**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**

**TRANSCRIPT OF EVIDENCE**

**CANBERRA**

**FRIDAY, 18 NOVEMBER 2022**

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

**By authority of the Legislative Assembly for the Australian Capital Territory**

## WITNESSES

## Privilege statement

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*Amended 20 May 2013*

**The committee met at 2.00 pm.**

**BARJESTEHMANESH, MS NEGAR**

**THE CHAIR**: Good afternoon, and welcome to the public hearings of the Standing Committee on Justice and Community Safety's inquiry into dangerous driving. The committee has been hearing from a number of individuals, organisations, and ministers and their officials, over four days.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people, and 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 or watching online.

Please ensure that mobile phones are switched off or in silent mode. COVID safety arrangements are in place. Please respect the stated room limits and physical distancing requirements as part of the Assembly's COVID safe measures. Please allow the cleaner to clean the desks and seats between witnesses, and practice good hand and respiratory hygiene.

Witnesses are to speak one at a time. Please speak into the microphone, or as close as you can comfortably get. Please state your name the first time you speak and the capacity in which you appear. The proceedings today are being recorded and transcribed by Hansard, and will be published. The proceedings are also being broadcast and webstreamed live.

When taking a question on notice, it would be useful if the witness said, "I will take that as a question taken on notice."

In this first session we will be hearing from Ms Negar Barjestehmanesh, and I welcome you. Is it okay if we call you Negar?

**Ms Barjestehmanesh**: Yes. Thanks.

**THE CHAIR**: Thank you. If you find any of the proceedings difficult, and you would like to take a break, please let me know. The secretary also has details of organisations that can provide support if you need some. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the pink privilege statement. Could you confirm, for the record, that you understand the privilege implications of the statement?

**Ms Barjestehmanesh**: Yes, I do.

**THE CHAIR**: Would you like to make a short opening statement?

**Ms Barjestehmanesh**: Yes. Thanks for having me here. I would like to start with saying that dangerous driving has a very negative impact on families, the society, government, and mainly the person who had the car accident. It can have a very bad

consequence later on to recover from that dangerous driving and accident, that I think everybody is going through. That is all I would like to mention.

**THE CHAIR**: I will follow with a question. If it is okay with you I would like to invite you to describe the incident?

**Ms Barjestehmanesh**: Yes.

**THE CHAIR**: Thank you.

**Ms Barjestehmanesh**: That is all right. The incident happened on 15 March 2019. I was going down from my mum's house to pick up my daughter from work. I had my child with me, six years old, in the car. The only thing I can remember is just going out of the street and then I heard a bang. That is all I can remember. At the time that the accident happened they told me, "You were not unconscious," but to me I was unconscious because I cannot remember anything. I cannot remember a word. Because there was a video, after that, being released, and I was talking to firefighters and the police, but I cannot even remember a second of those talking.

I cannot remember anything, unfortunately. But later on, when I did wake up in the hospital, a few hours later, I thought about my son. I mean, I was just asking them, "What happened to me?" The police was telling me, "You had a car accident". And I was asking, "Where is my son?" And then they said that he is safe at home.

And then it does not make sense to me. Head to toe I was wrapped around with the bandage and, "How come I am like this, and then my son is at home? It does not make sense. My husband is not here. I have a lot of family members here." It does not make sense for me. It was a very coincident that happened. Still, by now, when I am talking about it, I get that feeling: "What if my son was dead at that time?" It was just a horrible feeling that I can tell. He is healthy; he is good now. But if he was dead, what would I do? I do not know what would be my reaction at that time.

But, luckily, he was healthy; he was home with my husband. But because he took a long time and they checked him. The doctors in the hospital checked him. They sent him home because he was so sleepy—to go with my husband, go home to sleep. And I did wait until 9 am the day after to just talk to my husband to find out he is healthy.

**THE CHAIR**: We are very thankful that you are both doing all right.

**Ms Barjestehmanesh**: Yes, and at the same time I have to say that my daughter was waiting and waiting for one hour in front of McDonald's, after finishing her work, not knowing exactly what happened at 10 pm. Saying, "Where is mum?" and then calling my husband. He was practising some kind of theatre for the community, and his phone was off, too. So she had no idea what she had to do. She was relying on us as a parent. She was waiting for nearly one hour in front of McDonald's just to see if someone would come and pick her up. So, she went through a lot. I think she was 16. Sorry; I am just a little confused about the timing. Yes, around 16.

You can imagine having two kids, and both of them have that much negative impact. One has been in the car accident and one was not in the car accident, but she has been

going through a lot as well. I do not know if you need more details.

**THE CHAIR**: Thank you for your courage and for telling your story.

**DR PATERSON**: Would you feel comfortable talking about the offender?

**Ms Barjestehmanesh**: Yes. I never met him.

**DR PATERSON**: Was he speeding?

**Ms Barjestehmanesh**: Yes, he was drunk. It was a level 3 drink driving. Based on the police report, his speed was 205. Once he hit my car, he was stopped at 195. So if my speed was 22, you can you imagine that my car was like a wall. And then in physics, once you have got a higher speed like mine, I got all the impact of the speed on me and on the car.

I never met him. I know that he is young. And I understand how it looks like to be young. I know that some young people are doing some. When I was young—I am honest—back in my country I was doing some kinds of speeding. But this is the difference: I had never been educated there. I know in Australia that they talk about it. And then I find that—I would like to talk about it later on in more detail—the education would be the base of everything and, specifically in this case it can make a big difference in terms of what people can do later on, once they have got their licence.

**DR PATERSON**: And did you go through the court system?

**Ms Barjestehmanesh**: At that time, I started talking to the lawyers. That was one of the biggest actual procedure that I went through. Imagine being on a hospital bed, and I cannot move at all. I could not move in there, in the first 10 days, at all. I was just in the bed and they were washing me in the bed and things like that. But I did talk to lawyers, but I was not in a court—like going and sitting in a court or anything like that. I just left it with them to deal with it because, first of all, I could not. For six months of my life it was just doctors, physios, surgeries—after the car accident, I am saying—and that is it. And then I tried and tried to be on the phone with people, sending emails and, yes, doing extra stuff that you do not want to go through.

**DR PATERSON**: But you went through the court system?

**Ms Barjestehmanesh** I would say, yes. Yes, I think so. Yes, because the police were telling me, "He did not plead guilty yet".

**DR PATERSON**: In that situation where you were seriously injured, did you have engagement with the Victims of Crime Commission?

**Ms Barjestehmanesh** Okay. Since the car accident, I have a very bad memory. I do not want to give wrong information. From what I remember no, but I had millions and millions of phone calls and different types of stuff, and then mostly I was talking about getting myself up and walking. That was my main issue because I was thinking, "I'm not going to end up in a wheelchair." That is all I was thinking at that time. I have to be honest with you, I cannot remember, but they might have called me. I cannot remember; sorry.

**DR PATERSON**: No, that is fine.

**THE CHAIR**: That is fine; you are doing really well.

**MR BRADDOCK**: I would just like to ask a question in terms of the Motor Accident Insurance Scheme. Have you had any association with them? Have they been able to provide support to you, and how did you find that experience?

**Ms Barjestehmanesh**: This is my main point that I would like to talk about. I have been thinking about it since 2019, because I am always just thinking what we can change to prevent. We cannot be the best, definitely I understand that, but we can do something to change some bits and pieces to be able to prevent it or to work in a better way. So this is an accident. It can happen with speeding or without speeding; any kind of situation can happen.

So it is good to educate the kids and stuff to be able to get through how they have to drive, but it has happened and then someone goes through it—both party, both cars, both passengers, it does not matter. Sorry, I have to start with this part: when we get our registration from the government, there are two parts that we have to pay; that is, our registration and the third party insurance. Everybody thinks that that is under the control of the government, which it is not. The part that is the registration, yes, but the part that goes through to the third party, it is not under the control at all. They do act independently, the insurance part, but I am sure that 90 to 100 per cent of people think, "This is it. The government has got control over it," which is not true.

Once you get involved with these matters and you need to go through the insurance, then they say, "We do have our own rules and we do whatever we want to do. It is not government telling us what to do." I could not get through any of the steps with the government at all, and they were clearly telling me, "That is independent, and we cannot do anything about it." And what was that? I was calling them, letting them know: "Look, I had a car accident. They told me that the NRMA is involved, for example, but, hey, I need physio, I need surgery, I need this, this, this. I need these ones; this is what the GP said; this is what the doctors/specialists said." But it was, "Until the other party does plead guilty, we are not liable." And this plea of guilty can go up to 18 months, and that is what I did serve.

I have been jailed in the house. I have been sitting in the house and going through all of the surgeries, going through all the financial problems, and going through all the stresses about my kids. I was not able to even drop them off to the school. They were walking and then some strangers were coming to them and saying something to them. And then I had, the other day, to keep them at home just to make sure they are safe.

So this is crime to me. This is crime that for 18 months someone else can play with the system for some reason. Even if they are not at fault or they are at fault—it does not matter. Then 18 months of playing with the system, not plead guilty, and then the other person should go through a lot because government does not take any responsibility in between. They just throw it to the people. They pay the money, but when they need to use it, they say that the other party should plead guilty. I was

needing two or three surgeries at that time, which I did not go through. I ended up having media involved and going through *A Current Affair* to push them, "You have to do something about it". I mean, it ended up like they were pushing him and then talking to him—to the other party—saying, "You were speeding, you were drink driving and then not plead guilty?" I do not know how to explain this—but anyway.

Yes, it ended up that he did plead guilty and then they pay for the insurance and stuff for me to go to very essential surgery that I needed. But the insurance is just, I would say, useless. I am so sorry, but it is. It looks like—they were telling me—NRMA is the best, actually. That is what I was told, but it was just unbelievable. I still cannot believe that I went through all of the steps of sending emails, begging people, getting angry, getting upset over the phone with that kind of situation or body that I have got just to be able to do some surgeries that I need.

I was not able to do it in the public system because there was a waiting period involved. Also I had private health insurance, which I could use for that one, but then when I was filling out the form, one of the options was, "Is this a third party surgery," or something. I had to say "Yes," because it was. Then they were just saying, "Oh, okay. Let's get involved with NRMA." Then it is kind of like a loophole. It was like a loop, and we were just inside it and then going through and through it. We were not going to get anywhere. That is something that I really need to talk about. I would just like to know if something has changed since 2019. I do not know.

**THE CHAIR**: Thank you. Are you aware of the sentence that was imposed?

**Ms Barjestehmanesh**: I know that there was the 18 months suspended jail. That is what the court gave him. I am a mum. I have got a teenager. I understand the other side. He is 24 years old; he is a teenager. If I want to put myself in his mum's place, I have to think about both sides. I should not be selfish, but I think that we need a little bit stronger consequence for them, even if it is my child. I am not saying it should be jail. I do not know, I am not a law maker, but I would like to know what the government can do in terms of putting a more serious consequence in place to make sure that other people are not repeating it. I am thinking that usually, most likely the people who have done this crime are not going to repeat it. This is what I believe, but when that person is talking with the other friends and with the other family members and saying, "There you go; I've got out of it with an 18 month suspended jail. I have to just watch myself not speeding any more or anything like that," but for the others, "That's it. He is doing his job. He is working. He is on the street."

He was driving after six months suspended licence. That is all. Clearly, I was the one at fault, not him, because I have been jailed in the house for two years not being able to drive. My licence got suspended because I was not able to do any kind of driving because of my legs and hips and lots of other stuff in my arms. It looks like I was doing something wrong, not him. I went through a lot more than him. And it is my belief—maybe I am wrong—that in terms of not being able to do anything and not having a proper support, it looks like I was at fault. If someone here did not know the whole story and was seeing that I have been at home and undergoing surgeries, and that the other person was working, driving, going for travel, la, la, la, la—all of this stuff—

**DR PATERSON**: As a community, how could we better support you and your family through a circumstance like this? Are there particular things? You have described the situation with the insurance company, but it does not sound as if you had lots of other supports or engagement with other agencies through this process.

**Ms Barjestehmanesh**: No, really not. I mean, this is what I remember. It depends what kind of injuries the person got. Mine was a severe one, but someone can have a car accident with one fracture on their arms or hands or something like that. But going through all of the paperwork and emails and getting in touch with the people to say, "What can you do for me?" or "What can you support me with?" All of the organisations that are involved say, "Okay. Send us an email." "Do this." "We put your name down on the list for the physio, for this or that," But the person cannot even sit down, lie down properly or breathe properly. I had my sternum broken, and it was just in pieces this way. Any time that I wanted to breathe, I had to hold the big pillow here—just hold it together to be able to breathe. That was one of the worst pains I have experienced. So, if I cannot even do this—normal breathing—how am I meant to send emails?

And how am I meant to ask my husband? He was fully, like, crazy. I was not working at that time. I stopped working because I could not. He was working more than 12 hours a day. My kids—luckily, I had my mum, and she was just cooking for them. But then for a lot of other stuff we had no support. My daughter has a mental health disorder, so she needed me to support her at that time, which I could not. She went through a lot of problems at that time. Believe me, I did not do anything wrong, but I will never forgive myself because it is too much to take, and what she went through is not acceptable at all.

I do not know what the government can offer in terms of the support for the people who have a car accident, but they need to look at how severe these kinds of accidents are and then just provide this system while they are in the hospital, to engage them. The hospital sent a referral letter to ask them to get in contact with that person and they said, "Send this email," "Send that email," "Call this person," "Talk to this person"—all these kinds of things. It was not possible; both my arms were just in casts, so I could not even move this or this.

I could not walk and hold the crutches. I needed help from my kids or my daughter to push my back to just sit up. How am I meant to do all of this, and then being on very strong medication? I was half asleep. I cannot remember a lot of stuff happening at that time while I was taking those medications, because without those medications I was not able to deal with the situation at all. This is something that I would like to get from government—at least to look at the severity of the person and injury and then at what support. Yes, there are some kinds of physios involved, but how are they meant to mentally and physically get involved with them and then engage with them? This is the admin part. Maybe mine is a rare case, but it is happening. The majority are not big huge car accidents with big huge injuries, but I think that is one point that I like the government to think about.

**MR BRADDOCK**: You mentioned earlier education as something you would like to talk about. Can you please elaborate on that?

**Ms Barjestehmanesh**: Actually, yes. When I was back in my country, we never had any kind of education regarding driving, dangerous driving, drinking—anything. I was not educated at all regarding driving, if I am honest, and I had some speeding maybe back in my country. And that is definitely wrong, 100 per cent wrong, but when I am comparing Iran and here, there is a lot more education involved. Like, I remember that at the school one day my daughter came home and she said, "Mum, they gave me glasses to put on and I couldn't walk straight. So that means how I am going to be when I drink alcohol," which was great. It was brilliant. I could not even think of, "Wow, that is a perfect way of educating kids in terms of how it looks like when you drink alcohol."

So education is a base point—this is my understanding—of everything in the world. This is what I understand, and Australia is good with education. We are good with education, as much as I know. In terms of teaching our kids the common knowledge of their life, we are good. Maybe we are not academically perfect in the school, but we are good in terms of teaching the normal stuff for their lives.

So I would really like the Department of Education to get involved in showing the kids what kind of impact the dangerous driving, speeding, drinking, using drugs, or any kind of other stuff that maybe I am not aware of, can have. They need something to get involved with, having something like a workshop in the classes in the school to let them know to share their experience and then talk about exactly it. And then have—I don't know—some kind of photos: something appropriate, not blood and stuff, definitely. But show them what happened with a car that had a 200 kilometres impact on one car—what it looks like. Because kids cannot imagine.

I remember my mum was telling me something when I was a kid. I was thinking, "What is she talking about?" until she got to the point of explaining it to me, opening it. Then once she was explaining it, I remembered those points. I just re-adjusted in my head. Now when I am talking to my kids, I do it the same way for all the bits and pieces. So they need explanation. Just telling them, "This is the speed, this is dangerous driving", they cannot get it. They are kids. They are still developing their brains, so they need to see, they need to work it out. They need to show them the photos, the videos, and then educate them to see, hopefully, once they have their licence, they do not go through all of this. I mean, there will still be numbers who do not listen—I do get it—but then we can have a reduced number rather than stop it. So, definitely, it is not stoppable, I am sure.

**THE CHAIR**: Thank you. The committee so appreciates you being willing to come and your courage in telling your story as well. We certainly wish you all the best towards a full recovery.

**Ms Barjestehmanesh**: Thank you very much.

**THE CHAIR**: I do not believe there are any questions on notice, but thank you so much, Negar, for coming and sharing with us.

**Ms Barjestehmanesh**: Thank you for having me. Thank you so much.

**THE CHAIR**: We will have a short changeover to clean the desk for the next witness.

You are welcome to stay in the gallery.

**Ms Barjestehmanesh**: Yes. I would like to stay. Yes, thank you, if you do not mind.

**THE CHAIR**: That is quite all right.

**Short suspension.**

**BEACROFT, MS LAURA**, Chair, Sentence Administration Board

**THE CHAIR**: In this session we will hear from the Sentence Administration Board, and we welcome Ms Laura Beacroft. Ms Beacroft, can 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?

**Ms Beacroft**: I do.

**THE CHAIR**: Thank you. Would you like to make a brief opening statement?

**Ms Beacroft**: Yes, thank you. Could I check whether you have received the correspondence that I sent in?

**THE CHAIR**: We have just been handed it.

**Ms Beacroft**: That is okay. I realised you probably had not read it. I will be referring to it as I go along, so you will understand why I have sent that in.

Firstly, I would like to begin by acknowledging the importance of this inquiry. The board deals with many offenders who are sentenced for dangerous driving offences, and we find it a very complex area. I acknowledge the importance of the evidence and submissions provided to this inquiry, which I have read, and I also acknowledge the importance of evidence and submissions provided by victims of dangerous driving offences.

I particularly acknowledge the submissions and evidence of Ms Camille Jago, Mr Andrew Corney and Mr Stefaniak, who lost family members due to dangerous driving. They have drawn on their experiences in the criminal justice system to make specific comments, including about the Sentence Administration Board. Their commentary, insights and recommendations provide a unique and important perspective, and I thank them for these.

In my opening statement, it might be best if I respond to issues raised by Mr Corney and Ms Jago in particular, in submissions and evidence about the Sentence Administration Board. In submission 035 by Mr Andrew Corney, he raises—and I quote:

> … the Transitional Release Program and the Parole Board processes should be reviewed to determine if decisions are producing beneficial outcomes to the community … There would not appear to be any sound basis for a decision that allowed him—

In this case the offender, Mr Livas—

> entry into the Transitional Release Program or parole. I don't think that such decisions would meet with the expectations of the majority of the community.

Mr Corney quotes from correspondence that I, as the chair of the board, provided

earlier this year to the Victims of Crime Commissioner about a concern Mr Corney and Ms Jago raised with the board, and that was about not releasing Mr Livas, who is the offender in that case, around the birthday of Blake, who is their child who died.

I acknowledge the stress that Mr Corney and Ms Jago experienced during the parole proceedings. As I understand it, part of the distress centred on the fact that the non-parole date—NPP, as we call it—which is set by the sentencing court, and it was 18 May 2022, was near their son Blake's birthday. This meant that the potential timing of the offender's release by the Parole Board was near or on Blake's birthday.

I have provided today to the committee the outcomes of the parole and recent management proceedings and the time line in this matter. As you can see—you may not have read it, but if I could just point out—the board approved parole and Mr Livas was released on 1 June 2022, which is about 13 days after his NPP date. Thirteen days after his NPP date is at least a period of time, but I do need to note that legally the board is required—as far as practicable, and subject to considerations set out in the main legislation that guides us, which is the Crimes (Sentence Administration) Act 2005—to respect the NPP date which is set by the sentencing court. That is because, to put it in very summary form, the main purpose of the Sentence Administration Board is to administer a sentence. We cannot change a sentence.

Since being granted parole, the board has conducted what is called a management hearing, which is not uncommon for serious offenders, in the matter of Mr Livas, and found no further action is required at this time, based on the evidence provided to it.

In the board's view, reducing recidivism of dangerous drivers can be quite a complex challenge, but it certainly requires focus on the causes of the dangerous driving, which can be varied, and the question of whether the offender should simply, in a sense, be removed from the road; in other words, whether they should hold a licence and, if they are disqualified, for how long, among other factors.

The sentencing court found that Mr Livas's medical issues contributed to his dangerous driving. He was not a drug driver; it was his medical issues, which was a rather unusual case. The board is not able to mandate that any offender undergo medical treatment without their consent. That is an explicit provision in the Human Rights Act. In parole orders that we issue, we do not have conditions that do that, because it is illegal.

In any case Mr Livas cannot obtain a drivers licence until ordered by a court. This is clear from the court decision. Parties to any such court hearing to decide if he should, after his disqualification period ends, have a licence, will include the road transport authority and the Chief Police Officer who, no doubt, would put substantial submissions on the matter, and also evidence about a number of factors that are required under the road transport act, including whether there has been any relevant rehabilitation or remedial action undertaken, or is proposed to be undertaken, in this case by Mr Livas, and also the risk to the safety of other road users.

**THE CHAIR**: I am wondering whether you might entertain some questions.

**Ms Beacroft**: Now?

**THE CHAIR**: Yes, if that is okay.

**Ms Beacroft**: Yes, of course.

**THE CHAIR**: One thing that would be of interest to the committee and the community is: you say you do not set the sentence. I think we understand that. When someone comes to your board for administration of the sentence, what does that actually look like? Whether you want to use Mr Livas or another example, you have someone who presents to you with a sentence, and I will let you pick a scenario. What is actually your role when that convicted person is presented to you with a sentence?

**Ms Beacroft**: The board's role, as I say, is to administer the sentence. Anyone who gets a sentence over one year in the ACT will be given a date when they can apply for parole. But they cannot get parole unless the board grants them parole. Common law tells us that parole is a privilege, so it is quite a high bar, and there are a whole lot of considerations set out in our legislation. The board receives a lot of evidence and information about all of those considerations. That is the decision we are making.

We also consider breaches of parole and what the consequences should be. Of course, we are also looking at breaches of intensive corrections orders. If the board cancels an intensive corrections order, increasingly we are looking at whether that order should be reinstated, which is a bit like a parole decision.

**THE CHAIR**: For anyone with a sentence under one year, do they come before you at all?

**Ms Beacroft**: No. By definition, the only persons that come before us applying for parole, or on breach, are what you might call serious offenders, because they have got at least one year.

**DR PATERSON**: As part of your role, can you refer someone to drug and alcohol treatment? If we consider drug and alcoholism as a health issue, if we can refer to drug and alcohol treatment, why can you not refer to medical—

**Ms Beacroft**: Because there are statutory provisions that allow that in our act. It is one of the standard conditions. If there was a statutory provision that allowed the board—I am not quite sure what the wording would be—to undergo certain medical treatment, perhaps, that would have to be considered, obviously, in terms of its impact on human rights. But that is why we can refer and require them to attend residential rehab in an alcohol and drug facility.

**DR PATERSON**: What about mental health treatment? You cannot refer that, either?

**Ms Beacroft**: Not without consent. If someone appears in front of us and it is clear that they are willing and they want to have the treatment, we say that—I will summarise the actual condition—in essence, they have to keep their community corrections officer informed of treatment diagnosis and any change to that; also, their treating medical professionals and, within 48 hours, if there is any change, they let their community corrections officer know. Some offenders are on a psychiatric

treatment order, so that is mandatory mental health. But that is because of another regime, not our regime.

**DR PATERSON**: Is this increasingly becoming an issue with more medical or mental health type extenuating factors to offending, or that may actually lead to the person reoffending in the community—that, potentially, the law needs to be re-looked at?

**Ms Beacroft**: It is a very common area, where people have complex, multiple needs. If, for example, they have a serious mental illness and they stop taking their meds, that is a risk factor. At the moment, all we can do is try to make sure the community corrections officer is informed, if they are not on a psychiatric treatment order.

**MR BRADDOCK**: How do you assess the risk of a dangerous driver offender reoffending and then monitor that risk whilst they are out on parole?

**Ms Beacroft**: There is an actuarial risk tool which is considered to be the best. It is called an LSI-R. Parole reviews around Australia have occurred over the last five to 10 years, and they have always recommended that tool. It is constantly updated. That is what is used in the ACT. It gives you an actuarial risk assessment of the person's risk of reoffending.

Of course, it is just an actuarial risk tool. Someone might present before us with a high risk, so that is immediately an alert. A person might appear with a low risk, but the board might take the view that, if the consequences of their last offence were very severe, a low risk is still a significant risk, if you like. They may not be released, if it looks like that risk cannot be managed, if the offender has not done anything in custody to begin to manage it, and just seems very demotivated about engaging with how it might be managed in the community. That would be a factor that the board would take into account, about whether they even got parole, or whether the ICO was reinstated.

Say they did get paroled; this is where what I call our management power becomes very important. We can put in additional conditions. We rely on the community corrections officer to supervise intensely. That could even be twice a week that they are engaging. There can be police visits, if they are on curfew. Also, we bring them back before the board and get all of the evidence in to see what is going on.

Obviously, if someone is in the community, it is different to when they are in prison. There is a lot more opportunity, if you like, for someone to get lured into using drugs or just not being supervised to the same extent. I think the big decision is about whether they get released at all.

**MR BRADDOCK**: I am thinking about the risk of getting behind the wheel and potentially injuring or hurting another member of the community. How is that incorporated into your assessment?

**Ms Beacroft**: The board cannot make a condition that a person loses their licence. We rely on what the court has done. A lot of the offenders that come before us on dangerous driving or very serious traffic offences have already got their licence

disqualified for a period of time or, as I said, in the case of Mr Livas, if you read the court judgement, he actually has to go back to court to convince the court that he should get it back.

We discuss that with the offender to see what attitude they have to that. If they have a history of driving while disqualified, that is a significant concern for the board and would weigh into the question of whether they would get parole or get reinstated. We can ask whether they have access to vehicles and how they are going to get around. Often it is about how they have thought through things—what is often called the prevention of relapse plan. What are the strategies for how they are going to manage the fact that they do not have a licence? If they do not seem to have any strategies, that is a concern, and that would weigh into whether they would be released at all.

If we get a notification of a new charge, where someone has been caught driving while disqualified, we would bring someone on a parole order back before the board quite promptly, to work out whether they still have the capacity to do parole. We would not see that as a minor issue.

Could I raise something that was in my opening statement? If you look at the review of intensive corrections orders, 12 per cent of the offenders who were under orders when that review was conducted have ICOs for traffic offences. One would think, if they are getting an ICO, that they are not minor traffic offences. If you are caught speeding for the first time, depending on the circumstances, you get a fine. We also have to think about intensive corrections orders here, not just people who get imprisoned and then are put on parole.

I would flag that there does need to be some consideration about aligning the powers the board has for ICOs with parole. When ICOs were first brought in, they were quite a different regime. As time has gone by, which the review shows, you are starting to see similar offenders on both. As I say, I raised that there are some serious traffic offenders on ICOs. However, the board does not have the power to bring someone on an ICO back before them unless there is an actual breach raised with us. I would like consideration of that.

As I pointed out, if someone is on parole and, for example, they were charged but not yet convicted of driving while disqualified, almost in any circumstance, we would see that as a concern. Certainly, if it is a person with a traffic history who is under sentence for a serious traffic matter, they would definitely be brought back for a management hearing before the board, very promptly, for the board to investigate whether they still have the capacity to do that order.

However, we cannot do that for a serious traffic offender who is on an intensive corrections order. I would like consideration of that power—it is called section 153 of the Crimes (Sentence Administration) Act—to be replicated for intensive corrections orders.

**DR PATERSON**: We have heard from police about Operation TORIC, and that seems to be highlighting the very high level of recidivism, particularly around dangerous driving offences. Given that you see everyone coming out on that side, do you see this group of offenders as a high-risk recidivist group? Are they worth

targeting? Do you think about this group differently, in your delivery of their outcomes?

**Ms Beacroft**: Some of them are what we call specialist offenders. Some of the submissions give a normal profile, which you find around the country, of who commits these offences—male, disadvantaged, young. We commonly see those sorts of offenders almost only with traffic offences. The problem is that once they start getting involved with the criminal justice system, initially with only traffic offences, they then start doing other offences. We know that once you engage with the criminal justice system, life gets difficult; they might start using drugs or there might be a burglary. So you will see someone evolve.

This is set out in relation to Indigenous people in the *Pathways to justice*. You can find kids that do not have any way of getting a licence starting off with unlicensed; then they get disqualified, and they might do a speed. Then they are a disqualified driver. Then they are in a pursuit because they freak out when the police are about to pull them over. Yes, some of them are specialist offenders. But there are also unusual cases. The case of Mr Livas is an unusual case, but very serious.

One point I would raise is that, yes, we do get those young men who are specialist offenders, and I see a lot of submissions talk about what could be done to try to target that group. To completely support that, we do get a number of those before us. But we do get unusual offenders, and we need also to be able to deal with those.

**THE CHAIR**: What guides you in making a decision on a parole application? Obviously, it is a very discretionary activity. What are the characteristics of the case, or the person, that would lead to an approval of a parole application?

**Ms Beacroft**: We are guided by the act, particularly section 120. We receive a lot of submissions in evidence. Not all of it is shared with the parties. We can get in-confidence submissions, for example, from police or indeed victims. All of those submissions are carefully considered.

Ultimately, the public interest is the primary basis for releasing someone on parole, and that is, broadly speaking, community safety. But there is also an interest in having that person rehabilitated. That is part of the public interest. It is a weighing-up exercise. But parole is a privilege. The person applying, in a sense, has the onus.

We look at what they have done in prison, not just their behaviour but what programs they have done, and how they respond to focused questioning about their risk factors. We do not put it quite like that. It is more of a therapeutic context, more plain English—that sort of thing.

If it is a serious offender, as I say, we will bring them back on a management hearing shortly after they are released, if it is decided that they should be released. Also, we have some scope to put additional conditions in. The standard statutory conditions are very comprehensive, anyway.

**THE CHAIR**: Who is on the board?

**Ms Beacroft**: The names of the people are on our website. There are three judicial members who have legal qualifications. I am one of those people. There are a number of people who are called ordinary members, with a diverse range of experience. Everyone's term is three years. At the end of that term, the government seeks expressions of interest through a public, advertised process.

**THE CHAIR**: Are there what you might call members of the community, without necessarily any specialties, on the board?

**Ms Beacroft**: Yes. In the past there has been a need to have some kind of relevant skill, but the range of people on the board is quite broad. They are not experts, if I could put it that way. They are not experts in the criminal justice system or in criminology. In fact, many of them are not at all.

**THE CHAIR**: Can anyone apply to be on the board?

**Ms Beacroft**: Anyone can apply.

**THE CHAIR**: For decisions, are they just by the numbers; is that right?

**Ms Beacroft**: Correct, majority rules. The board is always made up of three people. There is rarely dissent, I have to say, because the board's deliberations are done carefully and every view counts. But if there was such a situation, it is a majority of two that decides; correct.

**THE CHAIR**: There are only three on the board?

**Ms Beacroft**: There are only three that sit on the board for any decision. I think there are about 11 members. One of them, for example, is a serving police officer who gets rostered on.

**THE CHAIR**: The three who make the ultimate decision would be yourself and—

**Ms Beacroft**: Not necessarily me. There are three judicial members. There will always be a judicial member. I would sit on one-third of the boards. The other two judicial members sit on the other sittings. They would sit with two ordinary members in each case. We have a random rostering system in order to enhance the integrity of the system. It is well known that that is how you should do it. Once a complex matter comes before a board, subject to any conflicts of interest that might arise, we try to have at least the judicial member retain that matter as it goes through the various steps.

**MR BRADDOCK**: With the powers of the board, I was interested that you said earlier that you cannot disqualify a licence. I am not suggesting you should be overturning court decisions, but, surely, there should be scope there for a power for you to determine whether it is appropriate for someone to be driving or not, if it is a dangerous driving offence.

**Ms Beacroft**: Maybe, but we do not have the power. If I could wear another hat, because I also sit at ACAT, I have actually done the reviews of fitness to drive matters. It is quite a complex area. I do not necessarily disagree with you, but it is a complex

area.

**DR PATERSON**: With those people who breach a parole, does the board do an analysis? Do you work out trends in those breaches? What is the consistent breach? Is there an issue there? Is it with the offender or is it with the sentence? Do you look at any different types of offenders in that?

**Ms Beacroft**: Unfortunately, the board's data collection system is very limited. When we are looking at a matter, we look at the whole history of the matter. We have the entire history of the matter—the court, the previous offences and sentencing. In any particular matter, we look at any patterns or issues like that for that particular matter. But our data system cannot do the across-the-board breach analysis that I think you might be referring to there.

**DR PATERSON**: Again, talking about the 12 per cent of traffic offences that you noted before, are there particular parole issues related to those types of offenders that the committee should be aware of?

**Ms Beacroft**: I think that review brings out some fairly solid findings about intensive corrections orders. I would rely on their findings there. They did analysis of 230 intensive corrections orders. The challenge with intensive corrections orders—and I am really stating the obvious here—is that those orders mean that, instead of going to prison at all, you are doing it in the community from day one. That is what they are intended for. The word "intensive" tells you what is involved.

What the board finds, when we get the breaches—and we have increasing numbers of breaches as the ICOs get used more and there are more people subject to them; obviously, we are getting breaches—is that, just like people on parole, there are breaches for similar reasons. That is the challenge, isn't it? The person is in the community.

At least with intensive corrections orders, if we find that a person is going off the rails, so to speak, and not doing the right thing, we do have a suspension power. Say they started using drugs—and that is a risk factor, particularly for driving—at least we can suspend for seven days, so that, in a sense, they could dry out. That is the advantage. With parole, we cannot suspend; we just have to cancel.

I think it is the same challenge as for parole, in that they are in the community. As we were saying before, it is not the same as prison; they are just not supervised. You cannot possibly supervise them to the same degree. I think it is all about timing and doing intensive supervision, except we do not have a management power to bring them back before us. If we did, we would bring them back, if we saw any suggestion or evidence that they were not doing the right thing on that order.

**DR PATERSON**: Does that come into your consideration with people on parole—that you will let risk factors build up before you cancel parole?

**Ms Beacroft**: No, we would not let them build up. We only have the management power for parole, but if we had it for the ICO we would do the same thing. If anything comes to our attention that suggests that the risk factors are not being managed, we

would promptly bring them in on a management hearing. We can cancel on a management hearing without a breach, on the basis that they no longer have the capacity to do parole, and we do that. If, in doing that, something happens—and this does happen—where suddenly they are in a residential rehab—maybe triggered by the management hearing, but that is fine, they are in a residential rehab—they seem to have taken action, and that seems to be progressing well, we might adjourn that management hearing. We are not ignoring the risk factor, but we are trying to see whether it is being well managed.

**THE CHAIR**: On behalf of the committee, thank you for coming and speaking on behalf of the Sentence Administration Board. I do not believe there were any questions taken on notice. We will have a short break.

**Ms Beacroft**: Would it be possible for me to provide my opening statement, which I did not quite complete?

**THE CHAIR**: Sure.

**Ms Beacroft**: Out of respect for many of the submissions made, I would like to acknowledge aspects of them.

**THE CHAIR**: Yes.

**Ms Beacroft**: Would that be all right? Could I provide it as a letter?

**THE CHAIR**: Yes.

**Ms Beacroft**: Thank you.

**Short suspension.**

**WATCHIRS, DR HELEN**, President and Human Rights Commissioner, ACT Human Rights Commission
**MUNRO, MS ALLISON**, Manager, Victim Support ACT, ACT Human Rights Commission
**SKALISTIS, MS MAREE**, Legal and Policy Adviser, Victim Support ACT, ACT Human Rights Commission

**THE CHAIR**: In this session we will hear from Dr Helen Watchirs, on behalf of the Victims of Crime Commissioner. Dr Watchirs is supported by Ms Allison Munro and Ms Maree Skalistis. 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?

**Dr Watchirs**: Yes, I understand. Thank you.

**Ms Munro**: Yes, I understand.

**Ms Skalistis**: Yes, I understand.

**THE CHAIR**: Thank you. I believe, Dr Watchirs, you would like to make an opening statement.

**Dr Watchirs**: Yes, please. I am here speaking on behalf of Ms Heidi Yates, the Victims of Crime Commissioner, who is unwell this week. Under section 18(3) of the Human Rights Commission Act I do have the powers for all commissioners, so I do that in my own right as well.

The Victims of Crime Commissioner did do a submission. I had the opportunity on 20 October, four weeks ago, to meet with victim-survivors of motor vehicle collisions. They are central to this inquiry. Their contribution and insights through lived experience are very important to this public hearing. Of course, they are here present today and online as well. It is incumbent on us to listen to these lived experiences because their understanding of how the system has impacted on them in the aftermath of life-altering circumstances is vital to understand.

I would like to quote Ms Camille Jago's submission:

> Victims become victims twice over in my opinion. There is the originating crime and then victims of crime become victims of the justice system.

The Victims of Crime Commissioner can help people to navigate the justice system and other responses, in the context of immense grief and loss. Not having that assistance is, I think, a big impediment. In the meeting I had on 20 October it was clear that the advocacy was coming from an altruistic mind frame, so that other families were not going to be subjected to the grief that they have endured, particularly in the case of losing children.

Our records show that there have been 15 cases over the last 10 years of dangerous driving causing death in the ACT, resulting in a criminal conviction. It is difficult to

quantify the resounding impact, because it is so far reaching, beyond the loss of life. The service response required must be holistic, because the trauma is complex and intensive, often spanning several years. So that support and case coordination and justice advocacy can range from many places. It can be court support, it can be assistance in the coronial process, including accessing autopsy reports, it can be criminal or even civil matters, and it can be insurance matters. So it is quite wide ranging.

The Victims of Crime Commissioner, in Victim Support ACT, has been providing ongoing, wraparound, extensive support, but it is not funded. There is a gap in service provision, leaving families without holistic care and support. Victim services and support have been called on to fill this gap, but it is not resourced. It is a complex and distinctive service response required, taking several years—not just initial police investigations, but, as I said earlier, the prosecutions and coronial inquests.

There are gaps and inefficiencies that compound the impact of trauma on families—things like funeral benefits available from the MAI. You have to have a police incident number, then the other driver details, which they may not have collected, and to have someone standing alongside them to assist in the process would be very powerful. MAI does provide eventual trauma counselling and therapeutic support, but it is really the immediate crisis that is really important, in our experience. And there is a lack of access in the private sector. There is a two to three-month delay at the moment for psychological services, whereas Victim Support provides it in-house, as well as providers to provide that service.

There were two recommendations in this submission. The first is filling that service gap to provide ongoing wraparound support in justice advocacy at every stage of navigating the justice process and responses to motor vehicle crime. Recommendation 11 of PAVER, the projects assisting victims' experience and recovery review, supported having a discretion for the Victims of Crime Commissioner to access services. At the moment we are not supposed to look at MAI cases, and that could have a legislative fix.

The other one is to amend the Evidence (Miscellaneous Provisions) Act 1991 to extend existing law reform special measures to all motor vehicle related offences causing death. It currently only extends to culpable driving. In our view, it could extend to negligent driving so that they can be afforded that in providing witness evidence to the court. That will be based on the close relationship with the loved one who has passed away in the collision, not because of the nature of the charge. We think this small, good change could provide much more consistent support for families in that regard. Thank you.

**THE CHAIR**: Thank you. I will lead off with the first question. As you have said, and as the Victims of Crime Commissioner's submission said, you have been called upon to provide wraparound case coordination and support to families directly impacted by motor vehicle accidents causing death. You have mentioned that that is not funded. If there was a death on our roads this afternoon, what would your role be, from knowing of that event?

**Dr Watchirs**: We usually rely on referrals. Because we are excluded by that, we are

not receiving police referrals. So it would be the family coming to us directly. That is my understanding. Perhaps either of my colleagues could assist.

**Ms Munro**: Yes. Our normal referral pathway would be through police and other agencies. They would refer people to our Victim Services Scheme, which provides counselling and other services, and wraparound support as well. But because victims of motor collisions causing death are not eligible for the Victim Services Scheme, we have noticed that those referrals have not always come through and often people are not aware of our services until much later.

**THE CHAIR**: Even though it is not a requirement to refer those to you, if you are aware of it—

**Ms Munro**: We are. And when families have come to us requesting help, we have helped them because we just cannot not do that.

**THE CHAIR**: Sure.

**Ms Munro**: So we have done whatever we can to assist.

**THE CHAIR**: Forgive me for being a bit legally nerdy. Do you actually have the power to do that if it is that category of death and crime?

**Ms Munro**: With a lot of the holistic services we can. For example, regarding a victim of a motor collision that causes death, through us they can access our Financial Assistance Scheme. That is a scheme of last resort, so we would have to make sure that other entitlements that they may be able to get have been sorted out first.

With the justice advocacy, we could certainly help with that side of things. We can provide some of those supports. It is just that we are restricted through the regulation—I believe it is regulation 24—which says that, where the offence is related to a motor vehicle, people are excluded from eligibility for the Victims Services Scheme, which provides the facilitation of counselling. We have a number of service providers who provide counselling. That is a large part of that Victims Services Scheme.

**THE CHAIR**: And does the exclusion just apply to negligent driving causing death?

**Ms Munro**: I believe it is—

**Dr Watchirs**: Any motor vehicle accident—

**Ms Munro**: Yes; offences in relation to motor vehicles.

**THE CHAIR**: Okay.

**DR PATERSON**: I think this goes to the same issue. We heard evidence earlier from a woman who was hit by a drunk driver. She spent many months in hospital, with surgeries and things, and spoke of the overwhelming nature of having to fill out forms. She could not get her insurance until there was a guilty plea, which took two years, to

pay for those medical expenses for lifesaving surgery. What is needed in your agency to ensure that someone in that situation can be supported?

**Ms Munro**: I think one of the first things that would be needed is awareness of the services that we can provide with all of the different agencies so that that person actually comes into contact with us. Our FAS scheme would be available, but it depends on the circumstances and the particular offence. That scheme could be available, but, like I said, it would also depend on whether other entitlements have been provided.

That is why I think what we are calling for is intense case coordination, because it is quite complex. It depends on the nature of the crime, the particular charges involved, what insurance entitlements there are and whether it is going through the justice system or the coronial system. It is quite complex.

We see the need for one person to sit there and be able to take that administrative burden off that victim of crime, to work out what the options are and the processes. Do you need to go to the MAI first, for example, before you come to the FAS scheme? Someone needs to work all of that out with them because we do know that in times of immense trauma and distress it is very, very hard to do that on your own. It is really a call for that holistic support so that people can work out what they are entitled to. It is not always clear or obvious, even to us. You would often have to sit down and work out with insurers and know the circumstances around the offence.

**DR PATERSON**: In terms of your understanding of the potential case load, because a lot you would not potentially be aware of, would that be one full-time equivalent position or a couple of people? What do you think would service that?

**Ms Munro**: We are advocating for resources. I think we would need at least two people because, as Helen alluded to earlier, there are often multiple family members involved and close friends. So even though there may only be one incident, there might be a number of victims of crime. We also know that sometimes family members can be in conflict, and they may not want the same support person. It may not be appropriate for them to have the same support person. So we would need at least two people, I think. We would be aiming for a small team of people who can develop specialisation in this area, and all of the things I was talking about earlier, in terms of gaining an understanding of all of the entitlements available and the paperwork and the pathway through that.

**Dr Watchirs**: The submission only supports having dangerous driving causing death within jurisdiction, not serious injury to start with. We would want to see how that jurisdiction went and how many cases that involved.

**Ms Munro**: Yes.

**Dr Watchirs**: We would not oppose having that at a later date, when it was reviewed, but the initial proposal is for the most serious cases first.

**DR PATERSON**: Okay. Thank you.

**MR BRADDOCK**: In paragraph 21 of your submission you talk about the special measures being applied to all driving-related matters causing death. Using those arguments, are there also other offences, non-driving related, that may cause death that we should also be aware of to avoid any unintended equivalencies out there before we make such a change?

**Ms Skalistis**: Can I just clarify that the question is relating to other offences that sit outside of dangerous driving, whether or not there are gaps in the Evidence (Miscellaneous Provisions) Act?

**MR BRADDOCK**: Yes, because I am not disagreeing with your argument. I am just saying: if we were to grant the power in this particular area, is it the case that we also need to consider that there might be workplace incidents involving death where we might also look to provide victim support, just to make sure that we are not setting up for a false comparison down the track?

**Ms Skalistis**: I think the best way we can answer this question is, without having a large-scale review of all the special measures that apply to every particular proceeding and every charge under the Evidence (Miscellaneous Provisions) Act—and I know that our agency has been engaged with government on an ongoing basis when law reform arises in this space, as it has done over the years with the Evidence (Miscellaneous Provisions) Act—to look at the particular types of offences that are captured under the particular types of proceedings that are also defined under the legislation.

In relation to this particular recommendation that arises for the Victims of Crime Commissioner in our submission, we particularly noted the explanatory statement for the recommendation that came out of the royal commission bill in 2018, which talked about the intent behind wanting to have these special measures being afforded to witnesses in proceedings who have a close and special relationship with someone who is deceased, arising out of a criminal offence. That was not limited to dangerous driving offences, but within that it captured the culpable driving causing death charge.

For whatever reason, the negligent component was not captured in those reforms. That is the substance of what that goes to. But in relation to those other areas that may or may not be congruous within the legislation, we notice those on a case-by-case basis, as they arise, when victims access our services and tell our case coordinators, through the Victim Services Scheme, what they have experienced in terms of accessing procedural supports through the criminal justice process.

**MR BRADDOCK**: Okay. Thank you.

**THE CHAIR**: If you got this wraparound resourcing, that would be covering from the incident right through to when? When do you see the typical end point for that, or is it literally case by case? Is there a natural point where your support drops away because other things happen? How do you reach that decision?

**Ms Munro**: Due to the grief that the families feel, it can go on for years. I would not like to put an end date on it because not only can the court matters, the coronial matters and potential civil options go on for years and be very protracted but in our

experience there are no time limits or journey we can predict with grief. So we would like to be there to support family members for as long as they need our support.

If, for example, counselling can be provided through MAI, we would provide the initial counselling because we could have an in-house counsellor who would be there immediately. We would not have the waitlist that everyone else has. So they could do that in the first few weeks and months and also assist to get the paperwork in for the MAI and all of the other processes. Then, potentially, a longer term MAI counsellor or a counsellor through another service could see that person through their journey. But we would like to also be there to help with any advocacy or any other supports that they might require.

**THE CHAIR**: And if you had this wraparound service, would that be a saving to other current service providers, whether it is court support or police support or as required under MAI claims? Have you got an idea of the saving that there might be to other agencies?

**Dr Watchirs**: I think that would be very hard to quantify, given that we have not had experience with the cases.

**Ms Munro**: Yes, and I think there is a gap. Those services just are not being provided in the immediate days and weeks after collisions. But I agree; I do not know that we could quantify that.

**Dr Watchirs**: A victim of the meeting we had on 20 October mentioned that SupportLink used to attend accident collisions and that they had stopped—and that that had been a great source of support. So to reinstate that would be a good idea.

**THE CHAIR**: We have heard from them during this inquiry.

**DR PATERSON**: We just heard from the Sentence Administration Board that they can direct people coming out on parole to drug and alcohol rehabilitation. But the board were saying that they cannot direct medical intervention and would be potentially breaching human rights there, with respect to mental health medical attention as well. If we are redirecting people to drug and alcohol services, I am interested to understand what the difference is between that and health services. Do you think it is a breach of people's human rights to direct that they seek medical attention?

**Dr Watchirs**: I think we would have to take that on notice. Sorry; I am not prepared for that question.

**DR PATERSON**: Thank you.

**MR BRADDOCK**: In terms of your call for wraparound support services, how would that interact with the motor accident insurance policies? Is it possible that they might actually fund those support services? Is that a model you would foresee?

**Dr Watchirs**: One way of doing it would be that we could provide the immediate support and then, if it was granted by MAI, we would recover it from them. That

would be one way of doing it.

**Ms Munro**: That immediate support would also help people to access entitlements under the MAI. We have understood from some of the families that the paperwork is very exhausting, very complex, and there are time limits which cause people additional stress and compound their trauma at that time. So we would help with that role as well.

**MR BRADDOCK**: Would there need to be an adjustment to legislation covering the MAI to ensure that your support services are covered?

**Ms Munro**: Not that I am aware. Do you have a comment on that, Maree?

**Ms Skalistis**: I think it is difficult, looking at the MAI legislative framework. I know that it is also something that is quite new in the last few years. When our office has been assisting families in this MAI space we have found that it is a highly technical and highly complex area. It would be of great benefit, I think, to review that regulatory legislative scheme to see where those intersections might be. But it is not something that we have been particularly privy to in the purview of our role in supporting families to access the defined benefits under that scheme.

**MR BRADDOCK**: Okay. Thank you.

**THE CHAIR**: On behalf of the committee, thank you for appearing. We certainly wish Ms Yates all the best in getting better soon. There were questions taken on notice. Could you provide answers to the committee secretary within five working days of receipt of the uncorrected proof transcript.

**Short suspension.**

**DRUMGOLD, MR SHANE SC**, Director of Public Prosecutions

**THE CHAIR**: In this session we will hear from the Director of Public Prosecutions. We welcome Mr Shane Drumgold SC. 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 Drumgold**: Yes. I have read the privilege statement and agree to be bound by it.

**THE CHAIR**: And it is my understanding that you are content to get straight into questions?

**Mr Drumgold**: I am.

**THE CHAIR**: Thank you. This is probably a very broad one, and committee members might like to come in on it with supps, but with your extensive experience in, particularly, prosecutions where there is a death involved—and if you could focus even further to dangerous driving being the cause, or a driving event that caused a death—what do you think could be an improvement for the surviving families, from beginning to end of the whole process?

**Mr Drumgold**: I just want to say that I wish the families of everyone that has lost loved ones through crime or accident comfort and strength. There is very little that the criminal justice system can do to ease that pain of losing someone; it does not matter whether it occurs through a road accident that is an accident, through a road accident that has an element of crime, or indeed through an industrial accident. The criminal justice system is designed to, first of all, uncover the truth and then, secondly, to arrive at a sentence that furthers one of the provisions in the sentencing act—one of the objectives of sentencing—whether it is general deterrence or specific deterrence, and both of those things are valid. There are things such as denunciation, just denouncing the action, some punishment and some rehabilitation.

Not all of those things move in the same direction. Rehabilitation often moves in a different direction to punishment. The role of the court is to balance all of the competing things and try and arrive at the best possible outcome for everybody. At the moment, they have wide discretion and I think that that is a good thing. They have wide discretion to find where the correct balance is. The case law says that they use things such as instinctive synthesis, and I think that there is a place for that in the criminal justice system.

**THE CHAIR**: Thank you. Do you actually get feedback from families? Doe the role that you play in these prosecutions fall into categories or frequency of feedback?

**Mr Drumgold**: Whether I am doing a murder trial, a culpable driving causing death trial or a manslaughter trial, I travel a journey with all of the victims, from first charging through to sentencing, including reviewing. So we deal extensively with victims through the criminal justice system.

**THE CHAIR**: Thank you.

**DR PATERSON**: The ACT government submission spoke about not so much sentencing guidelines but sentencing judgement guidelines, I think, as a potential way through. I asked the Attorney-General about this when he appeared before us. He said there is a possibility to explore something like that. I get the feeling that you just said the opposite: that the more discretion a judge has the better. Can you speak through the pros and cons of that?

**Mr Drumgold**: Sure. Whenever I look at a piece of law, I look at what it is seeking to achieve. For example, sections 36 to 42A of the Crimes (Sentencing Procedure) Act in New South Wales have a regime for guideline judgements. They can arrive a number of ways. They can arrive on the court's own initiative. The Attorney-General can apply for a guideline judgement. They can apply to specific courts, to specific offences or indeed to classes of offenders. One needs to look at what that is seeking to address in New South Wales. You have a large number of judges in a number of jurisdictions in New South Wales, and one might think that you might get a range of sentences and that large disparities in sentences may have an impact on the confidence that people might have in the criminal justice system.

In the ACT we do not have those factors. We do not have the tyranny of distance. We have five in the Supreme Court jurisdiction. We do not have a district court, but in the Supreme Court jurisdiction we have five judges. Generally, three or two of those, if I decide that a sentence needs to be looked at, will sit on a review sentence and, through a reconstitution of a single judge, into the Court of Appeal.

We simply do not have the divergence of judicial officers that I think guideline judgements in New South Wales are seeking to overcome, because it is such a small jurisdiction. I have judge A sentencing somebody, and if I think it needs to be looked at I will potentially have another three of the five that will sit on the Court of Appeal. Sometimes it will be two of the five, with an external judge. But we do not have the divergence of sentencing ranges here because we do not have the number of court structures and the number of judges sitting within those court structures that you might have in New South Wales or Victoria.

**DR PATERSON**: Some people in the community may argue, then, that, all the judges having like mind, we are ending up with a very low group of sentences, particularly for very serious driving offences. Can that be a problem in itself?

**Mr Drumgold**: Consistency in sentencing is not a problem, I do not think. It is inconsistency in sentencing that is the problem. If you went to remote New South Wales, in a District Court, and got six or seven years and went to inner Sydney and got 12 or 13 years for the same type of offending behaviour, that would be a problem. We have a very experienced judiciary in the ACT. It is a small jurisdiction but a very experienced jurisdiction, so we tend to have, by and large, consistency in sentencing.

**DR PATERSON**: Given that these dangerous driving issues have been highlighted over the last year or so, is there discussion or general review internally of sentencing? Overall, are we actually ending up at quite a low-level sentence? When you have a 14-year maximum sentence and we are getting two or three years, do questions start

getting asked internally about that?

**Mr Drumgold**: One needs to look at the history. I do not deal with general road deaths. I only deal with them if they are criminal, if they result in either a culpable driving or a negligent driving charge. One needs to look at the legislative history of this. We were inconsistent prior to 2011. A review was done of comparative maximum penalties around Australia and we introduced the Crimes (Penalties) Act of 2011. We saw a number of changes. Manslaughter was one. Culpable driving causing death increased from seven to around 14, I think. So we have had a review of maximum penalties.

When a sentence is imposed or when we are arguing in a sentencing hearing, we cite authority in similar matters in other jurisdictions. When a sentence is handed down, we look at them holistically and how they sit in the national scheme and we make a decision about whether or not it requires intervention from the Court of Appeal. That occurs in every matter, particularly matters involving death.

**DR PATERSON**: I have looked through some of the judgements, and you see all the listed cases. So it is not only in the ACT but broadly that we do look at other jurisdictions and take note of similar offences?

**Mr Drumgold**: Yes.

**MR BRADDOCK**: Other witnesses have suggested a reform of the legislation around dangerous driving and accidents causing death. Do you have any perspective on that or what you might like to see as a reform to the legislation?

**Mr Drumgold**: On what, sorry?

**MR BRADDOCK**: A reform to the legislation around dangerous driving?

**Mr Drumgold**: Nothing jumps out. No reforms immediately jump out. My office, prior to me being director, was involved in the review process that occurred in 2011. We sought consistency amongst jurisdictions for maximum penalties for these types of offences and the legislative change gave consistent maximum penalties to those in other jurisdictions. So the work has been done in the past.

**MR BRADDOCK**: Okay. I am just also interested, in terms of where you have different acts, whether it might occur within a worksite or behind the wheel of a vehicle or on the pavement, do we ensure consistency in how they are treated under the law and how they are sentenced?

**Mr Drumgold**: That is the number one priority in our submissions on sentence. We look at what factors could aggravate a matter, what factors might mitigate a matter, what factors are existent in all of these types of matters. And then that is the basis for our argument. We argue in a sentencing proceeding what factors might make this more serious than other matters.

**MR BRADDOCK**: Thank you.

**DR PATERSON**: In a lot of the submissions there is a call for reform to the Bail Act to move the presumption of bail, particularly for culpable driving or recidivist type offences, to no presumption for bail. Do you have any thoughts on that?

**Mr Drumgold**: I have thoughts generally on law reform. My general view is that law reform should be based on logic rather than emotion. There needs to be some issue that is sought to be achieved by law reform. There needs to be some measure of what it is seeking to achieve and some measure of how it is seeking to achieve it. Importantly, it also needs to examine what might be captured that we might not want to capture. Ultimately, there needs to be an assessment of: how will this achieve what it is seeking to achieve and what unintended ramifications might there be?

At the moment, bail considerations are pretty clear. That is based on a number of criteria in section 22 of the Bail Act. It is based on the risk of reoffending, the likelihood of appearing and the risk of interference with witnesses. Judicial discretion is brought to that, with the benefit of arguments from both sides, and the judiciary ultimately arrives at the best possible point. Fettering that can often lead to people that the law is not intended to capture being caught by those provisions.

**DR PATERSON**: Operation TORIC has highlighted a fairly high level of recidivism amongst dangerous driving offenders. Do you think that we do need to target those types of offences, given that this has really been highlighted as an issue, and a particular type of offender, potentially?

**Mr Drumgold**: I would be hesitant to generalise, because person A applying for bail should have their bail decision determined by their circumstances, not the circumstances of somebody else.

**DR PATERSON**: Why is moving to a neutral position or the no-presumption—so it is at the judge's discretion—potentially problematic, compared to having a presumption for bail?

**Mr Drumgold**: I think it should be a presumption that if someone is still answering a charge they should not be given bail unless there are compelling reasons to depart from that. We do have departures from that. We have presumptions against bail and neutral presumptions of bail.

My position on whether or not particular driving offences should fall into a neutral position, or a presumption against, would be based on whatever evidence was brought to my attention, that that would in some way address a particular issue.

Recidivism is a difficult concept to grapple with. If you have a really serious culpable driving causing death, and subsequently you have a low range PCA, you would technically be a recidivist. So even the term recidivism, needs a judicial mind brought to it to work out the relevance of that for this particular offence.

**THE CHAIR**: I am happy to focus on dangerous driving that has caused death. When such a charge is proven, in whatever category of the driving offence, what informs your sentencing arguments? In particular, how often have you argued for the maximum sentence?

**Mr Drumgold**: We look to the common law of some of the things. If we could pull out culpable driving causing death, the law identifies things such as the extent and the nature of the injuries, the number of people that were at risk, the speed that was involved, or the degree of intoxication that was involved, whether it involved any erratic driving, whether it involved some sort of competitive driving, racing and that type of stuff, the length of journey that was travelled, whether or not they adhered to warnings along the way, and whether or not they failed to stop. So there are a range of things we look at to work out where this sits in a range of criminality.

In the ACT we generally do not place crimes in the middle range or at the upper end or at the lower end, because they are unhelpful adjectives. We look at what particular circumstances exist in this particular offending that should be considered in the ultimate sentence and we argue those with the judiciary, ultimately determining what those numbers should be.

**THE CHAIR**: I was looking at the common law. You are really guided by precedent?

**Mr Drumgold**: Yes.

**THE CHAIR**: Is that what you are saying? When, for example, would you ever argue for the maximum penalty?

**Mr Drumgold**: Well, if it had all of the elements that warranted the highest maximum penalty. They are the circumstances that we would do it. I am being very careful with my words because sentencing is not a mathematical equation. We are not applying an algorithm. We are applying a judicial discretion that looks at the objective circumstances of the offence, and also it considers the subjective circumstances of the offender. All of that goes into a mix that assists the judiciary to ultimately arrive at the correct penalty.

**THE CHAIR**: For example, how often over the last two or three financial years have you argued for the maximum penalty?

**Mr Drumgold**: I have not engaged in an examination of sentencing submissions that we have made in all of the matters. But there are very few of these types of matters. I cannot answer that question because that would require an examination of how that particular prosecutor applied their discretion in arguing.

**THE CHAIR**: So you are not aware of anything that comes to mind where you have argued for the maximum penalty?

**Mr Drumgold**: Not that I am aware of, no.

**THE CHAIR**: Thank you.

**DR PATERSON**: In terms of data collection, there seem to be different ways of measuring these things. As you said, recidivism is very difficult to measure. How do you communicate, from the court perspective, with JACS and other agencies on things that you think could be improved, so that we do have data that potentially does

highlight areas that we need target and improve?

**Mr Drumgold**: It depends on the area. Generally, we confine ourselves to lacunas in the legislation. There might be an issue in the legislation that makes a piece of legislation difficult to reverse, or we might think that a particular piece of legislation might capture unintended things. But we have made no recommendations for law reform in this space since 2011.

**DR PATERSON**: And you stick to that. You do not believe that there is any need for reform in this space?

**Mr Drumgold**: Nothing that has jumped out to us, no. I am just being careful, in case you are conflating how we view sentence outcomes. If we view a sentence outcome as containing a specific error, where something has not been considered that should have been considered, whether or not we look at the whole of the sentence and consider the whole of the sentence to be manifestly inadequate with regard to the offending, the remedy for that is not for us to write to government. The remedy for that is for us to file an appeal to the Court of Appeal to review that sentence on either a specific ground or the ground of manifest inadequacy. We would not normally write off to the legislature in those circumstances, because that is the application of judicial discretion.

**DR PATERSON**: Wasn't there a quote in the paper from you saying that there are a lot of appeals in the ACT?

**Mr Drumgold**: We have been active in the appeals space, but we have been very targeted in the appeals space. We have looked closely at two types of offending: child sex offending and murders. We have given the full bench of the Supreme Court, the Court of Appeal, an opportunity to have a look at those ranges to make some general statements about those types of sentences. We have not identified particular issues with those types of offences, which is evidenced by the fact that we have not appealed. Our sentencing review suggests that there are few, if any of these matters, over the last 10 years that have not resulted in a term of imprisonment for culpable driving causing death.

**MR BRADDOCK**: ACT Policing have recommended changing the name "offence of culpable driving causing death" to "vehicular homicide" and increasing the penalty to be brought in line with manslaughter. Do you have a view on this recommendation?

**Mr Drumgold**: I come back to: is there a particular issue that is being sought to be addressed by a name change? One does not jump out. We can charge for offences that cause death. We can charge murder in certain circumstances. We can charge manslaughter in certain circumstances. The difficulty with manslaughter is that with manslaughter you have to intend the conduct that caused the death. That is one of the elements of manslaughter, rather than conduct that resulted in an accident that caused death.

Many times, where someone is either highly intoxicated or driving very negligently and does not intend to strike a car but does strike a car and someone dies, the elements of manslaughter are not there. If someone intended to hit a car and that subsequently caused the death, we might be closer to the elements of manslaughter, rather than

culpable driving causing death. Culpable driving causing death, negligent driving causing death and manslaughter all fall within the category of offences known as homicide.

**MR BRADDOCK**: Thank you.

**THE CHAIR**: Touching on Dr Paterson's line of questioning, you say that you would appeal a sentence if there was a technical error or some fact was not properly considered or—

**Mr Drumgold**: A specific error.

**THE CHAIR**: Yes.

**Mr Drumgold**: Or it was generally manifestly inadequate.

**THE CHAIR**: How do you reach that conclusion that a sentence was manifestly inadequate?

**Mr Drumgold**: First of all, we do not reach the ultimate conclusion that it is manifestly inadequate. That is a question for the court. We reach a position, first of all, that there is an arguable position that it is manifestly inadequate and that some correction is required because the outcome is manifestly unjust. Or we look at it through the prism of: if we leave sentences unaddressed, subsequent sentences that argue that as a precedent might start to drag the sentencing range down. We have a group within Crown Chambers called the Policy and Appeals Unit that looks at most sentences, particularly homicides, and asks that question. It is done independently of the prosecutor that argued the matter.

**THE CHAIR**: Right. So are you guided purely by ACT case law?

**Mr Drumgold**: No.

**THE CHAIR**: What is it that your policy and appeals committee use to lead them to a decision whether to recommend an appeal or not?

**Mr Drumgold**: They look at the case law and what the case law suggests might be aggravating elements, if an aggravated element has not been considered an aggravating element within this sentence, or if we think that the ACT is moving out of line with other jurisdictions and it requires some intervention.

**THE CHAIR**: Okay.

**Mr Drumgold**: I should say the tests for Crown appeals are not established by us. The tests for Crown appeals are established by the common law. They have to be rare and exceptional and they have to address a specific issue.

**THE CHAIR**: Thank you.

**DR PATERSON**: We have heard from lots of families who have navigated the court

system. Obviously, it is incredibly challenging, like you said. We do appreciate the victims of crime support and the victim support that the court offers. We have heard evidence about offenders and witnesses walking in at the same time to the court building and things like that, which can be very triggering and traumatic. Are there things that we could be doing to better facilitate and assist victims in those types of situations?

**Mr Drumgold**: We have a range formal measures and informal measures that we use to try to keep people apart. Ultimately, all of the evidence occurs in one court room. The accused is in that court room and the common law says that the accused has a right to hear the witnesses give evidence against them. So ultimately everybody is moved into one location.

We have a witness assistance service that manages witness fears, such as the inadvertent stumbling across somebody else involved in the matter that might trigger them. We have the ability, in certain circumstances, for witnesses to give evidence via AVL. Witnesses are very well serviced generally in the ACT. There are witness liaison officers in the AFP. I have the Witness Assistance Service, and of course there is the victims of crime service in the ACT.

It is really difficult, and indeed sometimes dangerous, to adopt a uniform protocol, because it will depend on a witness. For example, one witness might be really fearful of bumping into somebody and might want one of my witness assistance officers to walk over. Another one might be offended by that. They might feel that they are being harassed by my witness assistance officers, who are over-servicing them. It is really a case of tailoring what a particular complainant or victim or witness wants and trying to meet their desires. The system needs enough flexibility to achieve that.

**DR PATERSON**: The issue of subpoenas came up as well. Is it court-issued subpoenas?

**Mr Drumgold**: They are generated from our office. But, yes, they are technically issued by the court.

**DR PATERSON**: Again, we heard testimony that it can be very triggering and traumatic to receive a subpoena. Do we look at that in terms of victim impact as well?

**Mr Drumgold**: Absolutely. Before a subpoena is served, by and large, if someone is significantly affected by an offence, we would be aware of their sensitivities. We will have had some engagement before then and we will have told them that a subpoena is coming. We will sometimes ask them, if it is appropriate, "How would you like to receive that? Would you like to come in and pick it up?" We try to facilitate that so that people are not cold-called. We have a lot of witnesses in a lot of matters, so we service the sensitivities higher than we service other people.

People who might be on the periphery of a matter might not get the service and might end up being cold-served by servicing processing from the AFP. But if we have identified a particularly vulnerable complainant or a particularly vulnerable or traumatised witness, we will then put scaffolding around them, and that will include things like serving subpoenas.

We deal with a lot of trials, a lot of hearings, a lot of people and a lot of circumstances. It is almost impossible to get things perfect every time. But we go through a constant review. As I say, most of the people involved in criminal charges, particularly complainants or victims, we have engaged with from first mention through to the conclusion, beyond the sentence. Generally, in serious matters we sit down with them post sentence and do our best to explain it. So we have a lot of contact with most people.

**MR BRADDOCK**: Do you have any information on how the ACT compares with other jurisdictions in terms of sentences handed down for dangerous driving offences?

**Mr Drumgold**: Generalisations are really difficult, because culpable driving causing death will range from the person using heavy drugs and driving crazily, running from police and crashing into somebody through to the domestic violence victim that was drinking at home with her husband before he turned violent and had to flea with the children and ran in the way of a truck and killed one of her children.

These vicissitudes of life, these things, capture a broad range of people. In fact, most of the culpable driving causing death matters that I have personally prosecuted have been where the deceased is a member of the driver's family. So there is a whole range of complicating factors that have to be considered in those types of offences.

To have a generalisation would capture all of those and then create a medium between all of those. That is not the way the law works, nor the way the law should work. The law should look at the subjective circumstances of this person and the objective circumstances and use instinctive symphysis to arrive at the best outcome. So generalisations are particularly harmful, I think.

**MR BRADDOCK**: Thank you.

**THE CHAIR**: What determines your prosecutor's argument with respect to discounts from a sentence? Do they actually include, in a sense, support for a discount because of this or that circumstance? Or is that totally something that the judiciary explains as an element of the sentence?

**Mr Drumgold**: We do not come up with ultimate numbers; nor do we come up with discounts. We come up with factors that will be relevant to a discount, and the court will ultimately arrive at what that discount should be. There are a range of discounts. In the Crimes (Sentencing) Act you have discounts for pleas of guilty and discounts for assistance with authorities. What those numbers are, and the ultimate percentages, are a matter for the court.

We have in the past appealed matters if we thought the discount was too high, or that the ultimate sentence did not reflect the criminality, and we felt that the ultimate sentence, standing back, was manifestly inadequate. Sometimes we appeal on a range of reasons that have led to the conclusion that the head sentence was manifestly inadequate—that the non-parole period meant that it was too long and that the ultimate sentence was manifestly inadequate. We can appeal any or all of those. If, in our view, the bottom number, the end number, is too low, there is a path that has led

to that that might not amount to individual error, but it might elucidate where we say the court went wrong to end up with an ultimate sentence that was manifestly inadequate.

The specific answer to your question is, we look at other like offences and the factors that they included both in the ACT and in other jurisdictions.

**THE CHAIR**: Do you mean decided judgements?

**Mr Drumgold**: Correct.

**THE CHAIR**: As you have said, you do not say that the sentence should be discounted by X percentage, but you do raise the prospect of your prosecutors agreeing that a discount would be supported or would seem to be suitable for this particular case. How is your argument actually framed?

**Mr Drumgold**: We would concede certain factors need to be considered, and the court will ultimately arrive at a percentage. If we are unhappy with that percentage, we will appeal it, if we think that it is not in keeping or it arrives at either a specific error or a manifest inadequacy in the sentence.

**THE CHAIR**: I am thinking of the option where your sentencing argument could really leave the discount side alone and leave that to be solely in the hands of the judiciary. It seems to suggest that you are conceding that this should not be as serious a sentence as perhaps it could be without the discounts.

**Mr Drumgold**: No; that would be luring us into error. Luring us into error is when we start to come up with specific numbers. There is High Court authority against that. There is High Court authority suggesting that we should not even be offering ranges of where matters fall.

**THE CHAIR**: I am not suggesting that you should put numbers in, but the mere fact that you, I guess, concede that, because of these set of circumstances, a discount may readily be available or relevant in the sentencing.

**Mr Drumgold**: It is difficult to answer in the abstract. I would put it within a specific context. If an offender pleads guilty very early, we will concede that it would be appropriate for that early plea to attract a discount. We will not come up with a number. We will not say this should be 16 per cent, 18 per cent or 20 per cent. We will concede that it would be an error not to give a discount for an early plea of guilty.

**THE CHAIR**: So what is the option of, in your closing argument on sentencing, to not even touch on those things but rather just leave it totally in the hands of the court, which has all of those circumstances before it anyway?

**Mr Drumgold**: We will argue elements of it. For example, there is a provision within the Crimes (Sentencing) Act that talks about sentences for early pleas; however, it must not be a significant discount if it was a particularly strong case or if the plea came particularly late. We will argue things like how strong the case was. That will be a relevant factor for the court to consider and it will need consider where the plea

came in the process of the criminal justice system. But we will never come up with ultimate numbers, with ultimate discounts, because that is a judicial role not a prosecutorial role.

**THE CHAIR**: Sure. Could you have a sentencing argument where you do not allude to discounts at all, knowing that the court has its own discretions on these things?

**Mr Drumgold**: If we think that no discount should be afforded, we might not even discuss discounts. If it is not a relevant factor in the particular sentence, we will not discuss it.

**THE CHAIR**: I guess I am wondering whether you need to touch on discounts at all and just leave that totally in the hands of the bench.

**Mr Drumgold**: Yes, we do—of course we do. If one of my prosecutors determines that a plea of guilty has been entered early, applying the law in the territory, it would be an error of law not to apply a discount to that. So we would need to enliven the court to the fact that not applying a discount to this sentence would be a specific error of law when the law says that they should be entitled to a discount.

**THE CHAIR**: I understand that.

**DR PATERSON**: We heard evidence before from a victim who was so badly injured and in hospital for many months. From what I could gather, it sounded like the criminal process proceeded, and I could not gather that there was much engagement from her. How does your office work with circumstances like that where you have a victim that is so badly injured or there are circumstances where perhaps their knowledge of the Australian criminal justice system is not good or English is not first language—all of these sorts of circumstances where you may have a very vulnerable victim? How do you engage in those situations?

**Mr Drumgold**: It is matter specific, of course. I do not know what that matter is. But we have a range of tools that we apply to identify barriers to engage them in the criminal justice system—for instance, where there are language barriers. We have a disability liaison officer attached to our witness's system service. We have witness assistance officers with particular skills in areas who look for things like vulnerabilities or barriers to the engagement in the criminal justice system.

We have a range of tools available. We have videos on our website that are referred to in the letters that we send to victims that walk them through the trial process. We have two of them. One walks them up to the court building, and the other one moves them inside the court building. Generally, the pain felt by a participant in the criminal justice system is a pain of an absence of knowledge. We try to fill that gap with knowledge. Rather than wondering what it might be like, we try to fill that gap with videos taken inside the courtroom so that they can see inside a court room to demystify it as best as we can.

We are always going to struggle to address barriers that we cannot identify or are unable to identify. We are going to always struggle to address those. But the answer is that we have a really well-trained witness assistance service to identify hurdles and

identify aggravating elements that might cause a witness additional pain through engaging. We have a large range of things. If we have a particularly vulnerable witness, we have victim and witness parking spaces across from the DPP and we arrange them a parking voucher for the day so that they do not have to park in a car park and risk bumping into somebody walking through the car park, or they can have ease of access to their car if they need to get away and check on kids.

Again, the measures that we have are developed through 20-plus years of experience in what are some of the gripes, or some of the bugbears, of victims and witnesses engaged in the criminal justice system, and we have attempted to meet them and address them when we have become aware of them.

**DR PATERSON**: What does happen if a victim is in hospital and is not well enough to give evidence? How do you incorporate their—

**Mr Drumgold**: Again, it depends on how unwell and the circumstances. If they cannot come to court, we can maybe call their evidence remotely. If they are incapable of engaging with the criminal justice system, we can make an application to the court that they are unavailable and rely on other evidence. They may have been given written evidence as an exception to the hearsay rule. It really just depends on the barrier and what capability we have of someone engaging in the criminal justice system or what scaffolding we can put around whatever that barrier is to assist them to engage with the criminal justice system.

**DR PATERSON**: Thank you.

**MR BRADDOCK**: A couple of witnesses have called into question the information contained within the sentencing databases as to whether or not it is accurate. Do you have any indication as to whether it is accurate?

**Mr Drumgold**: I have examined the last 12 years of sentences. I think the ultimate numbers that have been advanced are correct, but they have arrived at that point accidently. I checked the sentencing database. There was some double counting within there. But the ultimate numbers, which I think were nine sentences that have been imposed over the last 10 years, were reflected in the sentencing database. All nine, on my records, have resulted in a term of imprisonment being imposed.

And I have read other reports, such as the JRI report, that spoke about a sample size of 15. There were actually 15 charges that were laid but there were nine sentences, because there were six people that were either found guilty of a lesser offence than culpable driving causing death, such as negligent driving causing death or we did not continue the charge for some reason or they were found not guilty generally.

I examined the data in the database, and the suggestion that there were nine sentences and those nine sentences resulted in terms of imprisonment match the records. I looked at the JRI data, I looked at the data from the sentencing database and I have looked at the data independently acquired from our cases system. Over the last 12 years, we have had 15 culpable driving causing deaths that resulted in nine sentences. I understand that there was some double counting in the sentencing database, but the number of sentences imposed, the nine sentences imposed, over the last 10 years was

accurate.

**MR BRADDOCK**: Thank you.

**THE CHAIR**: On behalf of the committee, I would like to thank you, Mr Drumgold, for your attendance today. I am not sure if there were any questions taken on notice. If there were, please provide answers to the secretary within five working days of receipt of the uncorrected proof.

On behalf of the committee, I would like to thank all of the witnesses who have appeared throughout the day.

**The committee adjourned at 4.14 pm.**