LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into Dangerous Driving)

Members:

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

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 26 OCTOBER 2022

This is a **PROOF TRANSCRIPT** that is subject to suggested corrections by members and witnesses. The **FINAL TRANSCRIPT** will replace this transcript within 20 working days from the hearing date, subject to the receipt of corrections from members and witnesses.

Secretary to the committee:
Ms K de Kleuver (Ph: 620 70524)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

Privilege statement

The Assembly has authorised the recording, broadcasting and re-broadcasting of these proceedings.

All witnesses making submissions or giving evidence to committees of the Legislative Assembly for the ACT are protected by parliamentary privilege.

"Parliamentary privilege" means the special rights and immunities which belong to the Assembly, its committees and its members. These rights and immunities enable committees to operate effectively, and enable those involved in committee processes to do so without obstruction, or fear of prosecution.

Witnesses must tell the truth: giving false or misleading evidence will be treated as a serious matter, and may be considered a contempt of the Assembly.

While the committee prefers to hear all evidence in public, it may take evidence in-camera if requested. Confidential evidence will be recorded and kept securely. It is within the power of the committee at a later date to publish or present all or part of that evidence to the Assembly; but any decision to publish or present in-camera evidence will not be taken without consulting with the person who gave the evidence.

Amended 20 May 2013

The committee met at 10.50 am.

STEFANIAK, MR BILL, AM, RFD

THE CHAIR: Good morning and welcome to these public hearings of the Standing Committee on Justice and Community Safety inquiry into dangerous driving. The committee will hear from a number of individuals, organisations, ministers and their officials over three days.

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 this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

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

In this first session we will hear from Mr Bill Stefaniak. Welcome, Mr Stefaniak.

Mr Stefaniak: Thank you, Chair.

THE CHAIR: Before we start, Mr Stefaniak, please let us know if at any time you are finding the hearing difficult and please request a break. There are support people in the Assembly to assist.

Mr Stefaniak: Thank you.

THE CHAIR: I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of this statement?

Mr Stefaniak: Yes, I do.

THE CHAIR: Thank you. We invite you to make any opening statement, if you so choose to.

Mr Stefaniak: Thanks very much, Chair, and members. Congratulations to the Assembly on having this committee. Looking at the terms of reference, I think it is very comprehensive. As you may or may not be aware, I have had a fairly long legal history and Legislative Assembly history, including being an Attorney-General and a police minister.

In relation to this inquiry, I had the very bad personal experience in losing my youngest son, Jozef, on 2 January 2018. I think I will be right, Chair, in terms of the hearing. But, given that we buried my wife on Friday 14 October, if I get a bit upset, I

might request a break.

THE CHAIR: Sure.

Mr Stefaniak: But I will try not to. On 1 January 2018, at about noon, my wife Shirley and I went down to our block of land out the back of Pambula for a bit of a break. Jozef was there at home when we left—he was living with us at the time—and I think his last words were "love you" and "take care", or something like that. We then went down to Pambula. At 6 am the next morning, our eldest son, John, appeared in the doorway of the little hut that we stay in on the property. He was quite distraught but said that he had to deliver the message himself and told us that Jozef had died. Naturally, the family was incredibly upset. We sent Jozef off with a good funeral. He was buried on 11 January 2018.

It was annoying to hear that the other two involved in the accident had bolted from the scene and were yet to be caught. One of the two was the driver, Angela Smith, who was about 10 years older than Joe. She had eight children. I think they were with various foster carers and, in some cases their father, in relation to the children two, three and four. She was the girlfriend of a good mate of Joe's, Kane Kell, who was also in the accident. Kane was about 22—not the sharpest tool in the shed but a fairly nice young fella. Anyway, they bolted from the scene. Joe was dead on impact. The car rolled and I think his head was crushed. I did not have to identify the body; the police did that. But I saw how they had reconstructed him before he was buried.

The police kept us informed at all relevant times and they finally put them into custody in early January. I was somewhat concerned—and this is perhaps point No. 1—when Kane, after being locked up at the AMC for about five or six days, indicated that he wanted to see the police. At that stage, I think his girlfriend had tried to blame Joe as being the driver, which was really hurtful.

Kane wanted to see the police and the police had made arrangements. But, because he had been charged as the driver and they had found out that he was not the driver and it was in fact Angela, the DPP, Jon White, in person decided to drop that charge, which in itself was fair enough. I do not quite know how he managed this—and I do not think a DPP should be allowed to—but he told the court that they could actually release him on bail. The police certainly were not happy with that. Kane had also been charged with driving whilst cancelled, which is a serious enough offence in itself to keep him remanded in custody. Kane was going to do the right thing and actually tell the police exactly what happened as it turned out—which I sort of suspected.

If I did not have defibrillator, I think that news would have caused me to have a heart attack. I was at lunch and I raced over to the court. I sprinted—which is very difficult at the best of times for me, but certainly at my age—to the court and was going to appear myself and just say, "I oppose bail." The police got there 30 seconds earlier, but basically Kane was walking out to get bail. They were not impressed, and apparently Jon White as DPP had done that before. I do not think that is necessary.

I flag that as something you might look at because that was particularly distressing to us and also quite inefficient because Kane was going to tell the police, and that could have saved a hell of a lot of trouble and a lot of time, angst and effort for everyone.

Indeed, had Kane and Angela stayed at the scene of the accident, a lot of trouble would have been saved and I think the police would have probably identified who the driver was and the matter would have been finalised earlier and everyone could get on with their lives.

The current penalty for leaving the scene of an accident is two years. It is a summary offence. Also, only the driver can be charged. I am not sure what it is interstate. I understand passengers can too. But certainly I think anyone in a car in a serious accident should stay there until the police arrive.

Secondly, for leaving the scene of an accident and then trying to blame someone as being the driver when they are not, if that is not an offence, it should be, and I would suggest probably a maximum penalty of about five or 10 years. I think 10 years in that case, because it hurt us as much as anything else that Joe was blamed as the driver when he was not.

THE CHAIR: Bill, so that we can engage with you—

Mr Stefaniak: I will speed it up.

THE CHAIR: There will perhaps be an opportunity to tell the rest of the story in response to some questions.

Mr Stefaniak: I will summarise the rest then.

THE CHAIR: Okay.

Mr Stefaniak: Fundamentally, as you will see from the statement, the police were great all the way through. The DPP junior officers did a wonderful job. Indeed, during Angela's many attempts to get bail, one of the young prosecutors actually got her to admit that she was the driver. John Burns was the judge in that one. Then we appeared in the Supreme Court for the sentencing procedures. The judge was very good in terms of allowing us to do our victim impact statements and ran that well. The sentence was certainly not outside the ballpark in Canberra. It was very much on the light side. I was talking to some other victims who have lost kids who wondered why on earth I said afterwards that we did not have huge qualms with it. That was probably me being the lawyer in that I thought five years and serve three was actually, for an ACT sort of sentence, not all that bad. In my view, though, it should have been something like about eight years and serve five—and I think a lot of that should have been particularly for leaving the scene of an accident. But in terms of the way of driving, the speed and the fact that Angela was on the drug ice, something like eight years and serve five—for a crime that has a penalty of up to 14 years—would have been better.

One thing that came out of that sentence was that the Crown prosecutor could only rely on ACT cases. John Burns had sentenced a driver who had killed two people—a worse situation than Joe's—to 11 years with nine months non-parole. The other two were much less serious and involved one death and the penalties a little less than in Joe's case—probably about two to two and a half years, on the bottom, as a non-parole sentence. There were no other precedents of any relevance and nothing to

assist the judge there. In the 1980s, when I was prosecuting, we used to rely a lot on interstate precedents, simply because there are so many more people interstate and a lot of the offences are very similar. We would use precedents from New South Wales, South Australia and other states. South Australia, for some reason, was very popular because the offences seemed to be much the same, and there was a significant relevance in their sentences and their penalties. So, even if you nothing else, I would recommend that you enable the Crown and the prosecution here to reference penalties for similar offences in every other state in Australia. I think that would be a very, very good start. That was something they could not do.

Anyway, after that, we were kept informed by the parole authorities. We basically left it to them. Angela seemed to be making quite good progress in the various courses she was doing at the remand centre. However, despite all that and despite being supposedly drug free, within six weeks of getting out she was in with a bad crowd and on drugs again, commits another offence and goes back in. I believe she was let out on parole about June or July this year. I believe she is doing a rehab course in Orange, which hopefully she benefits from. We were actually happy that she was doing well in there and we hoped that jail had reformed her. But, despite the programs, that did not seem to be the case.

I will stop there. You have probably got some extra stuff in what I wrote. So please ask me some questions.

THE CHAIR: Thank you. Our sympathy, of course, goes to you on the loss of your son in 2018 and also the recent loss of your wife. Please accept our commiserations.

Mr Stefaniak: Thank you.

THE CHAIR: I am perhaps asking you now to put on your legal cap. You have made one suggestion about being able to refer to interstate precedents. What other options are there that would, in your view, improve the sentencing regime in the ACT?

Mr Stefaniak: I think, at the very least, that would help. You will probably hear submissions about mandatory sentences. Even though I believe in strong penalties—and I am on the record, on a number of occasions, going back probably 30 years on that—I do not quite know how you do the mandatory stuff. But what you can do is what they do in other states when they had proper guideline judgements. You would need to look at what happens interstate, because we are such a small jurisdiction, and look at guideline judgements, which they do in New South Wales. Also, I am not sure if our courts have the sentencing technology that New South Wales does, where they can easily tap into a range of penalties in cases in relation to any particular offence.

But the guideline judgements are a very good way of doing that. Obviously if the Crown were not satisfied with the guideline judgement being good enough, they should have a mechanism to appeal, or maybe there is something you could do legislatively there. No two circumstances are exactly the same, but if it is a case where there are the same factors involved, even though there might be slightly different circumstances, a guideline judgement is something that should be followed. It is a wonderful guide. If there are absolutely extraordinary circumstances which take the case out of that—and there is always going to be that—then obviously you do not do

that. So that would be a start, and just following what actually happens interstate.

In relation to the term—not that anyone anywhere seems to worry about what the maximum penalty is, which is a pity at times—look at what the maximum penalties are interstate for the various sorts of driving offences and at least align them with that. There is probably a lot of sense in aligning us with the state that surrounds us, New South Wales, because in some instances the penalties are probably significantly higher.

In the ACT, going to 14 years is higher than it was. When I was prosecuting it was about seven or something then. If you give a higher penalty, it just tells the court, "Well, you have a got a bigger range, but the legislature expects you to take this very seriously." So that would be another suggestion. The guideline judgements, proper precedents and the electronic assistance the courts get in New South Wales would, I think, be very effective.

THE CHAIR: Thank you, for that. Dr Paterson, a substantive?

DR PATERSON: Mr Stefaniak. I was wondering if you could speak to navigating the world of courts and preparing victim impact statements as well as the support that your family might have needed following the death of your son. Is there any advice you can give the committee on what was lacking or what would have helped?

Mr Stefaniak: As I said, I did not particularly appreciate Kane being given bail by Jon White. That was silly. Kane ran away for two years, and when he came back we both cried together. He sat at Joe's graveside for a full day. It really affected him. We have totally forgiven Kane.

But, in terms of the support, we were offered support quickly. We probably did not need so much the department support, as there was a lot of family support. The support of the police was excellent. The support of the junior officers in the DPP, as well as keeping us informed and treating us in an empathetic way on all occasions, was very good indeed. That is something I think that is crucially important for any victim. It is something that was lacking up until about 30 or so years ago. I think the Assembly has helped the process now. Victims were often totally forgotten, but there is that support now.

After it was all over, the Victim Support Agency were very helpful, enabling us to access things like some financial assistance. The $8,000 we got towards his funeral expenses was greatly appreciated. We also received some other compensation, which probably effectively covered all our costs, which I thought was absolutely great. That is obviously very important and something that would obviously be appreciated by a lot of victims, especially families who are actually struggling. That is something that certainly helps ease the load.

We did not so much want counselling—that was just our individual choice—but it was offered.

DR PATERSON: Thank you.

THE CHAIR: Any supplementaries?

MR BRADDOCK: Not on that but I do have a substantive.

THE CHAIR: A substantive, Mr Braddock.

MR BRADDOCK: I just want to clarify what legally went wrong around granting Kane bail. I can understand the impacts on you and the police all running towards the courthouse, but I am trying to understand what happened there that went wrong that led to that situation.

Mr Stefaniak: I honestly have never heard of that. I do not quite know how he managed it. But, talking to one of the case officers, he said, "Oh, it has happened before". I would have thought that it would take a little bit longer to get someone from the AMC. It probably does not happen terribly often, because a lot of people in the ACT on remand probably do not want to talk to the police, but Kane did. Kane wanted to tell all, and they knew that was happening.

There was one other incident in recent times, but I honestly do not know how that was managed. I do not know what procedures they have in place for that. It does surprise me. But it may be worthwhile you guys asking some questions and just seeing that that is something that should not happen again. It should be done through a proper process and go before the court. Victims should have been told, and I was not—and nor apparently was the person the sergeant told me about before. If I had not had my defibrillator, which I had put in in 2016, they said I would have been on the floor.

With any government agency, and I know the DPP, and especially directors, have the discretion, families should be informed. Even with something like that, there was no need for that to happen, because Kane was in there as a cancelled driver, which is good enough to keep someone in custody. So we should have been informed, at the very least. But you probably need to check how on earth that occurred, because, if it is still possible, firstly, it should be done properly and, secondly, the victim's family or the relevant people should be informed so they can participate.

THE CHAIR: Any supplementaries?

DR PATERSON: Yes; just following on from what you said about victims being informed. You seem quite aware of the movements of the driver, Angela, now. Is that a personal thing or are you still being notified of her—

Mr Stefaniak: We were notified in terms of the parole, and we were able to say what we wanted to see happen. She was a woman with significant problems herself, obviously, and some significant drug problems. We were disappointed about certain aspects but, when we heard that she was doing well, we were happy with that. In fact, towards the end of her three-year sentence, we were contemplating contacting her and thought she could use her experience there to help other people—which has happened with some people that have been prisoners. But, alas, that was not so. Whatever program she did, did not seem to do too much good because, as I said, within six weeks she was back on the drugs and committing crimes.

Hopefully the program that she is on now, which is a residential one—which effectively gets us up to about five years anyway, which I thought would have been a good non-parole period to start with—works better for her. But I do not know what you do there. Some people respond to programs and some do not. The point is, I suppose, that some people will not, which means you need good strong sentences that reflect the offence, because not everyone is going to do the rehabilitation properly or necessarily benefit from it.

DR PATERSON: Was it the sentencing review board that you had engagement with before she got paroled?

Mr Stefaniak: The Parole Board, yes. They would make sensible suggestions. I would usually make a comment to the effect of, "Obviously, if she is doing everything right then we cannot say anything much about that. But you just need to be very vigilant." After she committed the further offences and was back in there, our view was, "No; she should do the full five years." As it turned out, she did about 10 months short. But, in retrospect, because she is on parole, if she fouls up again, at least she can go back in for those 10 months plus whatever extra sentence she has got.

Some criminals just stay in jail. For example, if it is five years non-parole they stay in jail, do the five years non-parole and there is no supervision after that. I do not know if that is in the purview of your review, but you might like to look into that, if you think that is sensible. There are some people who desperately need to be supervised, even if they are in there. If they have done their head sentence, there is no parole or anything like that but they still need supervision. So that may be something you might look at. But it might be beyond your reference.

THE CHAIR: I will go to another substantive, although it could easily have been a supplementary to my first question, but I was keen for the other committee members to be engaged. Again, perhaps this is one lawyer talking to another, Bill, but what do you think about the idea of commonwealth level sentencing guidelines to which the states and territories would obviously agree in principle and attempt to implement?

Mr Stefaniak: It is an excellent idea, Peter. I have always thought that there should be about 20 provinces in Australia and the commonwealth and we should get rid of states and territories—except for the state-of-origin games and things like that.

THE CHAIR: I was not advocating that, but anyway—

Mr Stefaniak: I think that is an excellent idea. That actually happens in a lot of ministerial meetings where one state might be like, "You do the legislation and then we will adopt it," and sometimes the commonwealth will do that. That happens in other areas. I have seen it in education. I have seen it in housing. I had probably even seen it as A-G.

THE CHAIR: It happens in tax too.

Mr Stefaniak: Yes. So there is precedence there. It is a really good idea. The commonwealth probably does not have any laws there—there is the Crimes Act—in relation to dangerous driving as such, but it does in relation to drugs. But it has

certainly got the expertise and, if it draws on the states in the process of delivering a uniform national code, that is great idea.

THE CHAIR: One of the things that we have been hearing is: how come the same offence gets X years incarceration in New South Wales and in the ACT it gets Y? And there is a significant difference, perhaps one way or the other sometimes. As a harmonisation approach, I guess, I am just interested in that as a possible way to go forward.

Mr Stefaniak: I think what you are suggesting would overcome that. Given that it may not happen any time soon, the ACT at least initially has to look at the laws in New South Wales, but probably have a look at Queensland and Victoria too, and try to standardise ours. It is ridiculous that a criminal can get 20 years imprisonment over the border for committing a really bad offence and only get 10 years in the ACT. That just makes a mockery of it.

Our courts get criticised—and probably rightly so at times—for being very weak when it comes to penalties. One way of addressing that is to ensure that the top maximum penalty is higher. If you are not going to do minimum sentencing, which is certainly difficult, you really need strong guidelines to make sure that we are not the odd man out and not out of kilter.

Historically, New South Wales gives about five to six years imprisonment for a certain type of offence and a certain type of offending. If we are giving it about one and a half to two or three, we are out of kilter. That causes the families a lot of grief. It is not going to bring back the deceased. Angela could have got 15 years and serve 10, and it was not going to bring Joe back. But we do need to be consistent with other states. We historically always have been weaker than other states, and that just sends out all the wrong messages.

THE CHAIR: As a final little supplementary, do you support mandatory sentencing?

Mr Stefaniak: Peter, I used to. When I was A-G, I was looking at it. I can remember a time when my colleague and old mate James Sabharwal, a very good barrister, had a bloke who had committed an armed robbery to get money for drugs. I thought, "Surely, we cannot go too far wrong with having a minimum jail term of, say a year, and then obviously higher penalties for armed robbery." This bloke worked in Fyshwick with his dad and he knew the bloke next door very well. He was desperate for money. He got a piece of four-by-two went next door and said, "Fred, give us $300". Fred said, "Do not be silly, Jacko. I need money for the weekend". "Fred, I am serious. I will belt you with us. I need it. I need a hit. Give me $300". He said, "You can have it, but I will report this to the police." He started giving him the money and he said, "Can I keep $100, Jacko? I need $100 for the weekend. You can have $200". "Oh, yeah, sure". Anyway, 12 months down the track the bloke has rehabilitated and is off heroin and he is going gangbusters. He had a bit of traffic and nothing more.

That was a person where I would say, "I could not jail him, because his criminal record does not say it and he has got over his problem. I think weekend detention speaks to the gravity of it," which is what Sabharwal actually submitted to the court. I think the Chief Justice, who might have been Miles then, gave him a two- or three-

year suspended sentence. That actually was not out of the ballpark when you look at the offences. That just shows that, whilst mandatory sentencing is going to work for a hell of a lot of matters, because it is the lowest common denominator, it might be too low and might encourage judges who might give fire to go down to it. Or, conversely, there might be the odd occasion, like Jacko—and that is not his real name—where, clearly jail time is not appropriate.

THE CHAIR: I am sorry, but we have only a couple of minutes to go. Another fresh substantive, Dr Paterson?

DR PATERSON: On driver education, do you think there are things that could be done in terms of looking at dangerous driving broadly as an issue? Is there anything specific that comes to mind in terms of educating young people or drivers?

Mr Stefaniak: Angela was not all that young but she had a drug problem. Young people tend to take risks and us older people do not—and we have probably all done it. I was reasonably cautious, but I certainly once recall seeing how fast the car would go—and thank Christ, nothing went wrong. We seem to have some reasonably good programs. I do not know if there is a huge amount more that we can actually do there. I always think of good campaigns on TV. If it is a real problem, you might do a few good graphics of things that might hit home to young people. It all helps. But I think it can be overrated and I think you do need the programs. But I caution about just how effective a hell of a lot of it would be. I think maturity, common sense and probably just experience in driving will help there—and also enforcing the law. What do they have in New York where they ping you if you drop a piece of paper. It is not harm minimisation. What is it? It is snapping. It is getting someone for a minor offence because it stops them committing a—

THE CHAIR: The broken window approach.

Mr Stefaniak: Yes, that is right. Things like that and having a good police presence so that people can be pinged for minor offences mean that they know that there is a penalty for doing traffic matters and they are probably less likely, as a result of that, to do a more serious traffic matter. I think that that approach, which is a good punitive one, would probably work in conjunction with driver training as much as anything. I see a lot of debates about the need for more police. I note that the number of police we seem to have running around the streets now is about the same as it was when I was police minister and then Attorney-General. So I think that is something the Assembly could look at. I know resourcing is always hard, but that is certainly going to help.

THE CHAIR: Thank you. I think we will come to a close now. Mr Stefaniak, on behalf of the committee, I would like to thank you for your attendance today. I do not believe there were any questions taken on notice. Thank you again for your attendance and for your contribution to our inquiry.

Mr Stefaniak: Thank you for giving me the opportunity.

Short suspension.

JAGO, MS CAMILLE ALISON

THE CHAIR: In this session we will hear from Ms Camille Jago. Welcome, Ms Jago. Ms Jago, please let us know if you find any part of this hearing difficult. The committee commiserates with you on the loss of your child and will understand if you need to take a break. We also acknowledge that your support person is with you. The committee secretary also has details of organisations that can provide support if you feel you need some.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

Ms Jago: Yes, I do.

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

Ms Jago: I will just say that I am here in my capacity as an individual and a survivor of an act of dangerous driving, where the truck driver was charged with culpable driving causing death. That was the death of my son, Blake.

THE CHAIR: Are you happy for us to go into questions?

Ms Jago: Yes.

THE CHAIR: Thank you for your submission. You have made quite a few, very well thought through and argued considerations for improvement or recommendations. Given your experience and your understanding now of that whole environment, if there were one thing you could do right now, what would that be?

Ms Jago: It is difficult.

THE CHAIR: You do not have to answer the question. We can move on to another question.

Ms Jago: I think people with lived experience should be included in policy decisions.

THE CHAIR: Thank you. Dr Paterson, a substantive?

DR PATERSON: Thank you. My question is around the trauma services and the service support for victims following an accident or being notified that a family member has been involved in an accident like this. You said that a 24-hour trauma service or someone you could call would have helped. I am interested to know what would have been helpful in the short and medium term?

Ms Jago: I do feel that in the medium term the support was in place through the Coronial Counselling Service, and we were also referred to the Red Nose counselling service. In the immediate term, though—and I have mentioned it in my submission—I felt what was missing was someone at the scene who is a trauma expert. I have since

read through some of the other submissions and have noticed, including in SupportLink's submission, that that service used to be available and that it ended in 2016. I would like to see that service come back.

I realise that there is only a certain amount of funding that can go around, but I think there needs to be caution about robbing Peter to pay Paul, as I understand that the funding for that went into the Coronial Counselling Service. In my opinion, both of those things need to be in place. In my situation, I was in the car and so I was at the scene, and there are some things that I think I possibly may have done differently if a trauma support person had been at the scene.

DR PATERSON: Do you think it would be helpful to have that one person stay with you at the scene and then be with you when you go to hospital—like a case management type of thing?

Ms Jago: Yes, I certainly think that it would be helpful if the same person was at the hospital as well and then have that sort of be handed over to, I suppose, the medium range services available, such as the Coronial Counselling Service or another counselling service. I am not sure, how from the back end, that would all be sorted out. But, yes, I think it would be more valuable to have the same person at the scene as in the hospital, rather than those two people being different.

DR PATERSON: At what point does the Coronial Counselling Service kick in? When do you start having communication with them?

Ms Jago: The exact timing of all of that is a little hazy for me. But I do feel like that did start within about two or three months. The collision was 28 July 2018, so we are going back four years. It is my understanding that, at the moment, the Coronial Counselling Service is so oversubscribed that it is taking a lot longer than that for people to be able to get in to that service.

DR PATERSON: Thank you.

MR BRADDOCK: Thank you very much for attending and for an excellent submission with lots of detail. I appreciate that. I want to understand from your perspective the impact of the court process, particularly in terms of the no-shows from the representatives and the lengthy period until there was the discount sentencing due to the guilty plea at the end. That as a process, I imagine, is quite retraumatising for you, having to go through that.

Ms Jago: Yes, it is. It took almost five months for a judge to be laid and then—sorry but I am not good with the exact wording of it—there were multiple directions hearings in the Magistrates Court before it was moved up to the Supreme Court. At two of those directions hearings the person representing the truck driver did not appear—and I will acknowledge that I did not go to the court myself. There is preparation that you need to do because it is about what is going to happen, what the outcome of this directions hearing is going to be and what thing is going to be happening next. It brings you back to the collision day and to everything that has led up to that—so the delays that occurred with a charge being laid in the first place and everything that comes after that.

MR BRADDOCK: You also mention in your submission about trauma informed subpoenas as well for when you are called upon to be a witness in the court proceedings. Can you please describe what you would be looking for as part of that?

Ms Jago: Our experience was that we were subpoenaed in January, and Canberra is kind of in a bit of a shutdown most of January. So our support network was not available. We had been given an idea of what week the subpoena would be coming in. As kind of fairly ordinary law-abiding citizens, we have never been through a process like this before. So, to have a police officer come to our house and serve a subpoena, there is no empathy in that process. I found that difficult to stomach, because we are the parents of the person who died.

As I mentioned in my submission, there was nothing that was going to stop me from being at that trial—nothing. Of course I was going to be in that room. While I cannot remember the exact wording, I definitely remember the feelings that come up from when I read it. It was if you are being accused of something before you have even done it. I had not not turned up to court. The wording was just difficult and the support was not available because of the timing of it being early January. I could be wrong, but my recollection is that it was also actually on the weekend.

MR BRADDOCK: In your particular circumstances, he did not plead guilty until very nearly when the case was going to court. What was the feeling that you had when he did plead guilty? I am trying to understand the impact of you potentially having to build up towards a court case where it would be quite an adversarial situation. You were saying that the discount rate should take into consideration how long that dragged out for you and the impact on you. I am trying to understand how that lengthy delay impacted you and why we need to be encouraging guilty pleas, if they entered, as early as possible.

Ms Jago: Obviously we were prepping for going to trial. Again, that brings up a lot of emotion. A lot of trauma comes back as you are thinking about the collision that occurred and there is frustration that there has not been a guilty verdict. This was fairly close to two years—certainly more than 18 months—after the collision, and by that time we were trying to manage normal life as well as looking after our younger son. By then we were both back at work. We were both on reduced hours, but we were both back at work. Our society does seem to have kind of a 12-month limit to grieving. We were heading into a trial period, more than 18 months after the collision occurred, whilst trying to manage normal life, and it does make it very difficult. So when the guilty plea did come in there was certainly relief that we did not need to go through a trial process. There was also frustration at how long it had taken to get to that point because it was clear that there was guilt and that should have happened 18 months earlier.

MR BRADDOCK: Thank you.

THE CHAIR: I will do a fresh substantive. I note your first two considerations for improvement relate to sentencing. What would you hope would be the outcome of such reviews into the disparity between average sentences and the maximums and also the leniency of discounts? What improvements would you be happy to see as a

result of such reviews?

Ms Jago: I would like to see discounts be less. I do like the idea that you brought up earlier of national guidelines. I suppose I would like to see average sentences more in line with maximums. Where I sit, I cannot even really imagine a set of circumstances that would mean that anyone would get even 10 of the 14 years for culpable driving causing death. While I do not have a law background, I do appreciate that precedent becomes involved and that then makes it difficult to ever get much movement, particularly on the upside, on what has previously been given in sentences.

THE CHAIR: Thank you. I have one supplementary on that. Do you have a view on mandatory sentences?

Ms Jago: I appreciate that that is a difficult topic. I think if there were guidelines rather than mandatory sentences. I talked about the leniency of percentage discounts on the one hand, but I also brought up the possibility of a percentage loading for reoffenders, and, in my opinion, that does not necessarily have to be for the same crime. So, rather than mandatory sentencing, I prefer the idea of a percentage loading for reoffenders and national guidelines or even some guidelines within the ACT.

THE CHAIR: Thank you so much. Dr Paterson, a substantive.

DR PATERSON: Thank you. On your point about the shared space in the court building and your whole engagement with the court process, what do you think would help? You have noted separate rooms for victims versus the perpetrator. I am quite shocked that you had to be in the same space.

Ms Jago: Obviously I was not talking about in the actual court room. The court space is quite large. I am not sure what they technically call that family area. But near the Children's Court there are about five or six rooms off the shared area, and we had access to that during the coronial process that we went through. I found that to be a safe space, a space where you could sort of get your thoughts together and be calm.

I realise that it is a bit complicated because I am talking about the part of the process before the person has been convicted; so they are still innocent at this point in time. But, when there has been a death and there are clear victims, I think having access to those amenities that are there within the court space, would be so helpful. I think it would be helpful for both parties. I am sure it is not an easy situation for people who are accused to be bumping into the other side in the foyer area, where you are going through security or through the cafe. I think I specifically mentioned the cafe in my submission.

Because those family rooms are near the Children's Court, you even go through a different security than the main security area. I think for everyone involved it would just be less stressful and less traumatising if it could be coordinated for those rooms to be available in Supreme Court matters as well as Children's Court matters and coronial matters.

DR PATERSON: Did you have any victim support with you through the court process?

Ms Jago: Yes, we did. We had a liaison officer from ACT Police. That was very helpful. She was very helpful in being able to explain how things might happen and taking us up to the courtroom early so we could have a look in the room and see the space and explain where each person was going to be sitting and things like that. That was very helpful.

DR PATERSON: You talked about training for judges and court support staff around trauma informed training and interactions, language and all that kind of thing. Are there specific examples that you can think of around what could really be improved there, or did you feel that, overall, the process was trauma inducing?

Ms Jago: The specific one that I mentioned in my submission is around dates. I have found it difficult that quite a few of the court dates and, since then, things relating to parole being very close to Blake's birthday. That is a time of year that is difficult for our family. It should be a time when we are trying to honour the memory of our child, but, instead, across multiple years, while we have been trying to do that, we have also been trying to navigate these court proceedings or administrative procedures relating to parole.

I just think that would be something that would be quite easy to change. Judges are able to make sentences of a particular length, and I am asking about a few weeks, one way or the other. To be quite honest, given sentences are inadequate anyway, even two weeks less would be better than it being so close to key dates relating to the person who has died.

THE CHAIR: Thank you. A substantive, Mr Braddock.

MR BRADDOCK: Just coming to your point about the Sentence Administration Board and your consideration for improvement and improve the transparency, what do you seek to do with that information? Would you seek a source of appeal? Or is it more just a greater understanding and transparency of the reasons of the decisions of the board?

Ms Jago: For me, that is more about just a greater understanding of how a decision has been made. We were able to provide statements, but it is difficult to gauge how much weight they really have when you get nothing back afterwards. Also, it is not consistent. After the on the papers review that they did, we did get a letter with a listing of like three or four points as to why parole was not granted on the papers meeting, and some of those things seemed quite substantial. We then felt confident that parole would not be granted at the hearing two months later because there was just too much that needed to be addressed. So it was a shock to us that parole was then granted.

So, from that point of view, we had this list of all the reasons why it could not be granted, and two months later it is granted and there is no sort of even referring back to how the points had been addressed. I suppose there is an argument that we are supposed to trust what has happened behind closed doors, but it is difficult to do.

MR BRADDOCK: Thank you.

THE CHAIR: Given that we are close to closing this session, I was wondering whether you would like to make any closing statements and perhaps say some things that you have not had a chance to say yet?

Ms Jago: There is a point that I would like to bring up, and this does come back to sentencing. I know there is discussion around productive lives and trying to keep people out of jail so that they have the best opportunity of a productive life. As a victim of crime, I would just like to say that the victims also have a right to a productive life. There are many mechanisms in place to support that, but there are some gaps—and we have brought those up in the submissions—and, even where there is a mechanism in place, it is under-resourced. Victims have a right to a productive life, and it is difficult and does require support.

THE CHAIR: Thank you so much and thank you for the courage you have shown in coming before us and speaking publicly.

DR PATERSON: Chair, can I just ask one question?

THE CHAIR: Yes.

DR PATERSON: I do not want to upset you by asking this, but would you like to say a few words about Blake and put on the record a happy memory of Blake?

Ms Jago: Blake was four when he died. He had these little dimples in his cheeks and, when he had a big smile, you could really see the dimples and his really bright shining eyes. And he was always running everywhere. He was so busy and so full of life. He loved trains and Lego. He had so much potential and that was taken away.

DR PATERSON: Thank you for sharing.

THE CHAIR: Thank you again for your courage in coming to be before us. I also want to thank and acknowledge Ms Corrine Vale, your support person, for being here with you and to help with this proceeding.

Ms Jago: Thank you very much.

Short suspension.

CORNEY, MR ANDREW JAMES

THE CHAIR: In this session we will hear from Andrew Corney. Welcome and thank you for coming before us in such a difficult inquiry. Before we start I would like to let you know that if you find the hearing difficult and need to take a break then please indicate that to us or speak to your support person. I acknowledge Ms Alison Munro for coming as a support person. Thank you for doing so. The secretary also has details of organisations that can provide support if needed. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

Mr Corney: Thank you. Yes, I understand.

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

Mr Corney: Sure. Look, the life of being a victim is not easy. Some of you have read what I have sent out to you before. I often want to reiterate it so that it is very clear for any decision makers just how bad it can be.

For me on that fateful day, 28 July 2018, it is how a happy period in life can suddenly change so quickly, when for me there is the sound of an accident and then everything goes black, my arms are paralysed. That is a deeply disturbing time when the world suddenly shifts around you to something that you just cannot comprehend. Then for me my head hit something and when I come to a short while later I see the devastation of my son's injury when, while trying to move him, the top of his head comes away and I am looking inside an empty skull. Now that is a thought that I would want in front of every decision maker so that it is exceptionally clear what the worst is that can occur.

To add to that, my father died less than five months later from a fast-acting cancer. While no one could say it was definitively caused by this I certainly do not think you could say that it was not—that it was not the straw that kicked off a very fast-acting cancer.

Then the process through the courts, through the Sentence Administration Board and the through the Transitional Release Program are not friendly towards victims. My advice to other victims since would be: do not bother participating in the process. You will only get pain out of this and your views are not taken into account in any substantive way. I would only add that the coronial process was excellent. It was a roundtable process and I greatly appreciate the Chief Coroner and how she ran that particular process. Thank you.

THE CHAIR: Thank you. I asked Blake's mother this as my first opening question and I will ask the same to you, if that is okay: if you could implement one thing right now what would that be?

Mr Corney: That is a difficult question because perhaps as I have outlined, I think there was so much that was wrong. But I do reflect on what occurred earlier in this

hearing around commonwealth sentencing guidelines. I think perhaps because this is a small jurisdiction it makes it difficult. But that might give some certainty to victims that crime is taken seriously and that for those who struggle to be rehabilitated that the community is being protected.

DR PATERSON: One of the points in your submission talks about the primary fatigue and distraction detection technology. These are particularly for truck drivers are they not? I was just wondering because these are going through a different set of—this is Minister Steel's work that he has been doing. I was wondering if you can speak or offer any insight into why you think that it is really important that those measures are implemented.

Mr Corney: Well I think in the coronial into Blake's death the Chief Coroner noted that as one of her recommendations. Yes Minister Steel has addressed that. I think barring situations where someone is deliberately doing the wrong thing such as street racing on the wrong side of the road, this would serve to alert someone that "Hey, a collision is about to occur." And that might enable the person to take—to either brake the vehicle, swerve off the road or something else. That might well have made a difference as the Chief Coroner alluded to in Blake's death. Because from viewing the footage as I did, it is pretty clear this was not someone that was watching the road.

DR PATERSON: In one of the submissions it talked about how it took a long time for police to get the mobile phone record, or the mobile phone off the—

Mr Corney: I think it took two weeks before the mobile phone was handed in. But also as I understand it Akis Livas did not assist police. I think that is just one of those things about what should a community expect and how should that be viewed at time of sentencing, that someone has assisted police. It certainly made a—we have heard how long the period took before the person, Akis Livas, eventually plead guilty. That might well have been different if the police were able to ascertain more information around the collision.

DR PATERSON: In terms of truck drivers or people driving heavy vehicles are there any other recommendations or thoughts that you have that are specific to those group of drivers?

Mr Corney: I preface this with trucks are of greater mass. If the speed does not sound that great, if your vehicle weighs three times more, the force with which that vehicle hits you is considerably more. I think this has been acknowledged at the commonwealth level with respect to the severity of collisions involving trucks even where it is not the trucks fault, or truck drivers fault. I think there should be greater attention paid to perhaps the suitability of drivers for these vehicles. They are a more potentially lethal form of transport. So if you have a driver who has shown either health problems or a propensity to disregard the road rules then I think that should be looked at more closely by companies. I think part of that, especially around the health, was looked at by the Chief Coroner. Recommendations have been made in that respect. They could well apply to any road user but particularly where heavy vehicles can cause more damage.

MR BRADDOCK: I want to keep exploring this idea of the discount rates which are

applied and when they should be applied. Would you see it being a stepping—or actually a sliding scale depending on how early the guilty plea might be entered as to what that discount rate should be?

Mr Corney: I certainly think that makes sense. I believe that is the intention. I think that as I understand it precedent was set where it was a minimum of 10 or 12 per cent that would be offered. That is why I think 12 per cent was given. But I do not think that makes sense to a victim, or many others I would think, about how you get 12 per cent when it is over 18 months after the collision. In fact I think it was about 15 months after being charged. Your lawyers have written to you saying, "We cannot defend you on this charge. You have nowhere else to go." Any more than five per cent would seem to be insane. Now if I was at trial and I was a sexual assault victim going through trial is going to be more harrowing. But for us as victims we have already been through the prepping process. There was not a lot more we were going to give. Twelve per cent to me would seem crazy. But I agree there should be absolutely a sliding scale. It is just how that is applied.

MR BRADDOCK: Also you were talking about loading for repeat offenders or particular aspects of a crime. Can you provide more details, what you would be looking for there?

Mr Corney: Yes. I think for repeat offenders, those who have consistently shown a disregard—this is not just for the one offence and this is not even for just driving—. In this particular case Akis Livas had a variety of offences and had at one point fled from the jurisdiction before being sentenced. I think the community should have the ability to say that is not acceptable. This is the loading that will sit on top of your crime, in recognition that perhaps previously you were given leniency and you have not lived up to that, almost akin to a suspended sentence. Now I understand this was looked at by the former Attorney-General Gordon Ramsay when he spoke to us. In discussions with the current Attorney-General and his staff it would appear that the directorate is unable to locate that material that Gordon Ramsay had previously referred to.

THE CHAIR: That is very surprising too. Sorry. I guess a very focused question on your view regarding mandatory sentencing.

Mr Corney: Yes. I think the jurisdiction has tried many things for a long time and they do not seem to be working. It seems to be we are trying things for the first time now. I do not think the things we are trying have been effective. I think the evidence regarding mandatory sentencing is deficient because when I have read the reports from the Victorian Sentencing Council and the Law Society—I mean rather the Law Council of Australia, they do not seem to consider very strongly victim's views and the impact on victims, nor the effect of incarcerating someone and how that may protect the community. I understand deterrence does not seem to be a strong factor. So I am in favour of protecting the community. If mandatory sentencing is going to be a more effective weapon, then yes. But that would be for repeat offenders. I certainly would not want to see a first-time offender for a low offence automatically given any sentence in jail where it was not applicable, as one of the earlier witnesses alluded to.

DR PATERSON: In terms of the Sentencing Review Board you said that victim's

views are not taken into consideration. What do you think through that process would —how could they engage with the impacts on you and your family better in terms of taking that into consideration and also engaging with you on the issue?

Mr Corney: Well I think this is the whole way through the process. So with respect to the sentencing remarks and the judge without weightings it is impossible to know how much the judge took that into consideration. Likewise for the Sentence Administration Board. Their inner workings are not revealed about how much consideration they took to the victims and what they might view with respect to the release of someone. In this case, particularly where their first report seemed to say that Akis Livas had not addressed his underlying culpability and then he is released in a timeframe where he could not possibly have added any more having been in jail already for two years. So I do not think the harm to victims is—it does not seem to be clear how they have addressed it. They may well have addressed it and I may well disagree with it. But it certainly is not transparent.

DR PATERSON: Turning to driver education, I am interested in your thoughts around whether we need more. Especially since over the last few years of having to deal with this situation and talking to other victims, do you think there is more we could be doing in terms of education?

Mr Corney: I think there always is more work we can be doing. I think there should be an acknowledgement that this does not work for everyone. Some people either cannot, will not take notice of it or are unable to take notice of it. But I think some of that education could stretch even into primary schools with visits from particular people to get in early enough to say, "This is what can happen." Cars might not be designed as weapons; they can certainly act as weapons. I think people need to understand that it is not a right to get out in the car; it is a privilege and it comes with obligations. And if you mess around with that the worst can occur, which I described at this start of this session.

THE CHAIR: Along that line what more could be done—education is one thing—to actually prevent these things occurring or at least reduce the incidents of these sort of horrible accidents?

Mr Corney: I think technology will go a long way to taking the idiot out of the car or at least alerting people who are just not focusing. I think the jurisdiction might need to ask itself some tough questions about those who are unable to be rehabilitated and what they will enable someone to do within the jurisdiction. I think there is a huge variance from those where it is a first-time offence and you can see they will never do it again. They show instant remorse; they assist police. I think we just need better discernment or judgement of where someone fits on that scale and then for what is an appropriate punishment or education or whatever for wherever that person sits on the scale. I think we are not going to stop necessarily someone who deliberately wants to go ahead and take an action to harm others. But I think there is a lot more we can do to try and educate people about what is appropriate behaviour and then protect the community from those who are unable to understand their obligations.

THE CHAIR: Particular types of technology. Do you have something in mind?

Mr Corney: Well I note some have been referred to in other submissions. I think anything that prevents a car or a truck from being operated by someone who should not be doing so. But even down to—and I guess some of this is what appetite does society have in regard to privacy about those who may have other sorts of health problems such that they should not be driving. So whether there are things that can be done to either assist them in terms of driving, technology or whatever else, or monitoring that says, "Hey, you should not be driving now. If you do an alert will be sent." Just sort of on with that detection software which looks to say if a driver is not driving correctly the company is then sent a note as well as the alarm waking the driver up or saying, "Hey, do not do this." I think there is a lot that can be done to help someone while they are in the vehicle, to prevent them getting into the vehicle if they should not be and to monitor people who probably should not even be anywhere near a car.

MR BRADDOCK: The section of your submission where you are talking about the review of decisions and the DPP stressed that if an appeal was not successful then the case would set a precedent for a future case rather than just be persuasive. That concerns me on two levels. Firstly, did that place a bit of a burden on yourself as a victim that the avenue of appeal was not open because it might potentially impact further victims down the track? Secondly, does that raise the possibility of a downward spiral in terms of the length of sentences being handed out?

Mr Corney: Well I think the DPP, as I understand, spent extensive time considering whether an appeal should be made. The difficulty with the current way sentencing remarks are made is that there are no weightings attached. So as long as a judge refers to the relevant points that they should there is not an easy avenue for the DPP to appeal other than the sentence being manifestly inadequate. Now I thought the sentence was manifestly inadequate. I think they could have doubled it. I do not think there would have been many complaints from most people in the community. But I think the DPP, when they went in, had considered a range of four to six years. Akis Livas got three years, nine months. On that basis the DPP felt they could not mount that argument either.

As it currently stood, because it was by a single judge, it is only persuasive on other judges. But if a Court of Appeal has made a decision it would then be binding on single judges. So they were concerned, which is to your point that it may make it more difficult to run other cases and get potentially higher penalties if it were knocked back. As I understand though the Akis Livas case was used in the case—I do not know the drivers name but with I think Lachlan Seary's death—

MR BRADDOCK: Lachlan Seary.

Mr Corney: Yes. So when you think sentences are inadequate and then they are used to support more inadequate sentences, as a victim there is almost a level of re-trauma. It is like, well I do not think this happened right. As you would see from my submission I had a number of issues that I felt were poorly handled by the judge at the time. And it would miss the opportunity around the fact that—to elaborate, you might not be speeding but at 74 kilometres an hour and hitting us at 69 in a truck it is still a significant speed. What does negligent mean? It is not just other criminal convictions. It is the action of driving a truck when you are not watching the road. Sorry, I do not

know whether I have answered your questions Mr Braddock.

MR BRADDOCK: It helps me understand what you were referring to there. So thank you.

Mr Corney: But I certainly think for serious offences, which would include death and sexual assault, judges should be required to put weightings in to assist the DPP. It would also assist those who are found guilty to determine if an appeal should be made.

THE CHAIR: Thank you for your very well thought out and written submission. On page 6 you talk about the role of the legislature to provide better sentencing directions to judges and mandatory minimum sentencing. So could you speak to that? In particular your support or otherwise for mandatory sentencing and to what types of offences do you think that would apply.

Mr Corney: I do not think you would apply it to all sentences. I have little interest in low grade sentences. I am interested in serious offences particularly where someone is a repeat offender. I think some of this is born out of the frustration that I do not think judges are coming anywhere near the maximums. It is hard to see, as my wife previously had stated, how you would get close to a maximum sentence, so what else can an ordinary citizen do to say sentencing is not working. To me it is talk to the legislature and say please make certain judges take note. These are the things—whether it is through example decisions and if you depart from those you would need good reason, and that it provides the basis of a potential appeal if you have departed. There may be good reasons for that. I am conscious of those who say it does not work, because they want judges to remain unfettered. But if in the community a significant proportion, and I believe there are, are unhappy with that, what is the angle to change that. How do you put the legislature's view to judges about what penalties should be? So for repeat offenders of serious crimes, yes, I am in favour.

THE CHAIR: Obviously it is the legislature that sets the penalties because it is all in law—sets the maximum anyway. What else do you think a sentencing section in an act could include to achieve what you are seeking here?

Mr Corney: That is a good point. In discussion with the current Attorney-General he made a similar point when we were discussing the Sentencing Act with respect to those criteria that a judge should look at. So what more could you add, apart from either guidelines or heavier direction about if you do not assist police this will be the loading.

And people have a right not to. But if they are found guilty—so again we are not talking about people who are not guilty because then sentencing would not apply. But if you are found guilty and you have not assisted police or you have only provided remorse two days before your sentencing, which is many, many, months afterwards, that to me might well be things that reflect a higher sentence. Or if there—particularly if you have evaded the jurisdiction before, or you have been found guilty of rape or another serious offence. That might mean that you should have a direction to say this person will get x per cent more. Rather than necessarily an arbitrary amount.

DR PATERSON: In terms of the courts and engaging in that process, what would

help victims? What would be helpful in terms of personnel, or support, or locations—anything that you could offer in terms of navigating that process?

Mr Corney: I think during the coronial process the availability of the families rooms, the family areas as my wife alluded to, was excellent. But I also found at each point we have had different support people. We were not engaged with Victims of Crime to start with. I really appreciate their support more recently. One of their members was at the Coroner's Court at the time. She was excellent in her support as well. And earlier, as alluded, to the Victim Police Liaison was excellent at a time when I think we were just in a different space. As were the police who—it is just unbelievable to me how they could remain so calm and helpful after what they happened to see on that day as well. But I guess it was not a consistent person the whole way through. And there was a little bit of, "What is the playbook here? As a victim what happens next? Where does this go?"

DR PATERSON: So your engagement with the Victims of Crime Commission came later. Is there a reason for that or?

Mr Corney: They may have to answer why. I do not know why. I understand there is part of motor vehicle—

DR PATERSON: Yes, I have heard that.

Mr Corney: —collisions are excluded. I think something like that. I do not know why. Our engagement with the Coroner's Court provided counselling, Red Nose, police Liaison were really good. Then we had—in fact it was Corrine Vale at the then Coroners Court who was extremely helpful. But since then Heidi Yates, the Victims of Crime Commissioner and her staff have been excellent in their support.

DR PATERSON: Would it be helpful if you had that support from the beginning?

Mr Corney: I think for consistency and just that playbook as well. I hope I never go through this process again, and I had not before. It is just useful to know where things are coming up.

THE CHAIR: On behalf of the committee I would like to thank you Mr Corney for your attendance today and also for your support person Ms Munro. I do not believe there were any questions taken on notice. Thank you again for the courage you have shown in coming to appear before us in this public hearing.

Hearing suspended from 12.20 pm to 1.20 pm.

KILLEN, DR GEMMA, Head of Policy and Acting Chief Executive Officer, ACTCOSS
ROBERTSON, MS GABRIELLE, Policy Support Officer, ACTCOSS

THE CHAIR: Welcome back to the public hearing on dangerous driving. Today's proceedings are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web streamed live. When taking a question on notice, it would be useful if witnesses use 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.

In this session we will hear from ACTCOSS. We welcome Dr Gemma Killen and Ms Gabrielle Robertson. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement?

Dr Killen: I understand.

Ms Robertson: I understand.

THE CHAIR: Thank you. We have decided for the shorter sessions not to take an opening statement, but I am sure you will be able to get a chance to have your say.

MR BRADDOCK: In your submission you mentioned restorative practices. Could you describe how that might look in an example where we do have a dangerous driving offence and where that has occurred?

Ms Robertson: To start with, the ACT government, as far as I am aware, already has a commitment to restorative justice principles. The Building Communities policy and I think the principles in the "Reducing recidivism by 25 per cent by 2025" are based on restorative principles.

In terms of dangerous driving specifically, I am not sure if restorative justice would necessarily look very different to any other offence. It would just involve offenders acknowledging any damage that has been done by their offending and taking part in re-education, for example. That is something that is specific.

The REVersed program that is run by Karralika—and I know they speak about that in their submission—could involve some of the restorative principles from the other restorative justice work that has already been done in the ACT that involves conferencing, for example, with victims. I know that is something that has already been put in place for some specific offenders who have had conferencing with victims and their families.

The sort of restoration that we would be talking about is community based, education based and victim justice based. So I suppose that would involve what the victims need in that scenario.

MR BRADDOCK: Thank you.

THE CHAIR: I have a substantive on your comments in your submission on technological responses, where you express a caution about it and then you seem to jump straight to police using surveillance technology and having a concern about that—and that is noted. What is your view on, and concerns about, other technology—for example, testing driver capability, whether it is through some sort of testing of their alcohol content or mandating automatic braking systems, particularly on larger vehicles and sensory technology to sort of detect things if the driver is really not paying attention? Are those things caught up in your concern about technological measures?

Dr Killen: We are not concerned about all technology. We are definitely not alarmists in that sense. And we are not necessarily against the use of alcohol and drug detection technology. Particularly in terms of drug detection, we are talking about impairment and not the presence of drugs, particularly for something like cannabis. We have seen more and more research that suggests that the presence of cannabis does not necessarily mean impairment. So we would not want to rely on technology that tells us cannabis is present but does not tell us whether there is impairment for the driver. So I think there always has to be some nuance when using technology.

I guess the concern about surveillance is also that sometimes technology can lead to more bias and not less. I think that that concern would hold across all technologies that might be used. So we would need to really think about it and make sure there was an evidence base to suggest that that was not happening if we were using other kinds of technology.

THE CHAIR: With surveillance technology, you are not including things like speed camera et cetera, are you?

Dr Killen: No.

THE CHAIR: What other things do you have in mind?

Ms Robertson: In the ACT Policing submission they have listed some of the technologies that they would like more investment in or more expansion in—for example, automatic number plate recognition; StarChase, a GPS that can, as far as I can tell, be launched at a vehicle at close range and that sticks to the vehicle and allows police to then track a vehicle; air support, which is drones, which seems like it would take a lot of research to actually put in place; and embedded GPS and access to things like that, especially things like the automatic number plate recognition, which can be used to target certain individuals. For example, if they are aware of an offence in the past, maybe someone would be targeted to be picked up on something that may otherwise not have been noticed or is not a particularly dangerous offence.

THE CHAIR: So you are opposed to those measures, or you just think caution is needed?

Dr Killen: We would be opposed to something like the number plate recognition. We hear, particularly the Aboriginal community in Canberra, that if there has been a

minor offence in the past sometimes they can be watched and then picked up repeatedly in a way that is not necessarily conducive to future positive behaviour. So we would be really concerned about the use of technology like that.

THE CHAIR: Thank you.

MR BRADDOCK: At least one of the other submissions has suggested data loggers, which would be in the form of a GPS, which could be applied either with the consent or the agreement of the offender or not. What would be your position on that? Would that be an area where you would have concern?

Dr Killen: I think I would have concern until we had at least seen evidence that it was helpful. If there was an evidence base to say that it did not necessarily increase targeting of particular communities and that it could work to decrease offences, then we would have fewer concerns. But, without that evidence, we would still be concerned.

MR BRADDOCK: Yes.

DR PATERSON: In your submission you mention recidivism, particularly recidivism around dangerous driving offences. Operation TORIC, which is going on at the moment, is really highlighting this as a major issue. You do mention drug and alcohol issues but, aside from that, what information are you getting from the sector in terms of what would assist in reducing recidivism, particularly around dangerous driving offences?

Dr Killen: One of the things that we are seeing is that there are a lot of young people that are involved in dangerous driving offences, and we think that there needs to be more done in early intervention for young people. I think this would tie in really well with the recommendations around raising the minimum age of criminal responsibility.

Morag McArthur's report outlines the things that we need to do in the ACT in order to respond to justice issues but also to prevent future crime. There are a number of things in that report, including a wraparound service, so that, if someone starts displaying potential signs that they might re-engage in dangerous behaviour in the future, there are services available to respond immediately. I think those kinds of investments would be really important, particularly because it is young offenders that we are talking about with dangerous driving.

MR BRADDOCK: Some of the submissions have been calling for harsher penalties in the form of the cancellation of licences or greater demerit points to be applied to particular offences. Does that create any concerns for you in terms of any inequitable impacts?

Dr Killen: Absolutely. Justice Reform Initiative's submission also outlines some of the concerns that we would hold around the cancellation of licences. We have a particularly high rate of licence cancelling here in the ACT already, and that means that there are a lot of traffic offences that go through the court that take up resources. Also, particularly for people on low incomes or for Aboriginal or Torres Strait Islander people, it can be very difficult to get your licence back, which increases the

chance that you might drive without your licence and then reoffend.

THE CHAIR: Any supplementaries?

DR PATERSON: Yes, just to sort of challenge that idea. If you have offended and you have lost your licence, there would be some community sentiment that would say that, just because you want to stop reoffending or technical reoffending—

Dr Killen: Yes.

DR PATERSON: Are there education programs or things that people should be subjected to if they lose their licence that might help in that?

Dr Killen: Yes. We are not suggesting that people should never lose their licences or that we should ignore it when dangerous things happen. But, yes, more education would be great. Justice Reform Initiative's submission speaks to a program that used to be run through the Aboriginal Legal Service for Aboriginal and Torres Strait Islander people to get their licences. It would be great if we had more education programs like that and things like the REVersed program that is run by Karralika and we could put people through those programs, especially at no cost or at very low cost, so that, once they can reobtain their licence, they are more likely to drive safely.

THE CHAIR: Again, reading from your paper, on page 3 you recommend restorative justice and community education programs as alternatives to custodial sentencing. Are you saying that that should apply to a dangerous driving event that might cause the death of another person?

Dr Killen: What we would say is that sentencing has to match up with culpability and that we cannot put a blanket statement that a certain offence should always be met with a custodial sentence, especially when we do not have an evidence base that suggests that a custodial sentence will reduce reoffending or make driving safer in the future.

THE CHAIR: What about the notion that sentencing should match the proportionality of the offence or the effect of the offence?

Dr Killen: Again, we would go back to the evidence base, especially in other jurisdictions where they have put in mandatory sentencing and it has not resulted in a reduction of offending or necessarily an increase in safety in the community. I think that is what we need to be focusing on.

THE CHAIR: I am not sure if you were tuning in this morning to some of the families who have been affected by dangerous driving. What does one say to them when they have lost a child for life in horrid circumstances and the offender gets two to five years incarceration?

Dr Killen: I think it is a very difficult conversation to have and we absolutely have so much compassion for the people in those situations. But we also know that there are other families who have been in that situation who do not necessarily want longer sentences for the people who have been involved in their loved one's death. I think at

the heart of the grief for all families who have lost someone in these particular situations is probably a desire to stop this from happening to other people in the future. And, again, the evidence tells us that incarceration will not necessarily solve it but that things like education programs, justice reinvestment and early intervention will do something to stop these kinds of tragedies happening to other people.

THE CHAIR: A substantive, Dr Paterson.

DR PATERSON: In the police submission they talk about amendments to the Bail Act and around addressing recidivism. They suggest that, if you have injured someone or killed someone on the roads, that should go into the schedule of offences where you do not carry a presumption of bail. I was wondering if ACTCOSS has any viewpoints on the issues of bail, recidivism and reoffending.

Ms Robertson: I would say that putting a specific offence in that classification, that they do not have a presumption of bail, does not do anything to help to rehabilitate and re-educate that person. Maybe the point would be on the conditions of bail for that particular person. That then prevents the judiciary from having indiscretion as to whether or not they are given bail in that circumstance. Just because it is a certain offence, does not mean that the circumstances would suit that measure necessary.

There could be more investment in other options for people in those situations. Having someone in jail is not free; it is actually very expensive. So, rather than saying bail or no bail for a particular offence why not look at what programs could be put in place that that person could be accessing, whether or not they are on bail and what could be preventing them from driving safely or from not reoffending in the future?

DR PATERSON: To go a step further, I guess there would be an argument that, if you have already seriously injured or killed someone on the roads, you have committed a crime that is very serious. The other crimes that are listed as "no presumption of bail" are like a threat to kill, domestic violence type issues, stalking and that type of stuff. So it would put these dangerous driving and culpable driving offences in line with those types of offences. It is not saying that you will not get bail; it is just that there is no presumption of bail. Given the level of reoffending that is going on, which has been highlighted by the police, do you think that could be an appropriate course of action?

Ms Robertson: Again, there is a question of culpability, which I think separates it a little bit from those offences that you listed. When we are talking about dangerous driving, we cannot assume a particular level of culpability, and that is why we go through the justice process. We might be looking at alcohol and drug issues, intellectual disability or another kind of impairment that reduces culpability. So it separates it a bit from a threat to kill, for example, or from stalking because we do not necessarily know the circumstances that have led to the harm or the death.

THE CHAIR: That now brings us to the end of this session. On behalf of the committee, I would like to thank ACTCOSS for your attendance today and for your submission.

Short suspension.

BOERSIG, DR JOHN, Chief Executive Officer, Legal Aid ACT
LEE, MS TAMZIN, Head of Criminal Practice, Legal Aid ACT

THE CHAIR: In this next session we will hear from Legal Aid ACT, and I welcome Dr John Boersig and Ms Tamzin Lee. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement?

Dr Boersig: I do.

Ms Lee: I do.

THE CHAIR: Thank you. As we are not having opening statements, we will go straight to questions, starting with Mr Braddock.

MR BRADDOCK: In your submission you suggest that it may be of assistance to the public for decisions of the court, especially the Magistrates Court, to be published to ensure accessibility and transparency. Can you elaborate a bit further on that point in terms of exactly what details you are talking about and how that would be able to help?

Dr Boersig: I think one of the issues here is the availability of access to information for families and the community. One of the ways in which this is done are the published judgements by court. But it is not something that you would generally read—unless you did it before bedtime. Having said that, the bulk of work done by the Magistrates Courts describes the human plight that people face. It talks about the individuals and the impact on victims. We suggest that that might be useful for people to understand the processes that are taking place.

I acknowledge the importance of this inquiry and the pain that you must have seen and heard this morning. We should never lose sight of that.

But most people do not come into the courtroom. It is an alien place. It is a place they do not understand. It is a place where other people go and then, suddenly, they are thrust into the situation, perhaps because a family member has either become a victim or is charged with something. So we suggest maybe opening it up. People having accessibility to that kind of information may help to them understand why the court concludes or makes the judgement that it does and all the factors.

We have talked about the principles under section 7 and the criteria under section 33—or at least what has to be done—but there is nothing quite like seeing that done or reading that done. So it is about opening this really in a way that might help people understand why an individual in a particular circumstance did not go to jail or, if they went to jail, they went for not as long as what people might think they should have.

THE CHAIR: A substantive. I note that you say in closing that you think that the checks and balances in our court sentencing and appellant system offer, "The necessary safeguards to ensure the most just results." Earlier in your paper you say

that, "In coming to sentencing, every relevant factor in relation to both the offence committed and the subjective circumstances of the offender should be considered." If a driving offence causes the death of another, is it your view that that is such a substantive factor that that should be the weight given to sentencing?

Dr Boersig: Part of the job of a judicial officer is to weigh all those factors. I would make the initial point that we need people to see how they do that. There have been studies in the past where people have had the opportunity to do a hypothetical sentencing on a person and their sentences have not been from the mark of what happens in court.

I suppose what we are saying is that there is a whole list of criteria that you on that side of the table set for us in practice because you are passing all of that legislation. Is it delivering what you think it should deliver? Should it be changed or are there sufficient tools? We can talk about that. I noted your questions about bail in particular. Are there tools sufficient for you to say to the community that justice has been done? That is, I suppose, what is behind all the criteria that is to be applied to the legislation.

THE CHAIR: Obviously, some would conclude that justice was not done when a life was taken and someone is incarcerated for 10 or 12 years, for example. How does an effective justice system address that concern?

Dr Boersig: Well, that is your side of the bench. If you are asking me whether the system works, I think the system works. But your side of the bench sets the penalties and the standards that must be abided by as representatives of the community. What can we do is apply those standards in court, and indeed that is what the court should be doing. There will be differences of view, I agree, about the individual circumstances. But, if you are asking whether the system is broken, we are clearly saying that we do not think the system is broken. We think that the appellant system and the criteria that is used, both in the Magistrates Court and higher up, is robust.

We make some comments about the complications in the way we do business in the ACT around this and the different kinds of pieces of legislation. I do not mean to be opportunistic here, but I am being a bit opportunistic in that we could do with some law reform which would make it more agile and clearer for people to understand. You can see, just setting it out, all the different pieces of legislation that governs this area that we are talking about. So I am sorry that I am being opportunistic about that.

THE CHAIR: That is quite fine. It is in your submission anyway.

Ms Lee: I might just add to what Dr Boersig has said. With respect to the penalty or the response of the court to a death in circumstances of dangerous driving, obviously that offence covers a manner of behaviour from something that is not quite so serious to something that is significantly serious and has resulted in a death. The sentencing exercise takes that into account but it also needs to take into account how best to protect the community in the future and how best to respond to what has happened.

That is where, as Dr Boersig was saying, the principles of the sentencing legislation come into play. How do we best protect the community? Is it by a lengthy term of imprisonment or is it by—picking up on some of the things that were said by

ACTCOSS—justice reinvestment? Is it ensuring that this offender will not be making those same decisions again?

DR PATERSON: In terms of weighting, we heard from witnesses this morning saying that the judge gives the judgement and they say they take into account all these principles, but there is no actual, you know, "We are valuing the rehabilitation of this person over the impact on the victim." Do you think there needs to be more explicit weighting or articulation of the weighting of the judgements?

Dr Boersig: Weighting, as in putting a weight on, does happen in certain circumstances in relation to, for example, discounts when people plead guilty or a discount of 25 per cent in certain stages. You could theoretically weigh all those different criteria in section 33 or even section 7—at least theoretically do that. Do you want to add anything?

Ms Lee: In my view, that would be very prescriptive and it would really take away the discretion of the judiciary to consider all the circumstances that are before them. It is an unfortunate fact, but the penalty is not going to return the family of a victim to the position they would have otherwise been in.

In terms of the value of this person who is no longer with us equals this amount, the whole sentencing exercise—and it is an exercise, because the court is required to consider material about what has happened about the effect, through victim impact statements, on a family or other people who are involved. They need to consider the offender themselves. It is an offender-centric system and that is, I think, at the core of it in terms of how we ensure that this person takes responsibility for what has occurred, is held responsible, their behaviour is denounced, and they are not going to do it again.

That is a balancing exercise that the judiciary takes into account, and they do that because the legislature has identified the things that they must consider. The legislature has not indicated that this is more important than this, because I think it would be impossible to do so and it would really depend on the circumstances that the judicial officer is faced with. They have a lot of responsibility, but they are appointed because of their background and their learning and we give that to them because we cannot sit in every exercise and determine it.

THE CHAIR: I have a supplementary on that. You mentioned that it is an offender-centric system. I am interpreting this in a certain way, and feel free to correct, but obviously we have a Victims of Crime Commissioner and we have the opportunity to provide a victim impact statement. So what about the impact on the victims, and that includes remaining family members?

Ms Lee: Please do not take this the wrong way. I think that the ACT has done very well in including victims in the system and allowing mechanisms for them to be heard and supported but, at the end of the day, the sentencing exercise is the passing of judgement on a particular person for what they have done. They are the person who wears that consequence. That is what I mean when I say that it is an offender-centric system. The person comes before the courts having broken the law and the courts respond.

I think it is very important that people—victims or people who have been affected—have an opportunity to be heard throughout that process, and I think that there are very significant and important ways that the ACT has allowed and improved their ability to do that through the work of the Victims of Crime Commissioner and through victim impact statements. But it is a system that is, I think, not ever going to be perfect for a victim, because they have always lost.

THE CHAIR: Thank you. Any other supplementaries?

MR BRADDOCK: Just a supplementary on that. Dr Boersig, you put a caveat on your answer saying "theoretically" you could do such a weighting scheme. Why did you use that caveat and what are you thinking about with that?

Dr Boersig: Because I only just thought about it when the question came.

MR BRADDOCK: Okay.

Dr Boersig: I do not think that it is beyond the remit that a government could legislate a percentage or a weight that had to be done. But I would have to think through how that would happen practically, in light of the fuller discussion that came from Ms Lee. Mandatory sentencing brings with it a whole range of problematic issues. I would want to be very considered in my response to that question because it might sound straightforward but I think it could actually be quite complex and problematic. So that is why. I do not mean to hedge, but I would need to think about that.

MR BRADDOCK: Thank you.

THE CHAIR: Are you happy to take that as a question taken on notice?

Dr Boersig: Yes, we will take it on notice.

THE CHAIR: Thank you. I think we are up to Dr Paterson for a substantive.

DR PATERSON: The recidivism around dangerous driving has really been highlighted by Operation TORIC and there is, I think, definite evidence that these particular offenders are quite recidivist in their offending. I am also interested in your view around people being out on bail and reoffending and the presumption of that.

Dr Boersig: We did not address that in our submission. The first thing I would say is that I think the Bail Act is a good tool for managing people at the moment. The question for many people—and, indeed, coming from you—is that it is not being used to effectively address those individual people. From our point of view, the Bail Act is not a punitive piece of legislation.

On the kinds of issues that you are raising as to whether there will be repeat offences and so forth, those matters should be weighed seriously at the time that the person is arrested and they are first considered by the police and, secondly, then by the Magistrates Court. I do not know the full circumstances in relation to each of the cases that we have publicly seen in court, and, indeed, we were probably involved

with those particular matters at one stage or another.

Ms Lee: Just generally, the likelihood of a person committing an offence whilst on bail is specifically a criteria that the court must consider when determining whether to grant bail or not. So, arguably, that likelihood for recidivism should already be taken into account under the current bail legislation. As Dr Boersig said, bail is not punitive; it is to ensure that somebody comes before the courts to have their matters dealt with and to ensure that, whilst they are on conditional liberty, they do not reoffend. In some circumstances, the risk of reoffending is going to be such that they must be remanded in custody. But there are a whole range of circumstances between those two, and the courts grant bail on conditions that they form a view are likely to address that recidivism issue.

In terms of ensuring that people do not continue to offend, there are bail conditions imposed frequently in the Magistrates Court that may particularly go to driving—for example, not to be in the possession of keys, not to be in the driver's seat of a vehicle and, if it is with respect to drug or alcohol use, not to use and to submit to testing et cetera.

In my position as Head of Criminal Practice, I come at this from a defence perspective. A presumption against bail for this type of offending—and not moving away from the fact that it is serious—would not necessarily address that recidivism issue. You can overcome that presumption. It is more putting supports in place to ensure that people do not reoffend.

THE CHAIR: Thank you. A substantive, Mr Braddock?

MR BRADDOCK: Regarding your opportunistic claim for law reform earlier, can you please be more expansive as to what you would like to see in terms of law reform in this area?

Dr Boersig: Sure. I think we have outlined the range of legislation that applies to this area, and we have four or five different ones. I think we can resolve that into a single piece of legislation, or maybe even two but certainly just resolve it so there are not so many aspects in the way we deal with this. It is quite confusing, really, when you look at it. It also would allow more precision for the parliament to work out what the penalties should be in relation to these kinds of offences and what should be the kind of criteria used in relation to how these then are managed.

MR BRADDOCK: Thank you.

THE CHAIR: Is there any final thought that you would like to leave us with?

Dr Boersig: No, but just to acknowledge the important work that is being done here today.

THE CHAIR: Thank you. On behalf of the committee, I would like to thank Dr Boersig and Ms Lee for your attendance today. I think there was a question taken on notice. Could you please provide answers to the committee secretary within five working days.

Dr Boersig: I am very familiar with this. As to whether I can get it in five, I might need an extension on this one. I will get back to you. Thank you.

Short suspension.

EVANS, MRS DONNA, Executive Director, SupportLink Australia
McQUALTER, MR RICK, Board Member, SupportLink Australia

THE CHAIR: In this session we will hear from SupportLink, and I welcome Mrs Donna Evans and Mr Rick McQualter. I remind witnesses of the protections and obligations provided by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement?

Mrs Evans: I do.

Mr McQualter: I do.

THE CHAIR: Thank you. As we will not be taking an opening statement, we will jump straight to questions. With your offer for whole of support from, I guess, offence to resolution, what are the current gaps that you see in the ACT system for, in particular, supporting the victims?

Mrs Evans: I will put a bit of a context. The submission that we put in obviously had us delivering a trauma support service for a number of years. Rick is currently a board member of SupportLink Australia, but he was the Acting ACT Policing Coroner's Officer at the time. So he can speak to the effect of, I guess, a first on the scene response.

I think there is a huge gap, which I have indicated in the submission. We worked very hard to fill a gap that was identified by police. It was not a gap that the community decided needed to be filled; it was a gap that those first on scene, police and paramedics, identified needed to be filled. We provided a response to that.

In terms of what the gaps are still, nothing seems to have changed for the experience of people who are impacted by road trauma or sudden death in the ACT. The Coronial Counselling Service received some government funding, which was of great benefit to us as we are the intake point for all of ACT Police referrals into the social support sector. But it has a criteria around it, which is coronial support for those impacted by a death being investigated by the coroner. There is a huge number of people outside of that criteria that we were still left with. Road trauma was one of them.

So we still, even sitting here today, have referrals coming through every day, every week, every month for people we cannot find appropriate trauma support services for. There are no services that can provide that immediate response that do not have a criteria or restrictions around eligibility for people to need support to navigate the system.

THE CHAIR: Thank you. Mr McQualter, did you want to add anything to that?

Mr McQualter: Not at this stage. I think I will let Donna continue with it and I will add to it when I think I am required, I suppose.

THE CHAIR: Any supplementaries?

DR PATERSON: In terms of the support, it is for bystanders and for everyone who might be involved in a traumatic accident or road scene. Is that broadly who you are trying to capture or would like to capture in your service?

Mrs Evans: Yes. The people that we identified over the 10 years we did deliver the service were those that might have slipped through the gaps. It could be people who were first on scene, it could be witnesses, it could be extended family members or neighbours, work colleagues or fellow school students—anybody, really, who is impacted by sudden death. Then there are the implications on the health system and other services that might be impacted by people not getting the support that they need and helping them find their way through that network.

We also found that being part of the police attendance at the time gave us an ability to work with people directly and help them navigate right from that time that the incident occurred. Somebody who is impacted by a sudden death, or a significant motor vehicle accident in this case, do not necessarily know what is next. They have a lot of repeated questions, which fall on the police to answer but then the police are gone.

It is about helping people with those early issues that appear that other services might pick up later down the track. People are not necessarily ready for counselling or any therapeutic support; they just need to know what happens next or, if they have a problem with something that is happening around them, such as an objection to a post mortem or any of those issues, how they deal with that and want to know, "What do I do? Who do I go to?"

It is about sitting with somebody at the time that an incident occurs and helping them navigate their way through from that first instance. Sometimes it might be: "I am supposed to be at work and I do not know what to do" and we'll say, "Well, we will call your boss"; "How do I tell the children?"; and "How do I call family members?" It is the initial things that people just do not know how to navigate, and that is where shock and trauma can cripple people in terms of what to do next.

THE CHAIR: A substantive?

DR PATERSON: Well, I will use it as my substantive. How would you describe your service? So you attend the scene and then you would go with an individual or individuals to either a hospital or to the home? Do you leave the scene with them?

Mrs Evans: So the way the model was initially implemented was that we would receive the call—and it was any sudden death. So it could have been a road fatality, it could be a suicide or it could be a heart attack or something in a public place. It could be for people that have no family or support around them—people who are isolated.

Police would call us if they felt they needed an extra set of skills in that particular circumstance. It could be delivering a death message. Then the police would either continue with the investigation or they would move on to their investigation in another location. Often when something unexpected happens, the person could be left there for many, many hours. That happens in a road fatality as well. I think people

expect that things happen quickly, but they can be there for four, five or six hours for investigations to happen.

So you are explaining to people what is going on, you are getting them hydrated or calling people if they need somebody to call. If police come to you and they have questions, often there are challenges between community members and relationships with police, so you can be that intermediary. They might say, "Who is the best person to get this information?" or "Who is the best person to do a formal identification?" or "Who is the best person for this?" So you can provide that liaison.

Police then move on with their investigation but, for that family, there might be so many other issues that need addressing—for example, school, returning to work, study, support letters to explain why university exams cannot be sat and all those sorts of things.

Then it is about helping people figure out what happens next. How do you do an identification? What does that look like? If somebody goes in and says, "This is what you are going to see. I will sit with you and I will help you do that," at least you are prepared for what comes next. Making funeral arrangements is another one. Nobody wants to just look up F in the *White Pages*. You need someone to help you navigate that or tell you what options are available to you and help sort of step you along.

There are also returning back to work issues. One of the biggest time challenges we find people face is when all of their loved ones have gone back to work. There has been this period of time since it happened and you have had all of this support around you—and now we need to move on. People go back to work or people say they just do not feel like they can keep talking about it. But, actually, they will need to talk about it for the rest of their lives. You do not move on from trauma; it stays with you for the rest of your life. So it is about navigating what support you need at a particular time. We do not have a model of "this is what happens"; we come in and we say, "We are here; how can we help you? What do you need?" And we keep saying that for as long as people need it.

There are some great services. Victim Support has helped us out recently, under extenuating circumstances. We have been inundated over this last month. But there are always going to be people who sit outside the criteria for these services—the parents of offenders, offenders themselves, and people that are not deceased, where there has been just a major injury.

There are criteria around the services that we currently have. The ACT government website lists support following death. I went through it all: for example, if you are not in hospital—which cuts out half of them; or if you do not leukaemia or cancer. The Coronial Counselling Service has not taken a referral from ACT Police since November last year because they reached capacity. That has had a huge impact on us with respect to the number of people that we are supporting without that referral pathway.

There is Camp Quality, Red Nose, Canteen, Carers ACT, Clare Holland House, and Donate Life. There are lots of services listed here. But, if I have lost someone, there is not a single service here that can help me. So I phoned ACT Community Health and

said, "It says in this that there are social workers available," and they said, "You should probably call Lifeline or go to your GP, because there are two social workers—one on the south side and one on the north side, and you will not get in till next year." So, even though we have lists of services available, the actual experience of somebody on the ground is just so limited.

MR BRADDOCK: When does the end date of your services happen and then the handover points to more longer-term services?

Mrs Evans: We never really had one, because we also did not have criteria that we were bound to. Counselling usually has to come in six weeks, eight weeks or three months after an incident. So they have certain criteria. We came in at the beginning and then we would help people navigate the practical and emotional issues that they were faced with and, if therapeutic support were needed, we would make sure they had those links as well.

If we needed to move into the place of therapeutic counselling, which people usually were not ready for for quite a long time, if at all, we would look at what supports they had. But people could always ring back and say, "This second anniversary is crippling," and we would check what support they have around them, check who they are in contact with and check what people's current resources were before suggesting any others. We would do a referral on to a GP to go out for allied health and social workers. But I think just going to your GP is something that people do not necessarily always think is going to be the best pathway for grief, loss and trauma issues.

There are things that we can work with along the way, but we would not say there is a certain number of sessions or there is a time frame, because then you are indicating that your life will change after that first six weeks or 12 month or two years, and we know that is not the case.

MR BRADDOCK: So, instead of a harsh stop point to your services, it is more of a gradual decline as the person is able to function more effectively? Is that the case?

Mrs Evans: Yes, or they might just need to know what is next. They might be interested in talking to somebody else who has had a similar experience or maybe they cannot work in that location anymore so they need to upskill. So you can refer people on for unrelated type issues. There might be drug and alcohol type issues or other impacts on the health system. It is really about finding out what that person needs and then finding the services to support around that.

What we heard over and over again was how important it was having someone there to help you navigate things—that personal touch, that care and that connection. Just asking somebody what they need is really important. That is not the role of the attending police and it is not the role of paramedics and, therefore, it becomes nobody's role.

Mr McQualter: I would add to that. As Donna said, I was the Coroner's Officer for the AFP from 2000 to 2012 and the Police Welfare Officer from 2012 to 2014. At the scene of a fatal car accident, the police need to basically control the scene, process the scene, examine it, look for evidence and take statements. They do not actually have a

lot of time to deal with the victims or the family members who may be there or witnesses to the scene. They have ambos and they have firies, and they have a fairly devastating scene to deal with. Their main function is to collect evidence, and the families or the victims or the witnesses tend to miss out. The police cannot always follow up at times, as well.

When I was the Coroner's Officer, we did not have support there for trauma support. They came in halfway through the system when I was there, and it took so much pressure off the police officers. They could actually concentrate on their job of processing the scene and gathering the evidence, and the families were well looked after. They could deal with all the complications and the issues they may have from the very scene and throughout the post mortem and the identification and through the criminal brief or coronial brief.

With a coronial brief, it could be up to two years before the matter gets before the coroner. During that time, the police officers are dealing with other jobs—other fatal car accidents and other suicides—or may have changed jobs or may have transferred or are on leave, and they are not there to take the family phone call. That is where SupportLink stepped in. They could take that work off police officers and deal with the family and help them through the whole process. From the police perspective, it was a great service and it assisted us in doing our job and doing it professionally, and the families were not left behind.

In the old days, it used to be, "We have to go now. Is there anybody I can call for you—the local priest or a family member?" and then you left the house and left them to themselves and there was no follow-up. This service looked after these families through the whole process, and I found it a godsend for the police officers and for the families.

THE CHAIR: Thank you.

MR BRADDOCK: I have noticed that, in a lot of the statements from the victims, they were very effusive in their praise of the police victim liaison officers and the support they are providing. I am just trying to understand how the service you are providing works with them or whether you are actually better placed to provide it. I do not know. This is why I am asking the question.

Mrs Evans: It is probably a good question for ACT Police, but my understanding would be that a victim liaison officer would not necessarily be involved in all of the sudden deaths or road vehicle fatalities. They refer to SupportLink. They use our referral system and then we are left with needing services to refer people on to. That has been our biggest challenge of late. We have a very long list of circumstances that we could go through where the end service provider is just not satisfactory.

The victim liaison officer does an amazing job at helping somebody navigate the legal side of the system, but not everyone would be eligible for that contact. Also, when they are finished with their role, what are the social supports that come into play? So they put a referral in and they use the system and we do not have end service providers to be able to pick that up.

It is as much about having a response on the ground as actually having a service you could refer to. If we cannot get support on the ground at the time, we still need a trauma support service to ring someone and follow up and see how they are going. We do not always recognise the impact on witnesses. We have been doing a lot of calls lately to people who stopped to help. Their stories are traumatic. Their stories are very sad and very difficult, and their lives have changed because they decided to stop that day. So there are a lot of people that would fall outside of that.

Even if we did not have face-to-face support, it would be great if we could still implement something that would reach out and check in and say to somebody, "How are you travelling? I appreciate that you have been through something really difficult." They often say, "Well, thanks for calling because I thought I was okay." That is because they are helping the police. They have adrenaline. They have something to do and they are giving statements. Then, the next day, the mind starts to ruminate over all of the things that could have happened and that did happen, and the trauma of it all starts to set in. These are normal reactions to what we would see as a completely unexpected event, but their lives now are impacted through a lens of trauma, unless they can work through navigating how to actually process and manage triggers and work towards what would look like recovery from that incident themselves.

So there are a few different ways you could look at. Reaching out and connecting with is people is ultimately what I think is the most important thing to do, and there are essentially no services that do that.

THE CHAIR: Thank you, Donna and Rick, for coming before us today on the behalf of SupportLink.

Short suspension.

BOWLES, DR DEVIN, CEO, Alcohol Tobacco and Other Drug Association ACT

THE CHAIR: In this session we will hear from ATODA, Alcohol Tobacco and Other Drug Association ACT, and we welcome Dr Devin Bowles. Can I remind witnesses of the protections and obligations offered by parliamentary privilege and draw your attention to the privilege statement? Could you confirm for the record that you understand the privilege implications of the statement?

Dr Bowles: I do, thank you.

THE CHAIR: We are not taking opening statements for these shorter sessions so we will proceed to questions. I have a very broad question and I trust you do not find it too provocative. What is your approach to sentencing based on proportionality of the offence, otherwise known as punishment fitting the crime, given that in the ACT we do have a Victim for Crime Commission and we do have the option for victims to lodge impact statements as part of the sentencing process? So with proportionality being perhaps the strong factor in determining the sentence.

Dr Bowles: Indeed. Dangerous driving can result in absolutely terrible outcomes. As I understand it the point of sentencing is often around deterrence. There are a couple of complexities with dangerous driving charges. One being that a person charged with dangerous driving who has harmed or killed someone rarely intends that outcome. So then there is the question of should proportionate sentencing be proportionate to the outcome or the intent. In most crimes those two are fairly similar. In most dangerous driving crimes they may not be. Beyond that philosophy I think dangerous driving is one of the dangers that people face in society and that our sentencing along with other approaches to our roads should be focused on reducing the amount of dangerous driving as our primary objective. So where there is a potential for a conflict between proportionality and reducing dangerous driving, we should favour reducing dangerous driving. Thank you.

DR PATERSON: I note in your submission the importance of roadside alcohol and drug testing and the randomness of that. In the ACT Policing submission they state that in recent years they have shifted away from the strategy of random traditional bulk approach to RBT they say to a more targeted, intelligence-led approach. Your submission seems quite contrary to that. I was just wondering if you could speak to why you are of the opinion that the randomness is important.

Dr Bowles: So when we talk about deterring dangerous driving and certainly driving under the influence of alcohol is a big danger, we talk about the way people engage with risk. Risk as people comprehend it is usually a combination of how bad the penalty or bad outcome would be and the likelihood of encountering that penalty.

Now the ultimate penalty for dangerous driving is not imposed by the state. It is death. It is death for you, and it is death for everyone in the car with you that you love. So the state's ability to increase the penalty in a meaningful way is negligible. Death plus a 10-year prison sentence versus a one-year prison sentence is just the timing of the prison sentence. It does not matter.

But the other thing that people use when they are calculating risk, which is really important when we are thinking about deterrence, is the perception that people have that there will be a negative consequence if they undertake a certain action. Random breath testing is the best way perhaps of increasing people's perception that there will be a negative consequence to the dangerous act of driving under the influence of alcohol. Having it be genuinely random is important. The ACT has the second worst rate of people who are identified as being under the influence when they are tested, behind only the NT. We also have the second-fewest tests per driver from memory and that is at only .26 random breath tests or roadside breath tests per driver per year. I asked my wife last night if she had ever been subject to RBT. Between us we have over 40 years driving and between us we had two. So the perception of many Canberrans as documented in the literature is that the risk of actually getting picked up for it is low.

States that have a ratio of one RBT or more per licensed driver per year have better outcomes in terms of reducing the number of people who are drinking while intoxicated by alcohol on the road. So it strongly suggests that police engagement in that activity increase and that at least some of it be random so that the perception changes from what it is now to "I could get tested at any time." Most drivers in the ACT do not think if they were to drink-drive they would be caught for it. That is also what the literature tells us. We note that alcohol is a drug that really impairs driving ability and we know that it is the most widely used of the drugs that significantly impact on driving ability. Based on the 80/20 rule we should be putting the great bulk of our effort into alcohol in terms of all drugs. It is really well proven in Australia and internationally to be effective to make our roads safer.

DR PATERSON: Do you think that it could be argued that our high rates of police capturing drink drivers is because they are actually targeting them through intelligence-led testing, therefore they are not wasting resources on general broad population testing and are more targeted, so they actually do pick up people?

Dr Bowles: That is a great question and I think some of the effect might be that. I do not know what police intelligence is other than Civic on a Friday night is going to be more likely than Braddon on a Wednesday afternoon. But I do not think it explains all of it. I think with the police—so, the police have potentially two goals. One is to catch a lot of people. One is to have a high rate of pickups or finding people who are testing positive. But the other, and I would argue more important one, is to make the community feel like "If I drink drive there is a pretty good chance a policeman is going to be waiting around the corner and I am going to get done. So I better not drink drive."

THE CHAIR: That is what the ads tell us anyway on TV.

MR BRADDOCK: The Australian Federal Police Association in their submission talk about the requirement if someone returns a positive saliva test result for drug driving to be taken into hospital for testing. They are also saying they should have their licence cancelled until such a point as the test results are known. Do you have a perspective on that in terms of does that present any issues for you, that idea?

Dr Bowles: As a society, we have agreed there is a certain level of impairment from

alcohol we are willing to accept. We are willing to accept a level of impairment up to a blood alcohol concentration of 0.05. In fact that level of impairment is not trivial. With other drugs, illicit drugs, there is no link to reduced driving ability or impairment. People are detected with any amount of drug in their system and it is based on that the prosecution can happen. So overall I think we have an inconsistency in our legislation where we require a certain level of impairment for alcohol but not for the illicit drugs for which we test. I think that is somewhat flawed.

The ACT Policing submission noted a study by Olaf Drummer and colleagues that said—basically it looked at people who had been involved in accidents causing injuries and tested their blood for alcohol and illicit drugs. It found that illicit drugs increased the likelihood of a person being culpable in that accident by 10 times. That is really important and illicit drugs can absolutely impair peoples driving. Interestingly, that same study found the level of impairment, or odds of culpability I should say, in contrast to 10 times greater for illicit drugs generally, for alcohol were 16 times greater. One of the important things to note in that study is that the level of impairment between the different types of illicit drugs is enormous. In that study approximately 90 per cent of the people who were involved in accidents who tested positive for THC, meaning they had used cannabis recently, were at a level of impairment equal or below the level that we accept for alcohol. So 90 per cent of people that would have been picked up as having the presence of cannabis were in fact as impaired or less impaired than, as a society, we have agreed is okay for alcohol.

I am conscious that does not answer your question directly, but I think it is an important grounding for how we think about it. In general I think there ought to be—well, I will take a step back and say that the *ACT Road Safety Action Plan 2020-23* suggests that we:

> Review and assess the effectiveness of the Territory's drink and drug driving scheme against best practice models including to consult with experts and the community on the effectiveness of the scheme and potential reforms.

In answer to your question, I think it is time that we do that and the alcohol, tobacco and other drugs sector, which plays an important role in increasing road safety, feels that we have something valuable to contribute as part of that.

DR PATERSON: We have seen through the recent fixed drug testing site the level of variation in what drugs people are bringing in. One sample is absolutely nowhere near exactly the same as the other samples. So it really articulates that drugs on the street are unregulated, that there can be anything in them and so you do not actually know what you are taking. Whereas you know if you buy a glass of wine you know the alcohol content of that wine and you can make your judgments on how much you drink. So it is quite a different issue to, I guess, if we had a regulated drug market. Would you not say then that would be a reasonable argument? But given it is completely you do not know what you are getting, then it is very hard to articulate an argument that there should be some level of drug impairment allowed on the roads.

Dr Bowles: You are right. It certainly does complicate things. The technology to be able to measure impairment generally is developing quite rapidly. We would hope that as part of the ACT road safety action plan's suggested review that the ACT

government really engage with the latest developments on that, because I think we are pretty close to getting to a point where people could test for their level of impairment. That would be useful for things potentially beyond alcohol and other drugs. It would be around fatigue or prescription drugs or as a new parent, again, having small children in the backseat.

THE CHAIR: It is perhaps stretching the relevance a little; what do you think about treating other drugs in the same way that alcohol is treated in terms of them being regulated, licensed and obviously tested for level of impairment as opposed to just mere presence in driving?

Dr Bowles: The question if I understand it is, is it worth regulating a drug market so that we can better regulate impaired driving? That is not actually an argument I have heard in favour of regulated drug markets. The legislation to decriminalise possession of illicit drugs—and I know we disagree on this Mr Cain—in my view, based on the evidence, it is fairly clear that that is a reasonable step. There are very few markets where that has happened. So I cannot from an evidence-informed way make a firm statement one way or the other at this stage.

MR BRADDOCK: Is there any jurisdiction that does the level of drug impairment on driving well that we might look to?

Dr Bowles: My understanding is that there are some jurisdictions that do it better than we do in the ACT. But I do not know of any jurisdiction that does it in a way that I think satisfies arguments about adequately reducing risk and also engaging effectively with human rights issues and proportionality issues.

DR PATTERSON: In your submission you talk about if someone is caught drink or drug driving that there needs to be education and intervention. Is that correct? Is that what you are recommending?

Dr Bowles: Yes, in many cases.

DR PATTERSON: Is that effective?

Dr Bowles: Yes. The evidence for education alongside engagement with the alcohol, tobacco and other drugs sector is better than for education alone. Many people that engage in dangerous driving due to alcohol or illicit drugs do so because they have a dependence. Merely educating for that cohort is often going to be not enough but supporting them through a process of reducing that dependence is a great way to substantially reduce the risks that are on our roads.

THE CHAIR: Thank you so much and thank you for your very comprehensive submission. On behalf of the committee I would like to thank Dr Bowles for your attendance today. I do not think there were any questions taken on notice.

Hearing suspended from 2.40 pm to 3.10 pm.

TEALE, MS SASKIA, Team Leader, Australian National University Law Reform and Social Justice Indigenous Reconciliation Project

THE CHAIR: Welcome back to the public hearing on dangerous driving. We have one witness. Please state your name and the capacity in which you appear when you first speak. These proceedings are being recorded and transcribed by Hansard and will be published. Proceedings are also being broadcast and webstreamed live. When taking a question on notice it would useful if the witness used these 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. In this session we will hear from the ANU LRSJ Indigenous Reconciliation Project, and we welcome Ms Saskia Teale. Can I remind you of the privileges and obligations afforded by parliamentary privilege and draw your attention to the privilege statement? Would you confirm for the record that you understand the privilege implications of the statement?

Ms Teale: Thank you. Yes, I confirm.

THE CHAIR: Thank you. Ms Teale has asked for an opportunity to make an opening statement so please proceed.

Ms Teale: Thank you Chair. My name is Saskia Teale and I am student legal researcher and team leader at the Australian National University Law Reform and Social Justice Indigenous Reconciliation Project. I would like to acknowledge that we are here today on Ngunnawal and Ngambri land and I would like to pay my respects to elders past, present and emerging and extend that respect to any First Nations Peoples here with us or listening to this recording. We are here today on stolen land where there has historically been denial of First Nations voices in processes such as these. The student project which I am a part of aims to learn, advocate and amplify for First Nations voices on issues of First Nations justice. The recommendations in our submission are informed by this approach, particularly as the authors, including myself, are not Indigenous.

I would like to recognise the seriousness of this topic of dangerous driving and the tragic injury and loss of life that occurs on ACT roads and that this is an incredibly important area to address in the ACT. Our submission was prompted by discussion within the community leading up to this inquiry surrounding calls for mandatory sentences, longer sentence lengths and overall harsher sentencing regimes in respect to dangerous driving. These calls are concerning because of the relationship that has been established between harsh sentencing regimes and the overrepresentation of First Nations People in the prison system. In the ACT, First Nations Peoples are imprisoned at 19 times the rate of non-Indigenous people. This is above the national average of 16 times. This was found in the Productivity Commission's *Report on government services 2022*.

The Australian Law Reform Commission's *Pathways to justice–inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples* report developed recommendations for all state and territory governments for reform to reduce disproportionate incarceration of First Nations Peoples. This report identified that mandatory sentences increase incarceration disproportionately affecting First Nations

People. Recommendation 8.1 of the report is that governments:

> … should repeal legislation imposing mandatory or presumptive terms of imprisonment upon conviction of an offender that has a disproportionate impact on Aboriginal and Torres Strait Islander peoples.

Similarly, recommendation 9.1 advised governments to:

> … develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release.

As our second recommendation in our submission addresses, we advise the committee to consider alternative policy strategies such as justice reinvestment programs to address dangerous driving offences. The *Pathways to justice* report recommends in 4.1 and 4.2 that the government promote justice reinvestment resources from the criminal justice system to community-led place-based initiatives that address drivers of crime and incarceration and that this should be in partnership with Aboriginal and Torres Strait Islander communities.

As the ACT government acknowledge in its submission to the *Pathways to justice* report a greater proportion of First Nations People experience barriers to obtaining and sustaining a licence. The funding of programs which assist First Nations Peoples obtaining a licence could be a consideration to the committee. I would also like to note the Maranguka driver licensing initiative in Bourke in New South Wales that took place under a justice reinvestment program. The New South Wales Bureau of Crime Statistics and Research reported that there was a 38 per cent decrease in driving offences proceeded against First Nations People under the age of 25. We also noted in the submission the committee may wish to look to the New South Wales *Roads Safety Action Plan* and the effectiveness of the mandatory alcohol interlock program. The Bureau of Crime Statistics and Research reported in 2022 there was a high reduction of drink driving offences caused by those participating in the program.

Lastly and most importantly, it is our third recommendation that the standing committee engage with groups such as First Nations community organisations, advocacy bodies and community law clinics in the ACT in the development of any reform in this area, particularly anything to do with the sentencing regimes. I extend this to any community programs or justice reinvestment strategies in this area that relate to rehabilitation and deterrence for driving offences. I have here a list of these organisations and community law clinics if the committee would like me to share with them.

THE CHAIR: You are more than welcome to provide those later.

Ms Teale: Absolutely.

THE CHAIR: As you have said in your conclusion you are deeply concerned about calls for longer sentences, mandatory sentence and non-parole schemes. Do you think there is anything wrong with our current sentencing regime and bail regime? You may feel that you just want to answer for the First Nations community or more broadly. Up to you.

Ms Teale: To be honest with you I cannot say I am an expert in our current system at the moment. I think our submission was more in response to calls for mandatory sentencing in the lead up to this discussion, this inquiry. I am sorry I could not say I am an expert in being able to answer particularly to the current system. I am sorry for that.

THE CHAIR: No that is quite all right. What in your opinion is the evidence that demonstrates the ineffectiveness of these regimes?

Ms Teale: I would particularly like to rely on the *Pathways to justice* report that we quoted in our submission. Particularly on page 7 of our submission when we were discussing what has really widely been acknowledged in the literature, of the effect of mandatory sentencing on the overrepresentation of First Nations People in the prison system. We have not provided any particular statistics in here but are definitely relying on the work of reports such as the *Pathway to justice* report that have clearly identified this.

THE CHAIR: Is that *Pathway to justice* report linked just to the Indigenous community or is it broader?

Ms Teale: The aim of it is to look at ways that the government can approach the overincarceration of particularly First Nations Peoples. I have a copy of the report here. I am more than happy to provide it if you like.

THE CHAIR: The secretary would be able to take it or you could provide it by email later.

Ms Teale: Certainly.

DR PATERSON: In one of the submissions from the justice reform initiative they have a table in their submission that suggests we have the highest proportion of prisoners with traffic offence as their most serious offence, by Indigenous status and jurisdiction and we have the highest over-representation of Indigenous people in prison in Australia. I was wondering if you could speak to what you feel would reduce the level of traffic offences or proportion of Aboriginal prisoners in our prison system in relation to traffic offences.

Ms Teale: Absolutely. So I think an emphasis on funding and support for programs within the ACT that completely focus around deterrence would certainly be something that we would recommend in our submission—for example, I am not sure if there is an Indigenous officer at Access Canberra to assist with First Nations People obtaining a licence and things like that. The program I referred to before, the Maranguka program, was found to be incredibly successful.

DR PATERSON: What were the key components for that program?

Ms Teale: The program was providing driving lessons for young people and they were provided free. There was an Indigenous driving instructor who was running the program. It created employment in the community and also there was a decrease in

the amount of young people who were offending and driving unlicensed. I think this is a really amazing program that could work in the ACT.

MR BRADDOCK: I agree entirely with early intervention diversionary sort of approaches. But post-incident, should it actually happen, what is your view in terms of the impact of whether it be intensive corrective orders, interlock, or various other measures on the First Nations community? Are those appropriate responses?

Ms Teale: As I am not an Indigenous person myself I am wary in answering that question and also that I do not have the scoping capacity to answer that. I think the—there certainly shows, as a general deterrent the mandatory alcohol interlock program has proven to be incredibly effective across the board. I cannot specifically speak to the effectiveness for First Nations People. But yes I assume that it would be quite effective, as it has shown in different studies.

THE CHAIR: As you are aware there are some submissions and some witnesses that have appeared today who have lost loved ones to dangerous driving. For them it is the loss of a loved one for the rest of their lives. And yet we are seeing sentencing in the range of two to five years in many cases. So what role do you see proportionality of the impact of the crime play in sentencing?

Ms Teale: I completely appreciate the purpose that retribution does play in sentencing. And that is a community standard that we certainly have. I think it is certainly the role of the committee to really balance these different interests in looking at programs which deter long-term and also the importance of victims within this as well. I think it is a very difficult balancing exercise and I think both need to be taken into consideration. I cannot specifically speak to—in great detail though. I am more putting forward my project's concerns on deterrence particularly and the way it effects First Nations People. But I do appreciate it is a very difficult balancing exercise of proportionality.

THE CHAIR: Do you think we have the balance right?

Ms Teale: In the current situation I do not feel like I can currently confirm the answer on that. My main urge is for the committee to consider the recommendations we have put forward, to take into consideration the responsibilities of the ACT government in regard to the *Pathways to justice* report as an important consideration.

DR PATERSON: Would you like to speak more about your views on justice reimbursement and education programs and what you think is important?

Ms Teale: I would not say I have a whole lot more to say on it, unfortunately. But just that from the research we have conducted, as has been recommended by the *Pathways to justice* report and this is what a lot of Indigenous communities have been talking about for years and years and years—it is to make sure you get power to community and power to First Nations leaders to really determine how the criminal justice system affects them. Really look to First Nations-led solutions, so yes. I think, yes, that is where my main argument lies.

MR BRADDOCK: I am interested in the statement from your submission on page 8

where you say:

> Further, mandatory sentencing regimes could potentially increase the likelihood of reoffending, as periods of incarceration are known to promote recidivism.

I am interested do you know if there are any statistics that demonstrate that is a likely outcome of a mandatory sentencing regime?

Ms Teale: Sorry, which sentence. Can you please refer, which sentence was that again sorry?

MR BRADDOCK: It is right near the bottom of the page, and you have a footnote to *Value of a justice reinvestment approach to criminal justice in Australia*. I am just interested if you know of any statistics that demonstrate that mandatory sentencing does actually increase recidivism.

Ms Teale: No I cannot say the statistics off the top of my head, but I am more than happy to get back to you with those.

MR BRADDOCK: If you do find any please send them through. Thank you.

Ms Teale: Absolutely more than happy to.

THE CHAIR: So you are happy to take that on notice?

Ms Teale: Yes I am.

THE CHAIR: Thank you. We have had some questions about preventative measures for dangerous driving, driver education, other programs. Do you see anything that would in particular assist the Indigenous community to prevent these sort of horrible events happening, whether it affects them and/or others?

Ms Teale: Sorry, was the question—

THE CHAIR: What preventative measures do you think—

Ms Teale: Okay.

THE CHAIR: —and are there any that are particular to the Indigenous community in Canberra?

Ms Teale: I think that would be best answered by First Nations organisations and from the organisations that I will provide to you. Yes I would not say that I am personally an expert in that. But yes those organisations would be the best people to speak to for that.

THE CHAIR: Would you like two minutes for a closing statement? Or not?

Ms Teale: I would just like to say thank you so much for the committee for letting me speak today. I really appreciate it. So thank you.

MR BRADDOCK: Thank you. We appreciate your time.

THE CHAIR: Thank you for your submission. On behalf of the committee I thank Ms Teale for your attendance today. I believe you have offered to take a question on notice—

Ms Teale: Yes.

THE CHAIR: Could you provide answers to the committee secretary within five working days?

Short suspension.

KATZ, DR RODERICK

THE CHAIR: In this session we will hear from Dr Rod Katz. Welcome Dr Katz. Can I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to privilege statement? Could you confirm for the record that you understand the privilege implications of the statement?

Dr Katz: I do.

THE CHAIR: Thank you. Now, unless you have a burning desire for an opening statement, we might jump into questions.

Dr Katz: No burning desire. I did prepare one. But I am happy to forego that in the interest of time—

THE CHAIR: How long is your opening statement?

Dr Katz: Five minutes. But it is basically a recapitulation of—

THE CHAIR: Okay well we will just dive straight in I think.

Dr Katz: Yes.

THE CHAIR: Thank you. Are you appearing in your personal capacity?

Dr Katz: That is correct.

THE CHAIR: Is the current ACT sentencing regime working as it should be and if not how do you think it should be improved?

Dr Katz: My submission was more addressed at dangerous driving and what system characteristics could be improved rather than simply the sentencing nature. Whilst I did do law, that was 100 years ago. I do not think I am qualified to speak on the sentencing practice in the ACT. My—

THE CHAIR: Well I might take the liberty to rephrase it to: how can road safety in the ACT be improved?

Dr Katz: I think that really we need to take a number of steps. First of all we need to commit seriously to a safe system and vision zero. At the moment we talk about vision zero in the Road Safety Strategy, but there is no date. It is not like with climate change where we have said, "Okay 2050 we are going to achieve zero carbon emissions." We have not taken that step and taken the step of doing the modelling that is necessary and developing the action plans that are necessary to reach that vision zero, which is the standard these days for achieving a safe system.

I guess I have been promoting this within the ACT for a couple of years. I really do see that it is essential for us to really make some gains. Our current strategy expires at the end of 2023. We need to be onto this now, to be doing the data analysis, the action planning, the visioning and the back casting to allow us to come up with the plan to

get to vision zero.

In that process, I think we need to really respect the grief of the victims that we are seeing at the moment that have obviously prompted this inquiry. I think we really do need to be conscious of the community backing up of those great tragedies. I think there are a number of steps that we can take within our system to improve it immediately beyond that planning phase which is so important. I think we need to ensure we capture evidence about what is going on on our roads. We do that through technology, such as dashcams, the various CCTV systems we have and data loggers in vehicles. That sort of stuff can make a huge difference.

I think in that process we can support our police teams, who I think are showing some initiative in coming up with programs like TORIC and Operation SNAP, which are about using smarter tactics to address dangerous driving, so that there is not a sense of impunity for people getting into vehicles and thinking that basically the roads are a speed thrill area where they can do essentially what you like with very little chance of being pulled up.

When it comes to sentencing, as I think previous speaker was saying, we need to understand the competing pressures on sentencing—rehabilitation and deterrence. I think all of those things can make a difference. But they are probably a small part of the picture when it comes to actually dealing with this feature of our roads, which is dangerous driving.

Arguably whenever we get into a vehicle, given its mass, given that speed potential, we are partaking in a level of dangerous driving which for some reason we think is below some notional threshold. We need to recognise that threshold is not fixed. It is something we should be constantly moving down as part of our safe system approach and ensuring we can create a safer system where there is no need for these people to go through this sort of trauma. In that, we really have a big job ahead in balancing the incarceration rates and rehabilitation and crime reduction.

I think in that process those people who do have their licenses taken away, who are put into a rehabilitation anti-recidivism program, should be given options apart from getting into a car. We need to understand there are mobility options and there are access options that do not require us to use motor vehicles. I would be all in favour of giving those people options. Hopefully not in a paternalistic way but allowing people to take advantage of public transport, which is improving, and active transport. Give recidivists free scooter passes and that sort of initiative. It is something we might want to consider, to allow people to have mobility without that responsibility of being in control of a vehicle with such lethality. Sorry, I should stop and let you ask a question.

THE CHAIR: That is the first time I have heard that idea. So thank you. We are hearing something new every day.

DR PATERSON: We are going to hear from Weston Creek Community Council tomorrow and Uriarra Village Residents around just this kind of broad scale dangerous driving that appears on the roads. These may not be people who have had any contact with the criminal justice system—just young idiots who have their licenses who are driving dangerously and recklessly. We do not necessarily want to

put them in jail, but we do need the behaviour to stop. From your experience, what would you suggest? How do we address the problem of this kind?

Dr Katz: Yes. I think there are a lot of very good psychologists out there coming up with good interventions that can be used to address particular groups. I think some of the studies suggest the potential for community shame and peer group shame can be a useful lever with some of these groups. It is not going to work for everybody. Some people may simply disregard that as not applicable to them. I think we have probably all been there before.

Ultimately, I think we need to address the lethality of the motor vehicles and start to adapt our fleet. This is not simply something the Territory can embark on its own. But I think it should be advocating through the federal road authorities, the ADRs, standards, et cetera to ensure that vehicles cannot do massive speeds with ridiculous levels of acceleration, which are really not necessary for transport. If you take away that thrill-seeking potential it may well reduce the amount of hooning behaviour at the same time. To transition the fleet is a 15-year process at least. So we are probably looking at interventions in the interim, even if we were to start that process tomorrow.

I think that is something that we need to work with the very capable psychologists in the better research centres around the country to come up with interventions. I think we have tried a few in the ACT. We probably do not have the budget of some of the efforts that have been put into place in other jurisdictions. I think we probably all remember in New South Wales the little finger campaign which, anecdotally, was very effective in changing people's whole approach to speeding and hooning, just taking away that sense that, "I am a hero and the fact that other aspects of my life might not be going so great, I can still make an impact and impress my peers through this sort of behaviour on the roads." Those are some of the ideas that I would be exploring anyway.

DR PATERSON: Yes. A lot of these people are putting up videos on YouTube and on social media. There are closed Facebook accounts and WhatsApp groups and stuff with these groups that are doing some of this behaviour. Is there again anything you have come across in your work that could address that issue?

Dr Katz: No. That is one I would like to take on notice actually, because it is something I think we do not pay enough attention to. Maybe it is something where we need to engage with the Metas of this world to say, "Okay can we report this? Can we address it? Can we put a sticker on it somehow to say, 'You may think you are wonderful but actually do you know your friend died doing it?'." So that sort of stuff—intervention into that circuit of dysfunctional behaviour—is really important.

MR BRADDOCK: I am interested in intelligent speed adaption and the potential of that. First, what can the ACT as a jurisdiction do to advance that? Second, can you talk in terms of the level of effectiveness if it is just based on a warning system versus an actual limiting system?

Dr Katz: Yes. Again this is something I think we are all exploring at the moment. As I mentioned before the ACT is going to have a hard time in leading the country in putting in place ISAs. But we could be doing things through our government fleet of

vehicles, through encouraging major employers to adapt ISA as it becomes available in fleet vehicles. Increasingly there are fleets that are managed that integrate ISAs. I am not sure about how many there are in the ACT doing this. Clearly the ACT does have a seat at the table federally and should be advocating for inclusion of these sorts of devices within the next generation of ADRs.

The second part of the question was how effective they are if it is just a warning. Some of these warnings can be very annoying. I think it is the sort of nudge that we need if we are five kilometres over. If we are getting told that "You are five kilometres over, bring it down", you are more than likely to make that adjustment to shut the stupid device up. I think the studies from the trials that have been done in Europe are suggesting that it significantly reduces that marginal level of speeding. I cannot point my finger at a particular study that has been done by a particular manufacturer on the spur of the moment, but I would be happy to look that up as well.

MR BRADDOCK: Yes, please. If you could take that on notice. Would you be suggesting that for example, for the ACT government fleet we should have a limiter to make it physically impossible to break the speed limit?

Dr Katz: I would certainly be looking at what could be done for the ACT government fleet whether it is a limiter or whether it is one of these warning devices. I think that is something that probably is worthy of further study as to what works best. Obviously in a police vehicle you probably would not want to have it but in other vehicles it may well be completely appropriate to have a limiter on there. I have only driven in one vehicle with an after-market limiter on it. It did allow you to go over the limit for a very short period of time before it brought you back. I think that sort of system seems to be very sensible and should hopefully be accepted by most of the people who want to do the right thing on our roads.

DR PATERSON: In terms of technology you mentioned dashcams in terms of capturing other stuff. Does having a dashcam change driver behaviour?

Dr Katz: The dashcams are obviously directed outside the vehicle so whether they change the drivers behaviour I do not know, but the driver management systems definitely do. Fleets that have had those driver management systems installed have had massively reduced levels of crashes as a result of those systems being installed. The Seeing Machines people who do this sort of stuff are based here locally. They have terrific evidence to back up their arguments about why we should be integrating driver management systems into all fleet vehicles—certainly all heavy vehicles, but increasingly we should be asking ourselves why not in all vehicles.

MR BRADDOCK: I cannot recall the exact insurance company but they have a similar data logger where you can access decreased premiums if you can prove your driving history. Do you know if there is any research demonstrating the value of such a thing as well?

Dr Katz: I am not aware of it off the top of my head. I could find out. I presume the insurance companies would not be doing it unless they had some evidence to support it.

THE CHAIR: What gaps do you see at the moment in post-crash support for either victims or their families and police that need to be filled or better administered?

Dr Katz: It is not something that I spend a lot of time focused on. In fact I came into the road safety area because of a personal tragedy, like so many of us. The Amy Gillett Foundation. Amy Gillett was a very good friend of ours. She was killed in Germany in a crash. I knew her family very well. My daughter was flower girl at her wedding. I know the grief that people go through when they lose somebody who is close to them.

I think there are a lot of organisations out there who are providing great service to victims. I had a squiz at some of the other submissions and clearly there is more that we could be doing to alert victims about what options there might be available to them. I saw one submission from, I think it was, the Victims of Crime Commissioner saying that there was not necessarily the awareness or the availability of that service to people who had been caught up in something involving a crime on the roads. That struck me as being a little strange. I think the post-crash piece is something that a lot of organisations have really not addressed, because we want to stop the crashes from happening; it is almost a signal of defeat to say, "Well, we will patch people up afterwards." But it is something that increasingly we need to engage with. We need to be allowing the victims in these situations to be able to tell us their stories, which has been so effective recently in making us realise what we need to do to make our system safer.

DR PATERSON: We have had an absolutely shocking road toll this year. It is about the furthest we have ever been from zero. I read a *Canberra Times* article on the weekend that was basically saying there was not any unifying thread through all these horrific accidents. I was wondering from your experience and your position on the board and that, is there a key thing that is striking you about what is going on on our roads at the moment that we could be doing?

Dr Katz: No. I read that article too. I thought it did make a very good point. Because the reasons that are attributed are so manifold. That brings me back to why we need this overall vision zero strategy which does take a systematic approach to look at what is happening with the infrastructure, the vehicles, the people and the regulations around speed. It is never going to be one thing. In one of the other submissions they mentioned the Swiss cheese approach where you need to have a layered approach to improving safety, so if the vehicle airbag does not save you, the speed will, or the crash barrier will, or your automatic emergency braking, or any of those things might come into play to stop that tragedy from occurring or to mitigate its effect. So yes there is no silver bullet. It is one of the cliches that we use in this area. But we do need to take a systematic approach.

THE CHAIR: Thank you. On behalf of the committee I would like to thank Dr Katz for your attendance today. I believe you have volunteered to take some questions on notice. Could you provide answers to the committee secretary within five working days?

Dr Katz: Yes.

THE CHAIR: Thank you so much for your submission as well.

Short suspension.

BOAST, MR MARK, President, Motorcycle Riders Association ACT

THE CHAIR: In this session we will hear from Motorcycle Riders Association ACT, and we welcome Mr Mark Boast. I remind you, Mr Boast, of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you confirm for the record that you understand the privilege implications of the statement?

Mr Boast: I do.

THE CHAIR: Thank you very much. We might let Mr Braddock start off with the first substantive.

MR BRADDOCK: Thank you for your submission. I am interested in the area of technologies and how they can assist. Representing the Motorcycle Riders Association, are you aware of any technologies that can actually ensure that your members, and motorcycle riders in general, are safer around these vehicles?

Mr Boast: It is a broad area. I would start with, first of all, recording. A number of motorcycle riders are now taking up recording systems, much like in vehicles where you have the crash cam. It is a lot more difficult and awkward for motorbikes because you have got small systems and there are not many available, unlike the ones available in vehicles. But that one seems most important. Most motorcycle accidents involving collisions with vehicles are ones where vehicles run into the motorcycle from behind at intersections, turn-offs and the likes. So that is where most vehicles interest comes from in that.

In other areas, the same principle applies to other vehicles on the road. In my opinion—and this is also what I hear from motorcycle riders—it is all right having a camera yourself but, if the other vehicle does not have a camera, you do not establish the full story of what happened.

Even up into the heavy vehicles area, there is no requirement to have vehicle visual recording equipment. I attended a forum earlier in the year with the New South Wales transport people, mainly Queanbeyan-Palerang and Snowy-Monaro, on professional drivers. So this is large vehicles and tradies working around the Snowy. As you know, Snowy 2.0 is a big driver of safety on the roads down there. They had people speaking from the big operator side as well as a plumbing contractor and a few others. They all talked about the benefits of having recording systems which did not only speed and visuals but also reporting back to base on what was going on with the vehicle in terms of efficient and safe operations and the impact it had on the operators themselves. It saved them a lot of money because they did not get back bashed vehicles all the time.

MR BRADDOCK: As a supplementary do you know if there are any issues with automatic braking systems and whether they are able to actually effectively pick up motorcycle riders and stop in time for them?

Mr Boast: No; I do not have that technical knowledge. But, as a motorbike rider, I do not rely on anybody.

MR BRADDOCK: Thank you.

THE CHAIR: Under your heading 'Prison sentences, fines and vehicle sanctions et cetera"—I think it is on page 3, depending on how we number them—I note you say that the deterrence value of existing legal punishments has been shown to be tragically insufficient.

Mr Boast: Yes.

THE CHAIR: But, in the next paragraph, you say consideration should be given to significantly increasing dangerous driving penalties and consequences for offences involving drugs, alcohol and substances.

Mr Boast: Yes.

THE CHAIR: Perhaps on a surface level, that sounds contradictory.

Mr Boast: On a surface level, it struck me as well. My explanation on that point is that I think there is a quite a big difference between someone driving their car unimpeded by anything and making the wrong decision and some who is impeded by the voluntary intake of things like too much alcohol or drugs and known medical conditions et cetera. So I put them into two really separate categories.

One of these is what we might normally call "accidents". We are humans and we make mistakes. It is in that sort of area. I am talking very broadly here, not specific. The other here is "deliberate". When I say "deliberate" it may be that the person is incapable of making a deliberate decision—to do something which is already in legislation, in road safety programs, and, in the public's view, already viewed as inherently unsafe—before they even turn the key or press the button. That is that difference.

THE CHAIR: So are you then saying that the first category of "accidents" is not dangerous driving?

Mr Boast: No. For the purposes of this inquiry, I would suggest that the definition of "dangerous driving" be any driving that is not conducted according to defensive driving or riding techniques. So it goes right from the deliberate—like some of horrible accidents we have seen recently when people know they are speeding, know they are drugged or whatever—all the way down to the granny getting it wrong at the corner in a turner intersection, for instance. The lack of defensive driving is what dangerous driving is. So the answer to your question there is that it is inherently dangerous driving if it ends up in an adverse outcome.

THE CHAIR: Forgive me if I have not picked your meaning. So you are saying with existing legal punishments dangerous driving offences are not sufficiently dealt with and then you are saying that, if there are drugs, alcohol or other substances, we need to increase the penalties and the consequences?

Mr Boast: Yes. Hopefully to clarify: the drugged et cetera are in a different category

and should be dealt with more strongly. I realise there are a number of options here—and I have read the other submissions. It will all depend on the individual and the circumstances. With the other ones, perhaps something like further education and training would work on that group. It would not work on that other group. So it might be that the penalty is: you shall go and do another driving course.

THE CHAIR: But you are still calling them dangerous driving?

Mr Boast: Yes.

DR PATERSON: I was out at Uriarra the other weekend. It was actually a sunny weekend. Driving back from there, I was absolutely shocked at the number of motorbikes on the road and the speeding and the people with cameras at turns to video these bikes. Speaking to Uriarra residents, they were saying how increasingly on the weekends it is actually quite terrifying to drive on those roads. I am just wondering, from your perspective as the Motorcycle Riders Association, what your perspective is on dangerous driving and motorcycle drivers and what we should be doing to address that.

Mr Boast: I totally agree, by the way. I have been out there on a motorbike and on a pushbike—I ride pushbikes as well—and I have had people go around me and I have thought, "I would not be doing that." It is another big topic, and I know there are lots of issues out at Cotter and Uriarra with the burnouts, hooning and all of that sort of stuff. I have spoken to the Tuggeranong Police, who deal with that area as well, to see how they can handle that sort of thing.

I follow the other riders' groups, because I think it is my responsibility to see what people are saying. I have also been out at the Cotter. During autumn, we had a thing with Shannon's Insurance, and I sat next to them at another table and we spoke to people. They all come out to the little cafe there that is on the road and we were chatting to them. Most of the riders are not like that. The ones you see are very spectacular to see, but that is not most of them. There is a group that says, and I have even had some come to me and say this: "We need different speed limits. We want to go faster."

Just taking one little bit out of what I am hearing from them, where else do they go? They do not have anywhere else to go and do what they want to do, which is whizz around on their motorbikes and have fun. We were all young once. Some of us survived being young once. That is what I hear from them. They say, "Where else can I go? I want to do this. I do not see why I cannot do this, but I do not have a choice. This is the one that is most convenient to me." It is a social thing. They film each other and do all that sort of stuff. That is not to say that it is a good thing. It is a bad thing, but I do note that they do not have viable options to do what they want to do—and I think, as individuals, that is probably not a bad request for them to make.

DR PATERSON: But I would challenge you on that in that they are targeting those particular roads because they have got some pretty wild bends on them.

Mr Boast: Yes.

DR PATERSON: So I would argue that they are test driving to the limit and they are also speeding.

Mr Boast: Yes.

DR PATERSON: To the argument "Well, where else do they go?" I think we need to be saying, 'How can we engage with those particular riders, so they do not engage in that behaviour," because it is dangerous.

Mr Boast: First of all, I am agreeing with you. I am not advocating for them to do any of this sort of stuff, because there is a lot of crashing that goes on out there that is not reported and there are a lot of cases of people getting injured that are not getting reported. So the statistics are not telling the truth. The stuff that is going on in the full view of the public is happening because they can get away with it—and they do. I know that the police do go out occasionally, but it is a long way out. It is also an area where you cannot report something on a mobile phone because there are lots of areas you cannot talk on a mobile phone. So you have that sort of "on the edge". It is one of those things.

What would I do as a motorbike rider? I would, first of all, have a presence. I would have a positive presence. The AFP motorcycle riders themselves are held in high regard—just below that of God, I think. They are respected for being very realistic, pragmatic, highly skilled and all that sort of stuff. Those sorts of people out there would change that behaviour in an instant, in my opinion.

The other one is to give them access to: "Here are the consequences of your actions, not only on you and beloved motorbike but also on your friends and family and everyone else who has to deal with the consequences of you crashing." I think with motorcycle riders you could be more in the face with a safety program and direct it straight at them, not through, "Here are the consequences; we will get you later." Well, no, it should be: "We will get you right now, and we will get you with why you should not be doing this."

DR PATERSON: Just finally, do you think there is a culture problem? You said it is a select group. Do you think it is a culture problem? Do you think that there is work that could be done within the motorcycle community, working with that particular group of riders?

Mr Boast: Yes. As I have said, I think it can be very directed. There are other people that do things out there as well.

DR PATERSON: Yes; sure.

Mr Boast: These are young kids. I might have been one of them in the day. You really just give it a go, do you not? It is encouraged right from the moment you buy your motorbike. It is a sports bike. There is advertising and all that sort of stuff, and this is what young people do.

THE CHAIR: I have a quick supplementary on that line. You say they have nowhere else to go. So are you advocating for a separate speed track?

Mr Boast: I say this strongly—yes! In the ACT, a city approaching half a million—the population of Tasmania—apart from the smaller things like go-carts and dirt bikes, we do not actually have any motorsports facilities that can handle people who want to go and take full-size vehicles or motorbikes and do what they want to do with them, in that sports-sense, off the road that you cannot do on the road, for instance. Nor do we have the facilities in the ACT for advanced training that is available to the public to go and do this sort of stuff. So we cannot set the example, and the training and the consequences of getting it wrong.

We have basically left them to themselves. I think that is a big component of why people go off and do their own thing. So I think positive support in that would do a great deal to changing the attitude and the professional standards they need to apply to what they are doing. The Save Wakefield Park program going on at the moment reflects just how strong that feeling is. Wakefield Park is a long way from Canberra, but yet it was the nearest to Canberra. So, yes, I think we are negligent in not providing that sort of facility.

THE CHAIR: Thank you. We might move to Mr Braddock's substantive.

MR BRADDOCK: In your submission you talk about how the burden of proof is sometimes placed on victims when they have been subject to dangerous driving.

Mr Boast: Yes.

MR BRADDOCK: Are you suggesting we flip that and place the burden of proof onto the offenders?

Mr Boast: I am not a legal eagle, and I would defer to someone who is far more experienced here. The terms "strict" or "presumed" liability are the ones. These are being picked up from other vulnerable road user groups, mainly cyclists. In, say, a vulnerable road user versus a car collision, usually the vulnerable road user comes off worst and yet it is up to them to prove that the other vehicle is guilty of something and all other vehicle has to do is say, "No, I am okay."

I have seen this. I have attended at least one inquiry in the ACT where a cyclist who was killed was run into behind and basically the driver did not even appear, so strong was the—and I will use this very loosely—the presumption of innocence. Of course, the person who died is dead and they did not have a camera and there was no-one watching what was going on. That has happened with a number of other incidents around the ACT, not inside the ACT. We have had ones up near Bungendore et cetera, where these unobserved, unwitnessed collisions that kill somebody end up with the situation where you just have to presume that they were not at fault, because you cannot prove they were at fault.

So the long story short here is that presumed liability or strict liability might mean, for instance, that, as the driver of a large vehicle hitting a motorcycle, you should be asked: "Show us the video that you had of this incident which shows that you were not guilty of doing something wrong, or that the other person actually did do something wrong and you could not avoid it." I believe that it is that simple. It goes

back to your very first question regarding getting the picture, which is why the police always say, "Has someone got a crash-cam coverage, please?"

THE CHAIR: Thank you so much. On behalf of the committee, I would like to thank you, Mark, for your submission and for your attendance today.

Mr Boast: Thank you. I would just add that I am also a member of the Weston Creek Community Council. I had no part to play in that submission. I deliberately stayed apart from that one. I am also part of the Pedal Power at Murrumbidgee advocacy team. Pedal Power did not put in anything and nor have I spoken to them about all this sort of stuff.

DR PATERSON: Lots of different interests.

THE CHAIR: That is quite all right. Thank you very much.

Short suspension.

KUKULIES-SMITH, MR MICHAEL, Chair, Criminal Law Committee, ACT Law Society
EDMONDS, MR PAUL, Vice Chair, Criminal Law Committee, ACT Law Society

THE CHAIR: In this final session for today we will hear from the ACT Law Society, and I welcome Mr Michael Kukulies-Smith and Mr Paul Edmonds. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Could you each confirm for the record that you understand the privilege implications of the statement?

Mr Edmonds: Yes; understood, Chair.

Mr Kukulies-Smith: Yes, I do.

THE CHAIR: As we are not inviting opening statements, we will go straight to questions. Thank you for your submission on behalf of the Law Society. I note that in your submission you say that the empirical evidence in relation to the utility of increasing maximum penalties and the length has consistently been called into question. My broad question now is: what role does meeting community expectations play in the sentencing regime?

Mr Kukulies-Smith: It is a factor that has to be taken into account in terms of the legislature's role to create law, no doubt. But, ultimately, we have a system of individualised justice in Australia. So the primary focus is on the individual and on the factors that are set out in our sentencing legislation et cetera. As to a specific role, it does not have a specific role to play in terms of assessments of whether laws are adequate et cetera. No doubt that is a factor that is taken into account, but it is not specifically taken into account in a courtroom context, or in the legal context, in our legal system. It is taken into account in the context of creating the law, rather than the implementation phase of the law. The expectation shapes the laws that are made.

Mr Edmonds: If I could add to that: the persons present who are legal practitioners will no doubt be aware of the list of relevant sentencing considerations set out in section 33 of the Crimes (Sentencing) Act. That lists some 20-odd categories of relevant matters. Community expectations per se are not referred to in that list, and presumably for good reason, including what part of the community.

The expectations of families of persons who have tragically died as a result of a motor vehicle accident will obviously have a particular expectation as to what the appropriate sentence should be. But that may well be very different to the expectations held by other parts of the community—and how would that be measured? Are we going to take some sort of straw poll after each serious offence or have people called on their telephone of a night to say, "What is your expectation about what the sentence should be?" Frankly, I would suggest, with the very grace of respect, that it is an absolute nonsense to suggest that, in any meaningful way, in any substantial representative sample of the community their expectations could ever be known.

To some extent, though, I agree with Mr Kukulies-Smith on judicial officers, as public officers, and similarly prosecutors, who specifically have a statutory duty to

represent the public, which is the community. It is the role of prosecutors to put to a sentencing court what the appropriate sentence should be. That is the way in which community expectations are taken into account. To suggest that it could be anything more than that would just be completely impractical, in my submission.

THE CHAIR: When a prosecutor does that—and Mr Kukulies-Smith is free to comment whether or not he agrees—how do they factor that into their sentencing arguments? What do they look at if, as you pointed out, different parts of the community view it differently? How then would a prosecutor ascertain that as part of their sentencing argument?

Mr Edmonds: I will let Mr Kukulies-Smith add anything to this in a minute. Undoubtedly, that is similarly a difficult task for any person, but it is a statutory obligation that the DPP have to represent the community. To some extent, those who are at the other end of the criminal justice system to Michael and I, from the prosecution, will claim from time to time to have some sort of weathervane, as it were, and to have some ability to measure these things. Exactly how it is done, I am unaware of.

Certainly one does hear from time to time prosecutors, particularly in more seriously matters in the Supreme Court, put forward as an argument to a sentencing judge that there is an expectation that this type of offending will be met with a particular type of sentence—for example, even if it is just put in terms of an immediate full-time custodial sentence.

THE CHAIR: From your understanding, how does a prosecutor reach the point where they say that is part of their argument?

Mr Edmonds: Obviously, there is a whole process of looking at sentencing statistics, working out where any particular offence lies in the range of similar offences between the worst possible example and the least serious possible example. As the letter from the Law Society seeks to make clear, in every case of a road fatality, the result for the family of the victim is the same in the sense that they have tragically lost a loved one. So the outcome cannot be any worse for them than it already is.

But the courts still have the unenviable task of then determining, out of all the road fatalities that come before the courts, what the more serious examples are in terms of the degree of recklessness on the part of the driver? Was he or she drug-affected, for example? Was he or she speeding? Or was it simply a case of momentary inattention? Which has the worst possible outcome?

Clearly, in some of the cases recently that have had media attention, there has been an understandable outcry about what is perceived to be leniency if someone has not received an immediate full-time custodial sentence. But that has to be viewed in the context of what the actual culpability was on the part of that particular driver, compared to other more serious cases. I am thinking, for example—it might even be a client of my colleague—that there was—

THE CHAIR: We might try and wrap up this line of—

Mr Edmonds: Yes.

DR PATERSON: Can I have a supplementary?

THE CHAIR: Yes. A supplementary, Dr Paterson.

DR PATERSON: What about the expectations of the Legislative Assembly? The Legislative Assembly has set the law and the maximum sentence. When you look at the different dangerous driving charges, the maximum sentence is equivalent to interstate. The problem is that these sentences reach nowhere even near the maximum, not even a quarter of the maximum. So forget community expectations; what about the Legislative Assembly's expectations on the judiciary to implement appropriate sentencing?

Mr Kukulies-Smith: I do not know that it avails itself of simplistic maths like that, with respect. I am assuming in the question is an assumption, or an inclusion, that, for example, outcomes are more frequently a higher percentage of the maximum penalty in another state or territory. If that is not the case and there is no meaningful difference, then where is our court failing in any way that another territory or state court is not?

The other point I will make is that obviously practitioners in this jurisdiction also practise frequently in New South Wales. In that context, most of the practice in New South Wales is regional New South Wales. Motor vehicle accidents in regional New South Wales have very different features to motor vehicle accidents in a built-up area such as Canberra and, therefore, the factors at play in those cases are quite different. The speeds involved can be quite different and the speed limits can also be quite different. In a 40 kilometre an hour zone, for example, it is very easy to have a circumstance where a vehicle is travelling several multiples of that speed limit over, and that is a factor that a court would take into account in terms of culpability and seriousness of offending.

DR PATERSON: Sure; but where is the reflection on the legal practice in the ACT? Your submission does not speak to that at all. Surely there are things that the judiciary or lawyers in the ACT could be doing. Surely there are problems here? You are seeing recidivous offenders. This is really very much highlighted in the evidence. It is not just emotive community venting. What needs to happen in the ACT? There is a perception that there are problems. Surely you would agree with that.

Mr Edmonds: I will briefly respond to that and partly to the last question. The Law Society's position is that the system fundamentally is sound. We have an appellate system, which is a check and balance against initial sentences that are viewed by the DPP on behalf of the community as too lenient. Quite recently there was a statement—and it has been trumpeted in the media—by Mr Drumgold SC, the Director of Public Prosecutions, that his officers had a successful time in the Court of Appeal. So, to that extent, that check and balance is already working.

But, to go back to the previous question regarding there being very few instances in the ACT of people receiving more than a quarter of the maximum penalty, that may be nothing more than a reflection of the fact that, over the last relevant period of

time—the ones looking at the sentencing statistics—there have not been any instances of the worst possible example of culpable driving.

DR PATERSON: Sure.

Mr Edmonds: To the family of a victim it will seem as though there can only be one penalty that is appropriate, and that, if a death has resulted, that is all that needs to be focused on. But there is a very big difference between someone who has been disqualified from driving who is high on ICE, who is an escapee in a stolen car driving 45 kilometres over the limit causing the death of an innocent person—that might be close to the worst case—and, on the other hand, someone who was licensed to drive and was driving their own car, who simply was distracted momentarily or failed to judge the distance and the time to turn in front of another vehicle and thus cause a fatality.

DR PATERSON: Sure. But is there anything that you see from a legal perspective, from the law profession acting in the ACT, that could be done to improve this system so that we are not getting these types of dangerous driving offenders and offences on our roads?

Mr Edmonds: I would make a brief comment. I do not think the Law Society has any in-principle objection to some of the suggestions made by ACT Police. We have certainly been provided with a summary of the recommendations by all the stakeholders to this committee. On bringing in immediate suspension notices for certain types of offences, the Law Society would not have an in-principle objection to that.

It would be very easy, with respect, to say let us enact Skye's Law in the ACT, as ACT Police say, or let us increase the maximum penalty for this or that or create this new offence. The simple fact remains that every new offence proposed by ACT Policing is already covered by existing legislation. Skye's Law is a good example. ACT Police say, "Let us have Skye's Law. There will be a maximum penalty of three years jail for a first offender and five years for a repeat offender." In the ACT, for several years, we have had the offence of aggravated dangerous driving with exactly the same penalties. It is understood why it would be tempting to respond in a particular way, but the Law Society would not support creating new offences for symbolic reasons where existing offences already cover this conduct with the same penalties.

THE CHAIR: Can I just confirm if you are happy to continue for another five or 10 minutes?

Mr Kukulies-Smith: Yes.

Mr Edmonds: Absolutely.

THE CHAIR: We might then throw straight to Mr Braddock, if that is okay, Dr Paterson.

Mr Kukulies-Smith: I would just say in answer to that last question that there is no

silver bullet in the legal system for any crime, whether it is a motor vehicle offence or otherwise. One of the concerns the Law Society has raised in this response, and consistently, is that increasing maximum penalties et cetera should not be seen as a silver bullet to any offending.

DR PATERSON: What about reviewing the judiciary, though?

Mr Kukulies-Smith: The Law Society does not see any other system or alternative functioning that would justify that radical proposal. There would presumably be a massive cost and presumably massive implications for the system in doing so, and the society does not see a sufficiently different outcome to justify that.

THE CHAIR: Mr Braddock, do you wish to add a supplementary?

MR BRADDOCK: No; I have a substantive that I am very keen to get the Law Society's perspective on. I am not sure if you saw the evidence earlier from Legal Aid, where Dr Boersig was talking about reform and basically taking the five laws which have various penalties in this particular space and seeing whether we could reduce that to two pieces and maybe even one piece of legislation. I would be keen to hear your thoughts or perspective on such an idea.

Mr Edmonds: I would be happy to respond to that very briefly. The Criminal Law Committee of the Law Society—of which Michael and I are both members and have been for over 10 years—have been advocating for a simplification, codification, a merging, of all these different pieces of legislation and offending for many years. It is something of a hotchpotch, unfortunately. We have at least five or six different pieces of legislation all covering different types of driving offences. Some years ago in New South Wales a similar suite of legislation was consolidated into one act—though perhaps not in an ideal way. But I think, in principle, the Law Society supports—

Mr Kukulies-Smith: It has advantages, but there are definitely issues. As to whether it leads to any perverse outcomes or not, I am not suggesting or asserting that. It definitely creates confusion amongst legal practitioners because there are complicated interactions between the acts. There are some occasions where the same term has different definitions depending on whether you are dealing with the Road Transport (Alcohol and Drugs) Act, the Road Transport (General) Act or the Road Transport (Safety and Traffic Management) Act. Whether certain default suspension provisions or disqualification provisions in the Road Transport (General) Act are applicable or triggered can sometimes become a matter of some confusion and contention, just because they are not consolidated in a single piece of legislation.

There would be some practical advantages to having it in one place. It would avoid the need to constantly flick back and forth and work out those things. Sometimes even for experienced practitioners, the interrelationships are something you simply cannot commit to memory and you have to go back and start again and work your way through. That has inefficiencies, no doubt, for organisations like Legal Aid. It has probably inefficiencies for DPP and the police as well in terms of forming decisions about whether to prosecute offence A or offence B. It would far simpler if they could look at all the like offences, all in a continuous list. So there is a practical advantage to that.

MR BRADDOCK: Thank you.

THE CHAIR: I want to pick up on something Dr Paterson went into. What is your understanding of the appointment of judicial officers? What involvement does the Law Society have in that process? Do you think there is scope for improving the process?

Mr Kukulies-Smith: We are committee members, not members of the executive of the Law Society so—

THE CHAIR: But you are of the Law Society position, whom you are representing.

Mr Kukulies-Smith: Yes, I understand that, but I am saying that I have no personal input or consultations. Within the Law Society, it does not feed down to the committee level. I understand there has historically been a process by which there is limited input into the process, but not extensive input from the—

Mr Edmonds: Historically, Mr Cain, as you possibly know from a previous life, a number of bodies, including the Law Society and the Bar Association, will be consulted about judicial appointments in terms of not a veto as such, but, if the Law Society or Bar Association felt that a particular person on a list was not a suitable person for any reason there would be an ability to communicate that. Similarly, the Chief Justice, as in other jurisdictions, has what might be closer to a right of veto against appointments of magistrates and judges. My understanding is that, historically, both the Chief Justice and the Chief Magistrate are consulted on all such appointments.

The Law Society, to be clear—because there is an implicit criticism of the judiciary in some of the questions that have been posed today—fully supports the current judiciary and magistracy in the ACT.

THE CHAIR: I do not think you should interpret our questions as clarifying processes and seeing why certain outcomes are occurring as opposed to criticising the judiciary.

Mr Edmonds: It is welcome to hear that that is not a criticism being made.

THE CHAIR: Are you aware of any Law Society objections to any judicial appointments?

Mr Edmonds: No. Again, neither Michael nor I have been members of the executive and so we have not been privy to those discussions. But certainly, amongst other things, we have a very gender balanced judiciary and magistracy in the ACT. That has not always been the case of course. In my time, as in Michael's, there have been no female magistrates or judges at different times. We now have roughly fifty-fifty in both courts. So that is a very positive development. Similarly, the judges and magistrates in the territory are well-qualified, experienced lawyers before they are appointed to the bench. One indication of that—it might only be a small one—is that there are very few successful High Court appeals from matters dealt with in the ACT Supreme Court.

DR PATERSON: Can I ask a question?

THE CHAIR: Yes, of course.

DR PATERSON: On the Bail Act, I am interested in your thoughts around the presumption of bail. In the ACT Police submission they said there is a neutral position on bail recidivism around dangerous driving offences. I was wondering whether it would change things if those offences were put under a "no presumption of bail". What are your views on that?

Mr Edmonds: I am happy to start with the answer. The proposal that was provided to us, or the summary of the ACT Police proposal, was that the number of offences that are not currently in schedule 1 of the Bail Act be included. All that that would do, however, is in some cases remove a presumption in favour of bail to a neutral presumption.

I think the Law Society's position would be that, if a very limited number of more serious types of offences were added to the schedule, clearly there could be some merit in that. But the more practical difficulty that then arises—a little bit like Michael was saying about having all these other different bits of legislation that courts deal with on a day-to-day level—is that, the more offences that are added to the schedule, the more difficult it becomes for bail courts to determine what the actual status is, under the Bail Act, of a particular offence.

At the moment there are relatively few offences that are included within schedule 1. Even if certain offences were added, it is not a presumption against bail; it is simply saying that there is a neutral starting point. As to what difference that would make in practice, it is difficult to say. I personally would not think that it would make a major difference.

Mr Kukulies-Smith: I would observe—and this is purely anecdotally and not with any detailed statistics on it—that recidivist driving offences, or people charged with recidivist driving offences, in my experience, are amongst the categories of offenders whom I represent who are frequently refused bail, or at least refused bail for a significant period of time. They may eventually be granted bail after spending some months behind bars and initially being refused bail.

That is indeed reflected when one looks at a lot of the sentencing decisions for some of the matters that we were effectively discussing earlier about whether community expectations are being met. When one reads those sentencing remarks, one will often find within the sentencing remarks quite significant periods of pre-sentence custody being taken into account. The reason there is pre-sentence custody is that those people were refused bail—perhaps not for the entirety of the time their matter was pending before the court—often for considerable periods of time, and measured in months not weeks.

Anecdotally, even with the presumptions that exist today, it is still a category of offence for which courts are quite regularly refusing people bail, particularly in the context of a recidivist and on the basis of the risk of reoffending being a large issue.

That is able to be taken into account regardless of the presumption, because it is a criterion that the courts are required to take into account on any grant of bail, irrespective of the presumption that exists.

THE CHAIR: We are very appreciative that you have granted us more of your time. Thank you very much for that.

Mr Edmonds: Mr Chair, could I raise very briefly one final point, in answer to Dr Paterson's earlier question, because I feel that the Law Society may not have been viewed as offering any helpful solutions or suggestions?

THE CHAIR: Sure.

Mr Edmonds: If we increase funding into drug rehabilitation in the ACT, that could have a very practical meaningful effect. Most offenders committing serious driving offences are young, male, drug affected, highly intoxicated on alcohol or with mental health issues, or all of those things. We cannot deal with all of things at once. There is a chronic under-resourcing of drug rehabilitation in Canberra. The waiting list is up to six months to get into either Karralika or Canberra Recovery Services. Whilst people are waiting to get into such a program while struggling with an ICE addiction, for example, they may well jump in a car one day and have an accident. The more of those people in rehab addressing their drug addiction and not in cars in the community, I think everyone would agree, would be for the better.

THE CHAIR: Indeed. Again, thank you both so much for your attendance here today on behalf of the Law Society. On behalf of the committee, I would like to thank all the witnesses who have appeared before us today. Thank you.

The committee adjourned at 4.44 pm.