align us with other states or tip us to be a very punitive state? Where do we sit with these changes?

Ms Greenland: It is difficult to draw direct comparisons because jurisdictions all tend

to have different levels of penalties for the same offences. There are some which are the same or close. I do not know that we could characterise it as being more punitive or less severe in terms of the offence levels, and not all jurisdictions have the same model around aggravated offences either. We can certainly provide information out of session or take on notice comparisons, if that would be helpful, but it is hard to characterise how the scheme as a wholes compares to other jurisdictions.

DR PATERSON: Just one more quick one. We heard from some of the other submissions that there already is great inconsistency in sentencing. Is there consideration given to the fact that having these aggravated offences may provide even more inconsistency in the system?

Mr Rattenbury: I think the intent and the rationale behind this legislation is to be very clear from a government and from an Assembly point of view, if the Assembly supports the bill, about our condemnation of family violence and to provide the judiciary with greater opportunity, in the most severe cases, for the penalties to be stronger, where they feel that is necessary for the protection of the community. I think, for me, one of the really important features of this is that the maximum penalty is not a form of mandatory sentencing. It does not mandate that the penalties must be higher, but it does give the court wider discretion in its sentencing decisions. Whether that leads to greater inconsistency, I guess others will draw a conclusion, but that is certainly the intent of having this aggravated offence regime.

THE CHAIR: Thank you.

MR BRADDOCK: With the increase in maximum sentences, you would expect that there would be an increase, on average, of sentences dished out; hence that might rule out some from restorative justice practices, community correction orders and those sorts of aspects, as possible options for the offenders. Has the government considered the impact from that?

Mr Rattenbury: Yes, we did consider that in the context of putting the bill together and whether to accept the recommendations of the review, as I just touched on with Dr Paterson. I am not sure I share the analysis, Mr Braddock, that we would necessarily, on average, see an increase in penalties. I think that the courts will still maintain the full discretion that they have prior to this bill. They will continue to take into account a whole range of factors. From an overall point of view, we do need to have that other set of options you are referring to—things like restorative justice—and that is why in the last years the government has opened up the restorative justice scheme to both family and sexual offences, because in some circumstances that will be appropriate.

There will be other circumstances where it is entirely inappropriate because the perpetrator is not willing to accept responsibility for what they have done, or because the victim does not feel capable, comfortable or safe going into a restorative justice process. I think the important part is that we have the full suite of options to respond to the circumstances, because of the diversity of offences and circumstances in which people find themselves.

THE CHAIR: On your comments about the sentencing regime and the penalties

being increased, we have just heard from the Law Society that, from a legal point of view, when sentencing exercises are undertaken by the courts, they actually start with the maximum penalty and then they consider the various circumstances. If that is the case—and I have no reason to doubt the criminal law expert that the society sent—we will see an increase in sentencing lengths and, hence, the time that people are spending in the Alexander Maconochie Centre. Do you have a comment on that?

Mr Rattenbury: That is clearly going to be a matter of opinion. The thing I would point to is that we have deliberately put into this bill a statutory review period of three years so that we can come back and examine the consequences of this legislation. If there are any unintended consequences being produced, we can have a look at that, and I am sure that that will provide an opportunity for people to test the opinions that are voiced now.

THE CHAIR: Just quickly, then: are you saying an unintended consequence would be increased sentencing periods?

Mr Rattenbury: No, I am not saying that. No.

THE CHAIR: The purpose of the bill, then, the net effect of it, will be to increase times in incarceration or under some community order?

Mr Rattenbury: As I specified before, the intent of the bill is to both send a clear signal of condemnation of family violence and provide the courts with higher maximum penalties, where they feel it is warranted in the circumstances of the case.

THE CHAIR: And you accept that, as an average figure, those sentencing figures will rise in terms of the period?

Mr Rattenbury: I do not accept that. The courts will make their decisions and it will depend on the circumstances of individual cases that come through.

DR PATERSON: To reiterate Mr Braddock's point, from memory, the tipping point for restorative justice is a five-year sentence. I am concerned that if it is over five years, no matter if you plead guilty, you are not applicable for the restorative process. My understanding is that if it is below five then you are. My concern is that, through raising the sentencing levels, people will be not able to apply for a restorative process.

Ms Greenland: I can provide some information about that, if that would assist.

DR PATERSON: Yes?

Ms Greenland: You are correct: there is a cut-off for restorative justice as a diversion that the police or the DPP can utilise. That is based on the seriousness of the offence. There is still the opportunity for restorative justice for all offences, including the more serious ones, but that would come from the courts. Because we regard those offences as more serious, it is appropriate that the court make that call. To be consistent with the approach we take already in relation to the appropriate referring entity for restorative justice, we treat the aggravated versions of these offences in the same way.

DR PATERSON: Thank you.

MR BRADDOCK: Some stakeholders have raised a potential unintended consequence—the over-representation of Aboriginal and Torres Strait Islanders that will result from this change. Minister Berry did draw attention to the three-year review, which I applaud, but I would like to know if there are any other government strategies that will be in play to align the government strategy about over-representation and the implementation of this bill so we do not see these groups being targeted?

Mr Rattenbury: I think it is a valid concern that people have in mind, because over-representation continues to be such a significant problem in our justice system. What this bill seeks to do is weigh up the importance of having a strong focus on preventing violence against family members, particularly women and children. We do not want to compromise the safety of those people, but we also need to be mindful of over-representation.

My view is that over-representation is addressed through a range of other measures that we are putting in place. That includes following through on a range of measures that have been identified under the reducing recidivism strategy, under the justice reinvestment agenda of the government—investing in preventative services and supporting community in ways that seek to prevent the family violence occurring in the first place. I do not think we can take a position that we will not provide the appropriate response when family violence occurs. I think I essentially agree with you, Mr Braddock, in the sense that we need to tackle over-representation, but I think there are other channels through which we will do it. This bill provides the necessary protection in the family violence space, but we must not lose sight of the need to reflect on the fact that there is a significant over-representation in the justice system.

MR BRADDOCK: Thank you.

DR PATERSON: Minister, in your speech at the presentation of the bill you stated, "These reforms also improve protections for victims generally by removing barriers to their engagement with the criminal justice system and with professional supports." Can you speak a bit more to how these barriers are being removed for victims-survivors?

Mr Rattenbury: That goes to a number of the measures in the bill, particularly allowing an adjournment for the preparation of a victim impact statement. We have formed the view that there is a value in having an explicit legislative requirement to allow the space for that victim impact statement to be prepared. This is not to suggest that the courts are currently seeking to impede victims making those statements, but you can have circumstances where, in a criminal matter, a defendant might, at a late stage, plead guilty. The victim is assuming there is going to be a trial and perhaps they have not prepared their statement for a range of reasons. So there is an opportunity to be explicit about the ability of the victim to prepare that statement.

I think that is very important, because the strong feedback we received from victims is that having the opportunity to state the impact on them in court is really important as part of seeing justice. Having a voice in the judicial process can be empowering for

some victims, so we want to make sure that victims have that ability. This provision just strengthens that.

Another part is the limitation on the cross-examination of victim impact statements. Again, there has been strong feedback from victims-survivors that the process of being cross-examined on that victim impact statement can be very retraumatising for them and also the barrier to the protection of counselling communications in family violence proceedings. Again, it is an important opportunity for people to feel comfortable that they can seek out that professional help and not have some of those most intimate thoughts used against them in the legal proceedings.

DR PATERSON: Thank you.

MR BRADDOCK: The Law Society also raised a concern about the potential application of these sentences to situations where, for example, a child has assaulted a parent, where that trust relationship is inverse. Do you have a response to the Law Society's concerns about those situations and the application of these sentences?

Mr Rattenbury: Ms Greenland, you might help me out here.

Ms Greenland: The legislation does not distinguish the nature of a family relationship. Those concerns sometimes go to the issues that have been raised by other witnesses, about who is in need of protection in a particular situation. There is nothing to suggest that the introduction of aggravated offences will necessarily disadvantage anybody who is in the family relationship of a parent and child. It is a potential scenario that arises now, and young people, depending upon the nature of the offending, could be good candidates for restorative justice diversion. I am aware, for example, that quite a lot of the referrals that could have occurred since family violence was an offence which could be referred to restorative justice have actually been those parent-child relationship situations. So there are other options for situations involving a parent assaulting a child.

MR BRADDOCK: Sorry, do you mean a child assaulting a parent?

Ms Greenland: My apologies. A child assaulting a parent; yes.

MR BRADDOCK: Thank you.

THE CHAIR: I have a supplementary question on that. Do you accept that, with the increased sentencing on acts of family violence, individuals who are captured by the Children's Court would also be subject to increased penalties?

Ms Greenland: Anyone who can be charged with an offence would be subject to the aggravated penalties. The other thing I probably should mention is that the court, in determining an appropriate penalty for an offence, takes into account a whole range of factors, which include the circumstance of the offence, the circumstance of the victim and the circumstance of the perpetrator. That circumstance of the perpetrator can include factors such as the age of the perpetrator. Those are all things that can contribute to the decision-making of the court about what is an appropriate offence. A range up to a maximum does not require the court to impose the maximum. There is

still that discretion of the court to impose an appropriate sentence having regard to the circumstances of the offence, the victim and the perpetrator.

THE CHAIR: Related to my earlier question to the Attorney-General, do you not see then that by raising the maximum, you are increasing the likelihood of children serving longer under a sentencing arrangement?

Mr Rattenbury: Are you asking that of Ms Greenland or myself?

THE CHAIR: Yes, Ms Greenland. Sorry.

Ms Greenland: The maximum penalty does allow for a longer sentence to be imposed, but I think the types of penalties that are typically imposed on younger people are often not custodial sentences. They are often other types of sentences that can be served in the community, or diversions. I think it would depend upon the circumstances as to whether or not you would find a young person being ultimately sentenced to a lengthier period of incarceration.

THE CHAIR: But one of the circumstances, if the bill passes, is that the maximum penalty is now greater?

Mr Rattenbury: Yes.

Ms Greenland: That is correct. It is greater.

THE CHAIR: So the likelihood of longer sentences for children is increased.

Ms Greenland: It is not so much a likelihood; it is a possibility, and it would depend on the circumstances of the case.

DR PATERSON: We have talked a lot this afternoon about the message that increasing the sentencing levels will send to the community and about how we do not tolerate family violence in the ACT. One important factor of the bill that, Minister, I was hoping you could speak to, is the disqualifying offences under the Working with Vulnerable People (Background Checking) Act, and the impact that you think that will have and the message that sends to the community.

Mr Rattenbury: This is an important signal because disqualifying offences are relevant to the assessment of whether a person can be given registration to engage in what is known as a regulated activity under that act, which involves contact with a vulnerable person. Clearly, there is a sense that early identification and exclusion of those who pose a risk to vulnerable people should lead to a reduction in the incidence of abuse, violence and exploitation. There is a clear linkage between that sense of "If you are willing to commit this offence over here, you are a risk to a vulnerable person." We believe that that is a sensible extension of the provisions and does provide another channel of protection to vulnerable members of the community.

DR PATERSON: Thank you.

THE CHAIR: I have a fresh substantive question. Attorney, in the light of today's

announcement that the federal government is committing $100 million to family violence support, but even absent that—it is going to happen, and obviously the ACT will benefit to some degree—will this bill be accompanied by increased funding of educative support and restorative justice practices?

Mr Rattenbury: Certainly that would be our intention, Mr Cain. Unfortunately I did not see Minister Berry's evidence before, but I am sure she spoke at great length about the range of services that the government is providing and the increases in funding in recent years to this area. But, clearly, recent actions such as the extension of restorative justice to family violence and sexual offences is an example of seeking to acknowledge that there are a range of pathways in which victims-survivors can feel a sense of justice, and in which perpetrators can develop an appreciation of the consequences of their actions.

The government as a whole—and I am sure Minister Berry spoke to this—is very clear that a legislative response and a criminal response is not the only answer and cannot be the sole response in this space. We need to work very hard on educative processes, on supportive processes, on shifting the culture of what is considered tolerable in our society. These are the sorts of issues we need to work on just as much as, if not more, as having a criminal justice response.

THE CHAIR: Certainly I understand you have in-principle support for all of those measures, but will there be additional funding to accompany the passage of this legislation?

Mr Rattenbury: Not specifically linked to this bill, but certainly you have seen that in the budget in recent years. I am not in a position to make budget announcements now, but you can be assured that the government continues to assess both the justice system needs and the service system needs in this space. As I am sure Minister Berry said, there has been a significant funding increase in these areas in recent years.

THE CHAIR: Attorney, as you are aware, because this is a bill referred to our committee, we have a reporting date that is fixed. It is 14 April.

Mr Rattenbury: Yes.

THE CHAIR: On that date a report will be issued from this committee. Can you unequivocally commit to holding off debate on this bill until the report is issued and considered by the government?

Mr Rattenbury: Yes, I can, Mr Cain. I am a very strong supporter of this process where committees examine bills. I think it is a very important opportunity. I am glad the committee has taken the chance to have a look at this bill, and it would be my intention to wait for that report to come out to consider any recommendations that come forward. That is the whole point of having this process.

THE CHAIR: Thank you. Absent any other supplementary questions or other thoughts from the committee members, we might call that a wrap.

Mr Rattenbury: Can I check, Mr Cain? Have we answered everything today? Was

there anything that you were expecting to come back on notice, mindful of those committee timelines? Does anyone feel that they did not get anything they were looking for today?

THE CHAIR: I think there were a couple of things taken on notice from Ms Greenland.

Ms Greenland: I think that was the question about how we compare with other jurisdictions. We can get some information to you on that.

THE CHAIR: Yes, thank you. We do have that to follow. Is there something you would like to wrap up before we formally close the broadcast and the hearing?

Mr Rattenbury: No, I am fine, thank you. I think we have covered the issues quite thoroughly.

THE CHAIR: On behalf of the committee I would like to thank the Attorney-General and your officials for appearing today. The secretary will provide you with a copy of the transcript of the hearing when it is available. If you have taken any questions on notice today, could you please provide these answers to the committee secretary within five working days of the receipt of the uncorrected proofed transcript of today's hearing. We will close slightly earlier. I remind members and the secretary that we have a private meeting, which we will continue in this format. Thank you again for appearing before us and for your contribution.

Mr Rattenbury: Thank you.

The committee adjourned at 3.46 pm.