LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 15 JUNE 2023

Acting secretary to the committee:
Ms K Mickelson (Ph: 620 70524)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 11 am.

CARUANA, MR ALEX, President, Australian Federal Police Association
ROBERTS, MR TROY, Government Relationships Manager, Australian Federal Police Association

THE CHAIR: Good morning everyone and welcome to the public hearing of the Standing Committee on Justice and Community Safety for its inquiry into the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023. The committee will today hear from 11 organisations and individuals and three ministers.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome any other Aboriginal and Torres Strait Islander people who may be attending today's event.

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

I now welcome witnesses from the Australian Federal Police Association. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you each understand the implications of the privilege statement and that you agree to comply with it.

Mr Caruana: I do.

Mr Roberts: I do.

THE CHAIR: Thank you. We are not taking opening statements, so we will go straight into questions. You have concerns about jumping straight to 14 in 2025. What fuels your concerns about that proposed change?

Mr Caruana: The main concern is there is a significant gap in what powers that police can exercise for people who are under the age of 14, when that power comes into play. One of the concerns that often comes up is domestic or family violence, where you have got a young offender, a 13-year-old offender, who is causing harm to other family members. Police officers are not babysitters. If it happens at 2 o'clock in the morning, obviously the victims are going to be calling police to try and get help. What powers are going to be in place? What is in place to empower police to do anything, if anything?

The other side of that is currently the courts have the power to determine whether someone is criminally responsible. They have the power to do that. We think that the courts should be looking at the whole picture, whether that person is 14, 15 or 16.

There might be some other extenuating circumstances for people older than 14 as well as people younger than 14. So we think that the courts should maintain that power, have that power, to determine what is the correct mechanism to punish or otherwise these offenders.

THE CHAIR: And, if it is raised to 12, you are calling for a review. What kind of form of review do you think that should be?

Mr Caruana: I will defer to my colleague here but, ultimately, we think that we need to see where it has worked and where it has not worked. We know that the government is putting these powers in place for it to be raised to 12. Truth be told, we want to see the data, if it is working and what is working. There has not been any spending done on other therapeutic options or other options to deter these youngsters who are going down this road.

We acknowledge that a negative interaction with law enforcement and the judicial system often means that that young person is going to continue down those paths. There are signs that indicate that. We acknowledge that. But what options are there? What therapeutic option is being considered, where is the money coming from et cetera?

We know that there are currently not enough options in the ACT to support young people through other alternative mechanisms; nor is there enough money being spent to support police officers to be able to deter people or youngsters through those mechanisms. So we would like to see a review of what is working and what is not working. But my colleague Troy has some more input.

THE CHAIR: Thank you.

Mr Roberts: I think Alex covered off on it fairly well. The two-year window is critical, because that will give us the data to work out what is being done correctly and what is not working. The idea with that review at the end of those two years would be to break it all down and celebrate the wins that we have in this but also have a look at the deficiencies in the system, which can be reviewed, looked at and changed to ensure that these kids that are coming into the attention of the police actually get the support and welfare that they need.

THE CHAIR: Thank you. Mr Braddock?

MR BRADDOCK: Does the AFPA have a view as to what those therapeutic services should look like in order to be able to support this reform?

Mr Caruana: We have done quite an extensive review and we do know that there are a lot of options out there. A lot of them are working for a very small number of people. So we are saying that, out of a hundred people that go through, eight per cent or nine per cent of those people are actually getting some good value out of the work. It might deter them for a little while, but there is no holistic, overarching deterrent or therapeutic option which actually prevents young people from going down this same path.

The only thing that really works is to break the poverty cycle and to get people back. The situation in the Northern Territory and Western Australia is very different. They have very different problems to what we are going to find in Canberra. A lot of their young offenders are offending because of sustenance—they cannot afford food. So they are out there and shoplifting to feed their family, which is very different to what we are encountering here. From our research, the evidence indicates that you need to break that poverty cycle in those areas.

As to what is going to work in the city, there are a multitude of current studies that are being undertaken, but not much of that research is finished yet to be able to provide any real evidence on that. What we can say, that we know that works, is that there is a need for something that is strong enough to provide a deterrent but also engaging enough to educate that young person that, ultimately, this sort of life is not worth it.

Mr Roberts: Following on from what Alex said, a really good model is the PCYC model. Canberra's population is over 400,000 people and we have only got one PCYC in the south. So what are the north kids supposed to do? Where are those programs for the north? The PCYC model works. The PCYC do a fantastic job. They really bring the kids and police together. I personally would like to see a PCYC out at Gungahlin. I think we need to share the diversion strategies across the whole of the territory, just not rely on one entity down south.

I know that there is Ted Noffs and there are all these others that, once again, do excellent work in that space. But, as a police officer, what do you do with a 13-year-old at 2 am in the morning who has committed a family violence offence which may not fit in that threshold of being charged? You have a responsibility to maintain the safety of the child but you have a responsibility to maintain the safety of the family—and you cannot leave the kid there.

I know there are plans and orders in place, but our concern is how that is going to work at 2 am in the morning. Are we going to have to wake up an on-call magistrate or do we have to wake up the proposed commissioner to say, "We have got this situation; how do we handle that?" In business hours, it is okay if you can find a bed or find a place to lodge the young person. But, as I said, crime does not operate in business hours. So what do the police do at 2.30 am or 3 am on a Sunday morning with a young offender?

Mr Caruana: On the comment around the PCYC, the evidence indicates that a negative experience that a young person has with the judicial system often dictates the path that they are going to continue to go down. There is evidence that shows that introducing something like PCYC and having police education officers heading into the schools mitigates or minimises the negative impact, because police officers are no longer seen as a person of punishment but are seen as a person who is part of the community.

So, by integrating police officers into part of the community, when a young person is having an interaction with a police officer that police officer is seen as a member of the community, a helper, as opposed to someone who is going to cause harm or cause a penalty—so changing that thought process.

There used to be a lot of money spent in the education space. The countries that are doing it well when it comes to youth offending are spending a lot of money in education. They are spending a lot of money on police officers getting out there and educating the community from a young age—we are talking like 9, 10 and 11. They are teaching them how to ride bikes, why it is important to wear helmets through to do not getting in a car with a young person that has been drink driving and the problems with drink driving.

When it is through that whole educative program, it is a bit more of a holistic approach. When we start talking about things like under-age drinking or consent, having more police officers there as part of the community and also as part of the welfare system enables a young people to feel comfortable walking up to police officers and saying, "Hey, this has happened to me at school," or "I have a hypothetical for you," or whatever it happens to be and that negative connotation between an offender and a police officer is softened because they are seen as a community member.

THE CHAIR: Who is doing it well?

Mr Caruana: Canada do it quite well, especially with some of their indigenous population. They have police officers out there that are from those specific cultures. I can source media and give you a whole heap of them that are doing quite well. But they all indicate that there is no silver bullet that will fix it all; it needs to be a holistic approach.

The government needs to invest in therapeutic options and educative programs as well as, on punitive side, giving the court the ability to say, "This young offender knows the difference between right and wrong but, if we were to send this person to a custodial sentence, it is going to have a negative impact on their life," because of the work that these other therapeutic organisations are doing. So it is still leaving it in the hands of the court but they are not hampering police officers by not being able to do anything at 3 o'clock in the morning, as my colleague has said, but then also softening the blow throughout the life of a young person.

DR PATERSON: The Acting DPP's submission pointed out that the bill does not adequately address search warrants. He uses two, I thought, very interesting examples: the recovery of stolen goods or firearms; and a 12-year-old using their phone to distribute internet images of another child, where they would normally seize that phone and can then see where that material has been sent and all that kind of thing.

I am interested in your views around whether this is problematic and if there should be a change in the bill to allow some form of search warrant to still exist for under the age of 14.

Mr Caruana: I think our stance is relatively clear in that we think that between 12 and 14 there needs to be a judicial process that identifies whether or not that person is criminally capable of making these decisions or is criminally culpable. But we would say that the only way to do that is to gather all of the evidence. So, if that evidence is unable to be collected, then you are skewing the result of that investigation.

I have not really turned my mind to this. This is my first go at turning my mind to it. We would support the Acting DPP's submission in that a supplementary or an option for police to search particularly phones as well as for firearms, drugs and other paraphernalia would be supported by us in order to collect the best evidence, in order to do the best investigation, to get the best outcome for the court and for that young offender.

DR PATERSON: I guess that is where the DPP highlights the problem exists because, if they are not criminally culpable, there is no investigation. But, if there were the view that what this child is doing is causing or may cause further harm, how do the police address this gap? If it is not for the collection of evidence, should there be some clause in there that says that, if there is any view that what the kid is doing is causing further harm or may cause further harm? Are there any views on this?

Mr Caruana: We will probably take that on notice because I do not want to go down the rabbit hole without fully informing myself. But, on face value, I think something needs to be done about it because we do not want to see people continue to get harmed. It might be that organised crime has infiltrated this young person and this young person is proliferating this type of material, whether it be terrorism material or child exploitation material, whatever it happens to be, and police need to get that information quickly so that they can stop further harm from happening. I would be inclined to take that question on notice just so I can give it better thought.

DR PATERSON: I would appreciate it; thank you.

MR BRADDOCK: In your submission you talk about the minimum age of detention and say you "strongly encourage the ACT government to conduct a due diligence review of the Tasmanian legislative changes". Can you explain to me why that is important to the AFP?

Mr Roberts: It is letting police do their job; so they can still proceed with the investigation, gather the evidence and then, if someone in that 12 to 14 age group needs to be charged, the courts can make that decision. We have seen recently here in the ACT where there has been a question of when do you charge. That is going to be really important in that 12 to 14 age group. As the inquiry found out, is it is difficult for police to actually pin down where that fine line is of where you charge someone. That can change between investigators. There are a lot of factors there which need to be looked at.

A good thing about that Tasmanian model is that it allows the police to do their job. So they can still conduct the investigation and they can still do the brief. The only thing it is stopping is that person having to sit inside a detention centre while their investigation is going on.

So you are still allowing the police to do their job, which also has some positive benefits in relation to victims of crime. The victim can now actually feel that, while the young person has not been charged due to the legislation, the police investigated it and they found that, if there was the option to charge, quite possibly, we could have gone down that path. So it gives them some closure as well. It is just not, "The

12-year-old broke into my house, destroyed my house and stole my property. What now?"

MR BRADDOCK: In terms of that thin line as to decide whether to charge or not, what would be the role of the police officer in making that decision?

Mr Roberts: Ultimately, the role of the police is to obtain the evidence. So, however they do it, by search warrants or whatever, their job is to obtain the evidence and put that before the DPP. The DPP should be able to adjudicate if it has to actually go to a hearing. Once again, you are letting the police do their job. You have given them the power to do that job. Let them do it.

As I said, depending on the offence, that young person does not have to be in custody. But we talk about recidivism offending. Where is that fine line? Do we let a young person steal a car 15 times before what then? If the ITOs and the orders are not working under this scheme, what is the next option?

MR BRADDOCK: What is the impact on a young person being exposed to the policemen doing their job? We spoke earlier about the negative impact on someone's first exposure to the judicial system. Does that include interaction with the police?

Mr Caruana: Any negative experience through the judicial system has an impact. The evidence indicates that it has an impact on that young person. The idea to soften that is through that educative program that I spoke about. At the end of the day, is it the community's expectation that we are just going to let kids run rampant and do whatever they want and not have any interaction with the judicial system? I do not think that is meeting community expectations.

So there needs to be a balance. We recognise what that balance is. Part of that balance needs to be about getting police officers out into the community to be recognised as human beings—for want of a better term—and to soften that blow for those young offenders.

By educating the young offenders—for example, "If you do this, this is the consequence"—their expectations are being managed, and it is not all of a sudden that someone is dropping a tonne of bricks of legislation and judicial process on them. They need to be educated such that, "This is the expectation. If you break the law, this is what is going to happen. This is the process we are going to go through. It is going to be fair and transparent"—but also allowing that young person to go through some sort of a therapeutic process as well to rein them back in.

The police officers still need to be able to do their job to find the best evidence, because if someone is continually offending or if they are unable to find the evidence and there is someone that is continuing to be offended against—whether that is terrorism, child exploitation or any of those other multitudes of issues—police have a duty of care to keep the community safe. They cannot do that, as my colleague said, without getting the best evidence, putting it before the court and letting the court decide what the next step is.

Mr Roberts: Just because you put someone in court, it does not mean they sit inside a

detention centre or visit—

Mr Caruana: Or even the courtroom. There are other mechanisms that can be used that are being utilised outside, where that young person can give evidence in a more comfortable scenario than being in court. That is something I think that we need to turn our minds to.

Mr Roberts: As much as I hate saying it, sometimes that time in custody is the circuit breaker that that young person needs. Their home life may be terrible. They may sleep on a dirty mattress in the middle of the winter cold and not get fed properly. There are a lot of home issues there which may impact on that young person. Removing them from that environment, they can have that intensive rehab, for lack of a better word, and experts can be there. Police are not shrinks. We are not psychiatrists. The experts can sit there and have an intense program for those weeks.

Sometimes it is a harsh circuit breaker, I acknowledge that. But sometimes when you have a recidivous offender and you use that circuit breaker, that can change that young person for the positive.

THE CHAIR: A bit earlier, you said, "What do you do with someone"—either a child under the age of criminal responsibility or over—"at 3 am who is causing harm?" What actually does happen in that kind of scenario now, and what are your concerns if the age is higher?

Mr Roberts: If it happens now, obviously the police have the option to take the young person into custody for family violence.

THE CHAIR: Even if they are under 10?

Mr Roberts: No. Under 10 there is no criminal responsibility.

THE CHAIR: If police are called to a home and a 9½ year old is harming people—

Mr Roberts: It is hard. Firstly, you have to break that situation. When they are that young, you can normally find a family member that can take the young person for a day just to break up that situation and while you try to get support services in place, for example, via SupportLink.

Mr Caruana: I think it is also very rare that a nine-year-old is going to be committing that sort of a family violence act or posing a significant threat to another family member that a parent or a guardian could not deal with. When we are talking—

THE CHAIR: What if it is a 10½ year-old?

Mr Roberts: If they are 10½ years old, it is a really hard decision as a police officer but, if you cannot find any alternate accommodation at a Ted Noffs or something like that, and you have enough to charge, you may have to use a watchhouse.

Very early on in my career, I had to arrest a 12-year-old because he assaulted his mother. I spent hours trying to find accommodation for him, even with other family

members. We could not find accommodation for him from an agency and none of his family members were able to accommodate him at that time. So, apart from being a babysitter for this young person, which took up a lot of time, the only other option I had was the watchhouse. They are in the watchhouse for a minimum time before they get transported to Bimberi, if they are not given watchhouse bail.

Mr Caruana: I think that speaks to, again, the lack of services that are currently here in the ACT for those therapeutic options and those therapeutic services. It is all well and good to change legislation—and pardon me if this is offensive—for tokenistic purposes, but you need to actually back it up with something that is going to help the community and the community members. We need to spend money. We need to invest money on those alternative options.

So fast-forward into 2023: Troy is arresting the same 12-year-old. That 12-year-old is not going into the watchhouse. That 12-year-old is going to a therapeutic alternative centre where they are going to get the help and the assistance they need to help them start the rehabilitation process to come back and reintegrate into the community. That needs to be the primary focus, I think, of this government—that is, spending money on those services to allow police officers to continue to do those jobs.

I am just going to backtrack a little bit on something that Troy touched on previously where he was talking about the Tasmanian model. The Tasmanian model allows police officers to do their job, as Troy said, and it also allows the police officers to investigate if people are being injured or people are at risk.

If you take away that ability—as Dr Paterson has indicated—for a search, you are taking away the ability for a police officer to find that best evidence and to find whether a crime has been committed, and, therefore, the courts cannot make that decision as to what happens. So we need the police officers to be allowed to continue to do their job; hence why we are strong supporters of allowing the courts to make that decision as to whether or not that person should be criminally charged.

I think we can achieve the same goals that we are trying to achieve, and that is to keep young people safe, without arbitrarily or tokenisticly making legislative changes—for example, some therapeutic options out there; some more funding for some of those options; and alternative measures where you could move young people to if this is happening.

But it is not the job of a police officer to be a babysitter and to sit, as Troy was, for hours trying to find alternative accommodation, alternative care for that young offender. That falls to another service, another department, because police officers are already stretched in the ACT.

DR PATERSON: I noticed that in your submission you said referrals to therapeutic support panels should be if anyone is at risk of harming an animal. You added the "animal" in as well. The other thing that the DPP added in was arson. He suggested that arson was something that should be considered. Do you also agree with that?

Mr Caruana: Yes. We had a conversation about property—just the general term "property". We were not sure where the appetite was to increase it to, but certainly

harming a pet dog or an animal, we think, would meet the threshold. But arson I think would meet the threshold in terms of property damage. So if someone is actively and continually destroying someone's house, destroying their own house or whatever it happens to be, I think arson would fit neatly in that "harm property" or that sort of thing.

Mr Roberts: I agree. I think arson is a very good idea. Arson is a bit like harming animals, in that it can be seen as a starting point. If police can intervene at that early starting point maybe it will stop something serious. Getting that young person help earlier is better than letting them commit a more serious offence down the track.

THE CHAIR: Thank you so much for your attendance and thank you for your submission. Thank you for your representation of your members, who play a very challenging and important role for the benefit of our community. So please pass on our thanks as a committee. I believe there was one question taken on notice.

Mr Caruana: There was.

THE CHAIR: We look forward to your response. Otherwise, I would like to thank you for your attendance today.

Mr Caruana: No worries. Thank you.

Mr Roberts: Thank you.

Short suspension.

CHAMPION, MS LINDA, Acting Deputy Chief Police Officer, ACT Policing
WHOWELL, MR PETER, Executive General Manager (Corporate), ACT Policing

THE CHAIR: We now welcome witnesses from ACT Policing. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you each understand the implications of the privilege statement and that you agree to comply with it.

Ms Champion: I confirm and agree.

Mr Whowell: I confirm and agree.

THE CHAIR: We are not taking opening statements; so I will allow Mr Braddock to take the first substantive.

MR BRADDOCK: Your submission seems to indicate that there might be an incentive for organised crime or other figures to utilise young children under the threshold to commit various acts. I want to understand what led you to that conclusion and the possibility of that and also whether the therapeutic programs would be sufficient to address that risk.

Ms Champion: We have had experiences in the past where adults have used children to commit offences on their behalf, noting that if they are caught there will be leniency with the children or they will not be criminally liable. Raising the age to 12 or 14 exposes those children who are that little bit older and able to commit crimes to do it on behalf or under the instructions of somebody else.

We have seen that in the past with things like driving offences where adults have had younger children drive the car because they have been intoxicated or the like. Whilst that is not a criminal offence, that is just indicative of the way that adults can use children on their behalf.

When you are looking at organised crime, naturally that leads into some of the more, probably, street-worthy children who are wiser to the practices and able to actually go places and do things, because of their size, maybe who they are connected with and where they are from, on behalf of the adults who they also have connections with.

MR BRADDOCK: How do the current arrangements as set up under existing legislation versus what is proposed with this bill change that risk profile?

Ms Champion: The adults will still be liable if they have actually recruited a child to do something on their behalf. We are asking that the offences note the fact that raising the minimum age of criminal responsibility still rests with the adult who is liable for the offence should they actually incite them to do that. As for the therapeutic side?

Mr Whowell: The therapeutic model is still being built, but that model is meant to address that behaviour and to break that nexus between that child and those adults who are influencing them. That is where we would be providing our input into the

development of that model once the legislation has passed to be able to address those behaviours. As the Deputy Chief Police Officer was saying, by raising the age you are basically changing the cohort of children who are exposed to this risk. So we need to focus in to remove that risk.

Ms Champion: I know it was raised earlier—we were watching the AFPA—that there are some great programs from the Police Community Youth Club, the PCYC. Those programs already have too many children on waiting lists. I know for a fact that one of the programs, which I think is called Level Up, has 79 kids waiting to go on it—and that is before raising the age of criminal responsibility.

On the impact of these sorts of programs, there is one for older children from year seven upwards, called the P180 Program. That has 35 children waiting to go on it. So you can see what the impact could be if we broaden that group. It is not insurmountable—and we are still supportive of up to 12 years of age—but we need those services to be adequately resourced.

From some of my experience with some of the kids that go through the P180 Program, they do phenomenal work and come out on the right track, which is exactly what we want. But there is then no resourcing for aftercare. So it is not just throwing some programs at children; it is actually seeing them through their developmental years to continue that aftercare, which, if done correctly, could be phenomenal for taking our children down the right track.

THE CHAIR: You have made a fairly clear statement about the carve-out of more serious crimes. Why are you of the opinion that, to have murder, intentional infliction of grievous bodily harm, sexual assault and act of indecency in first degrees? Why do you not think they are legitimate exceptions in the 13 to 14 age bracket?

Mr Whowell: When we were working on this—and if you track out public statements from the original public consultation process—we were, probably, initially supportive of the exceptions because we were concerned about the harm to the community. But, as we started to work through the material and based on our experiences, as we have stated in our submission, it became kind of illogical to actually say that you can be held criminally responsible for a serious offence but not a lesser offence.

That did not quite sit with where we wanted to go when we started to look at what the broader policy objectives were in terms of keeping people out of the criminal justice system for their life by intervening as early as we possibly can. So that was the policy, sort of, practical part of it.

Ms Champion: In a practical sense, we are of the opinion that you can form criminal intent or you cannot. You cannot divide that up into the types of criminal activities that you can do.

THE CHAIR: What led you to your earlier position where you thought maybe they are appropriate?

Mr Whowell: I think it was working through what our experience was with the cohort of offenders in that 10 and above range in our community and looking at what was

happening but then working through what the objectives of raising the minimum age criminal responsibility was and reflecting on some of the evidence that has been put forward from a therapeutic perspective.

DR PATERSON: In the Acting DPP's submission, he speaks to some research that says that you could find a difference between 10 and 12 but that, between the ages of 12 and 14, there was very little difference in the understanding of what had gone on. The DPP makes the argument that a 13-year-old, for example, would know the difference between right and wrong if they killed someone; whereas, for example, sexual assault might be more complex.

I am interested in your views around the 12 to 14 age group and the exceptions, because the DPP puts forward quite an extensive list of other crimes that he believes should be considered—for example, recklessly inflicting grievous bodily harm—and there are few other crimes that he believes should be included, not just the four. So, again, I am interested in your views on this.

Ms Champion: That is why we only support up to 12. It is quite clear cut that we support up to 12, as we agree that they cannot be held liable. But 12 to 14 is a big developmental age difference.

Mr Whowell: I would just add to that that we have only had a short time to look at the DPP's submission, since it was released last night. However, I guess it is the other side of our argument in the sense that, if you are going to draw the line and put exceptions in there, from our perspective, you are either culpable or not and you can form an understanding of what you are doing and be held responsible.

His argument is persuasive in terms of being very clear about what the principles are, and then how you apply it to offences if you are going to go down that path. When we are looking at it from a practical perspective, if you are going to raise it, you raise it.

DR PATERSON: I would be interested, if you could take on notice your views about annex A in the DPP's submission around some of the other crimes, if you have any views on them.

Mr Whowell: Happy to.

DR PATERSON: Thank you. I asked this question before. I guess it goes to seizing property and search warrants. If a child has stolen goods, how do the police recover them? Another example is a mobile phone that may have, for example, intimate images on it that a 12-year-old has been disseminating and police might want to recover that phone to see where those pictures have been sent. Do you see this as an issue? Should there be something further in the legislation that should address this?

Ms Champion: This is one of those complexities that we will need to unpack should the age be raised. When it comes to especially the exploitation of children on a mobile phone, we are not just talking about stolen chips from a shop or something like that. That is something that is so serious. Where there are actually victims out there and further offending, we would still take action. We would still do what we need to do to seize that phone and get to the bottom of the actual offending that is on there—so not

just the child having it but also what is happening to the child who is being exploited on it. We have had situations like that in the past, and normally approaching the parents is the way to do it, through consent, or, if the child is at school, through their guardian at the time.

This will lead to further discussions and how we would go about getting a warrant where the child cannot be legally an offender named on the warrant. They are the sort of legalities that we would have to look into and address.

MR BRADDOCK: I am just interested in a bit more detail about the alternative policing response model that you propose in your submission should the legislation pass. I would just be interested if you could provide more detail on how that might work.

Ms Champion: Was that from the first submission?

Mr Whowell: Is this the submission to this inquiry?

MR BRADDOCK: Sorry; this was attached to your submission to this inquiry. It is the submission you provided for the government in consultation. Is that still on the cards or has that been dropped?

Ms Champion: No. We are very supportive of being part of a multi-agency approach. Whether we can actually perform a full-time duty such as the PACER model, I do not think so and I do not think it is particularly warranted. What we need is 24/7 response from the right agencies to support the children.

As was mentioned before, when we do have cases—and we had one very recently—of children after hours, we cannot wait for two to three hours and then still not have CYPS attend for whatever reason. I am not saying it is their fault; it is a resourcing issue. When we have children up to the age of 12, we cannot just be holding them—and it is not good for them either way.

What we would prefer is an area where they can retrieve a child from us—so we literally take them to a spot that is agreed upon and we have a time frame that we can do it within—which should normally for policing be within an hour—and then they take over control of that child in a safe environment outside of a police station.

MR BRADDOCK: Thank you for clarifying that for me.

THE CHAIR: On the resourcing, if the age is raised to 12 in the next period, what resourcing issues do you think that raises? Do you think that the current resourcing that we have in the ACT would be adequate to cope with that? What challenges would there be for police?

Ms Champion: Are you talking about policing resourcing?

THE CHAIR: Yes.

Ms Champion: It depends. If there are the right resources to actually transfer the

child to then we are within normal policing duties. At this point in time, we do not have enough resources for the current way it works. As I said before, we had a police car with two members on night shift tied up for about 2½ to three hours two with some children the other night, and then we had to take immediate actions to instigate CYPS being called out.

We need something that is mandatory, an on-call 24/7 provision. That way, police will always respond. We will de-escalate the situation, we will make the situation safe, then we will need to hand over the child if they are under the age of 12.

Mr Whowell: I would just add that we are actually having those conversations. Going back to your question about the alternative model that was in our original submission from 2021 or whatever it was, that engagement started a really good discussion with the Community Services Directorate. We have been working through what that resourcing model might look like, and those representations have been made to government. So it is probably a question in that sense outside the police side and is best directed somewhere else.

Ms Champion: Can I add, though, if I may, that I read in the . There is also, I believe I read in the pack somewhere there of victims being able to seek compensation or a voice in the process. What we have already found with family violence is that every time that happens, quite rightly, we then have to provide the evidence from the policing systems as to what has happened et cetera, complete with redactions and all the other privacy considerations that we need.

Should this now open up a wider generation of people being able to put forward these claims, there will be an administrative burden on police because, at the moment, we take police officers offline to do it because we actually are not equipped to that sort of administrative task.

DR PATERSON: I would like to talk more about restorative justice and how the bill proposes to allow young people to be engaged in that restorative process. Do you think there should there be further investment in restorative justice? Do you think there are other sorts of pathways that should be invested in or explored in the ACT to further that process?

Ms Champion: I think that process is an excellent process if it is resourced adequately. At the moment, the time between us putting in submissions for restorative justice through to when it actually occurs is very lengthy—to the point sometimes where we actually think we have missed the opportunity to make it effective. For the younger children especially, I think it is an excellent way of getting children involved, taking accountability and understanding the impact they have had with the victims. So if we can do that in a timely manner that could be very beneficial.

DR PATERSON: So further resourcing to restorative justice process would be helpful?

Ms Champion: Absolutely.

MR BRADDOCK: You make the point under criminal history proceedings and

others the criminal history for those who are interstate who might be in the ACT and how this will affect their circumstances. I am just trying to understand what the challenges would be for the police with these arrangements. For example, if orders are issued by a New South Wales court, how would that apply in the ACT?

Ms Champion: It is complicating the process and understanding of the application of law for our members, to be frank. Whilst it is ACT, it could be a child from another jurisdiction that has different laws as well if we are not nationally consistent. For our members, they would have to look up each and every case, what that means, how that conflicts with them treating the child under the age of 12 as an offender where we are saying to them that they are not. So it is just a matter of the application of law being consistent, which is what we are always asking for.

Mr Whowell: One of the positions we have always been very clear about, because of the position we find ourselves in the system, is that a nationally consistent approach to raising the minimum age of criminal responsibility would be a really good outcome for all policing jurisdictions.

THE CHAIR: You have talked about your own police numbers as a resource issue. What do you think the ACT should have available? You have mentioned the PCYC, but what other things do you think the ACT should have operating to really embrace this change in the age?

Ms Champion: Outside of policing?

THE CHAIR: Yes.

Ms Champion: I do not know if I have explored that thoroughly, but I think something that is holistic and sits across all things to do with juvenile offending, similar to what I am looking at with adults and recidivist offending—how are we actually looking at it case by case, how are we looking at trauma informed, how are we looking at that child and, in particular, what does that child need—rather than just picking from a suite of tools.

Some studies have shown that nearly 80 per cent of offenders up to the age of 17 them came into contact with police before they were two, which means they are coming from a background where they are exposed to bad behaviours. So going through those years of development, there are things there, and we need to appreciate each and every child differently.

Going back to your question, I think something that is holistic that can actually group everything up and look at the programs that are out there and coordinate the efforts and inform either the police, the court systems, or the judicial process as to how we treat them.

Mr Whowell: This reflects more what the AFPA was talking about in terms of police sometimes finding themselves in a babysitting situation. I think the DCP has probably already touched on this in her evidence, but there being that place that we can actually take children who we come across who are under the age of any criminal responsibility at risk to themselves or to the community, so that they can actually be

looked after is going to be a critical part of what we need as a government system and a community system to implement this change.

THE CHAIR: What sort of place would that be? Is that happening elsewhere that is admirable?

Ms Champion: No. It would be a reception area of some sort—so somewhere that is identified that is conducive to a child, not where someone comes and collects them from a police station. Where we cannot have a suitable guardian, adult or parent—which does happen with some children, especially between the ages of 11 to 14—we cannot just sit with them indefinitely until someone comes up with an answer. As police officers, we need to be able to safely take them into the care of some sort of facility where they then take on those responsibilities.

Mr Whowell: Again, we have been actively working on those proposals with other partners in government. So that decision is with government at the moment.

DR PATERSON: The AFPAs submission suggests that harm or risk to animals should be added to the list of circumstances where this therapeutic intervention panel should be applied. I am interested in your views on adding animals into that, because currently I think it is "at risk to themselves or someone else". Should there also be therapeutic intervention for crimes such as arson and intentionally starting bushfires and those types of crimes?

Mr Whowell: Sorry; I have not had a chance to reflect on their submission. But if they are identifying those as clear risk indicators for other behaviour, I think that is worthy of consideration.

DR PATERSON: Thank you. My last question is around victims' rights, noting that a victim will still be able to access victim supports if the offender was under the age of 14. In your submission you talk about the "importance of ensuring a clear and consistent narrative regarding raising the age in terms of victim's rights". I was wondering if you can speak to that bit in your submission and how you achieve a balance if someone is quite seriously harmed by someone who is under the age of 14.

Ms Champion: I actually think it is applicable to all crimes. Victims should be heard. The offender, whether they are criminally liable or not, should be able to hear it, understand it, and know the impacts they have on that person or persons. Especially with children of a younger age, that could actually be adequate for them to really understand the method of their ways and what the impact is on other people.

Again, there are some that that may not work for. This goes back to the restorative justice. The ability to say that and understand it, I think, is well and truly within the rights of the victims. For the serious offences, it may be too much for some victims to do that. So it all has to be on a voluntary basis, no doubt.

DR PATERSON: Thank you.

THE CHAIR: You are not obliged to do so, but would you like to make a few words in closing?

Ms Champion: I did write down a few words in case I could—so thank you. As with any of these processes, we thank you for allowing ACT Policing to have a voice in here. As mentioned, we do support raising the minimum age of criminal responsibility to 12 years of age. However, we do want a nationally consistent approach, if possible.

We always put the community's needs at the forefront, but also the children. So please know that, in all the responses that we have given today, we do have the children as the prime priority for us balancing against the community's safety. We are very encouraged with the way this is working. We are hesitant to look at anything beyond the age of 12 years, though.

THE CHAIR: What is your hesitancy about going older than 12?

Ms Champion: Because we said you will not differentiate between crime types with liabilities. That is the great hesitancy there. As we have seen it act out recently, there are some children who are quite large in stature and they commit very serious crimes—aggravated assaults, burglaries, offensives with weapons and the like. To allow for those children not to be able to be criminally liable I think is a very dangerous slippery slope.

THE CHAIR: Thank you so much. On behalf of the committee, please pass on our thanks to the police in the ACT. They do a very difficult job at times, but we know that they are there for the sake of the community and to help those who wander astray to try and get on a better track. We do appreciate the work that you do for our community. Thank you.

Ms Champion: Thank you.

Short suspension.

BOWLES, DR DEVIN, Chief Executive Officer, ACT Council of Social Service
KILLEN, DR GEMMA, Head of Policy, ACT Council of Social Service
HUMPHRIES, MR GARY, Patrons Co-Chair, Justice Reform Initiative
ESGUERRA, MS INDRA, ACT Campaign and Advocacy Coordinator, Justice Reform Initiative

THE CHAIR: I welcome witnesses from the Justice Reform Initiative and ACTCOSS. I would like to acknowledge that Mr Humphries is also a previous MLA in this Assembly, Chief Minister and senator for the ACT. Thank you for your participation.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false and misleading information will be treated as a serious matter and may be considered contempt of the Assembly. Please could you each confirm that you understand the implications of the statement and that you agree to comply with it.

Dr Bowles: I do.

Dr Killen: I understand.

Mr Humphries: I do.

Ms Esguerra: I do.

THE CHAIR: Thank you. We are not taking opening statements, so we will dive straight into questions. From a service support point of view, is the ACT ready for the age of criminal responsibility to be raised?

Mr Humphries: Perhaps not, in that a necessary consequence of raising the age of criminal responsibility is that you divert people who would otherwise end up in the criminal justice system to other pathways—ideally therapeutic interventions to address the reasons for what would otherwise be criminal behaving. We have argued that there are some significant deficiencies in the pathways that we provided this territory for people generally—not just young people—who are spiralling into a criminal milieu and a lifestyle to divert them into a law-abiding one.

In a sense, this legislation will require, if it is to work effectively, the provision of services which are either not available or not available at an adequate level at this stage. But we feel that this is the right step to take because it primes the system to address the underlying problems of criminality rather than the manifestation of law-breaking itself. It is a necessary first step.

Dr Bowles: I agree with that statement but note that the care sector is ready to rapidly adapt. So, if the legislation were to go into effect tomorrow, yes, absolutely, we would be flat-footed and there would be people who are not arrested and do not receive the care that they require. Given widespread community support for this excellent legislative idea—and I note that the ACT is leading the country—there is an opportunity to plan for and rapidly build the sorts of supports that are required. We can say the system is primed with the passing of the bill or with the introduction of its

effects or we can say that the system is primed now, given widespread community support, and government can initiate a process in which the community sector and, I am sure, internal government areas will respond rapidly.

THE CHAIR: I have a supplementary on that. Are there features that are currently missing? As opposed to the quantum of support, are there features, qualitatively, that are not available at the moment that should be in anticipation of this change?

Dr Killen: To begin, we should note that we are not starting from zero. We have been doing work on the service gaps for a number of years in the ACT in preparation for this legislation, so we do know where the gaps are. There are some gaps for 12- and 13-year olds that exist in the service system, but we have also started planning for how to fill those gaps, particularly around functional family therapy and homelessness supports for young people. I think Devin is right, that the sector is ready to adapt, and we know the precise areas in which we need to adapt and provide more services.

Ms Esguerra: There is one recommendation we put in our submission that I think has been an ongoing gap despite all the work that has gone into looking at the legislation. There have been a couple of years of consultation and discussion papers and there has been a lot of discussion along the way, but one of the gaps is that there are still children going in and out of Bimberi without any through-care processes, which I find quite remarkable because we figured out a long time ago that we need these for adults, and I cannot understand why you would let children out of that kind of setting without putting complete wrap-around case management supports around them.

For me, this legislation marks a big change in how we see people rather than systems. As ACTCOSS has said, the support services are there and the organisations are there, but what we are doing is putting money into systems instead of changing things to be wrapped around the people that we know are in the system. The Chief Minister said it very neatly a few months ago on the radio. I heard him say, "We note there are actually very few people perpetrating those offences in the ACT." There are just a couple of hundred people who are sliding through and not that many families. With the amount of money that we spend in the corrections system, we could instead spend that money in rehabilitative support and education processes and making sure that those families are housed. That would make huge inroads in changing people going through the system. We really need to see people as people rather than systems, and doing it in a trauma-informed way would make a big difference.

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

DR PATERSON: Thank you. There is lots of debate in the submissions around the carve-outs or whether it just goes to the age of 14. There is equally an argument that, on your birthday at the age of 14, you do not suddenly become aware that your activity is criminally culpable. There is the age range between 12 and 14 and there are the carve-outs of the most grievous crimes that have inflicted harm on another person. Can you speak to the difference between drawing a line in the sand at 14 or drawing a line in the sand at 12 with some exceptions?

Mr Humphries: I can answer that. What we argue in our submission is that the evidence is that people at that age, before 14, are not capable of developing the

complex understanding of their responsibilities in a social sense that, you might want to say, gives us the right to deal with them in the criminal justice system. In theory, it is possible you could find a person at the age of 13 who you could say was aware of the circumstances of their offending and theoretically could be dealt with in an adult sense. But the point we make is that, even if there are people in that category, a young person at the age of, say, 12 or 13 who commits serious offences—be it murder or whatever else it might be in the carve-outs—has a very serious problem which is not best dealt with in the corrections system. The corrections system is, in a sense, the last place they should be with those sorts of problems.

Justice Refshauge, who is one of our patrons, made the sobering observation a few months ago that they took a snapshot of people who had been in the juvenile justice system at a particular point in time and then looked at those same people at an interval in the future—I think it was 10 years—and, at that point, in a particular exercise that was conducted, 100 per cent of the kids who had been through juvenile justice had been or were in the adult justice system, in gaol. That tells us that the juvenile justice system is not effective in dealing with these problems. It is just not the right place to put a young person who has a range of problems. It might be cognitive impairment, it might be mental health issues, it might be drugs and alcohol—whatever it is. If you want to deal with those things and you want to prevent that person embarking on a lifetime of crime, you intervene then and you do not intervene within the justice system, because it is not the right place for that to happen.

DR PATERSON: That is what I am trying to understand. You could equally argue that someone up to the age of 18 should not be in the juvenile justice system. There should be completely different interventions for anyone under 18. The arguments get conflated with the criminal culpability—the understanding. When I go through all the submissions, I see very little evidence on that 12 to 14 age group. There are a couple of references that I can find in submissions to papers and stuff. The culpability argument is one thing, but then there is the fact that perhaps under 14s should not be locked up because there are no good outcomes from that. Is the argument that there are better ways of dealing with under 14-year-olds and it is not so much about the understanding and the culpability of what they have done?

Ms Esguerra: It depends on the lens or framework and how you want to see it. You can see it from both angles. From the Justice Reform Initiative perspective, we know that the outcomes of putting people in the youth justice system are not what people were intending when they first set up the system. I cannot see beyond that, personally.

Mr Humphries: There is an extent to which the age of 14 is arbitrary. I accept that. In an ideal world, you would treat every offender as a person with a complex set of problems and you would address those issues. Even if they are an adult of 40 or 50, you might really want to deal with those issues fundamentally before you put them in the criminal justice system. If you can head off the problems in that way, that is the better way to do it. By setting that line at 14, we are, in a sense, forcing the system to take that approach with kids under that age, but theoretically we should be widening the system so that everybody with underlying issues is addressed in that way by the system.

Dr Bowles: I could add to that a little. I think you are right to separate it. On the one

hand, there is the criminal culpability, and it does not magically change on someone's 14th birthday. Then there is the pragmatic argument that, if you have someone who has clearly had a series of shocks in their young life in prison, presumably for a number of years with one of the four carve-out offences, it is highly unlikely that the person will not continue to perpetuate a cycle of criminality and incarceration.

When you separate those two things, though, you can also look at how they combine. If someone's understanding of what it means to be responsible for one's behaviour is at a point of development and is in the process of development around the early teenage years, then the idea of subjecting someone who is just forming a view of themselves and understanding that they are responsible for their actions through a criminal process is to all but guarantee that their self-conception is that they are someone who is a criminal and continues to do bad things.

The reason for a blanket approach with no carve-outs at the age of 14 is that there will be different levels of maturity and development at 13. But even the process of testing that in the courts imposes a punishment and a twisting of optimal emotional development and a development of the sense of self. That is a horrible punishment, but, also, it all but guarantees that the person is not going to contribute to society for their rest of their lives.

Dr Killen: We also know that that process, the doli incapax process, which would continue to apply after 14 for young people, is much more likely to lead to racial bias in decision-making for young people. If we approach each case individually, it is much more likely that we will continue to see a higher representation of Aboriginal people in the youth detention system, if we apply that for 12- and 13-year-olds.

I also note that, in the review that the ACT government commissioned for raising the age, the review found that there were no offences such as murder, manslaughter and sexual assault recorded between the ages of 10 and 13 between 2015 and 2020, so it is not a huge problem here in the ACT and not one that we could not address with therapeutic interventions as opposed to the criminal justice system.

DR PATERSON: Thank you.

THE CHAIR: A substantive, Mr Braddock?

MR BRADDOCK: With respect to the therapeutic support panel, I am interested in how we set that up for success in terms of its authority, its role, its functions and so forth. Do you have a perspective on that?

Dr Killen: In our submission, we recommend, first and foremost, that there are Aboriginal people represented on such a panel and that it is able to respond quickly—within 24 hours of harmful behaviour—that the panel can be called to respond and refer young people to specific services, that it has a holistic, wraparound approach that is able to connect families to services as well as young people, and that it has a wide variety of input or referral systems for young people so that teachers, families and people in young people's lives can all refer to the multidisciplinary panel and the intensive therapy support panel, so that we are not relying on the crisis point for people to receive support.

MR BRADDOCK: Just to test some other evidence, the AFPA suggested that perhaps multicultural communities also be included. Would you be supportive of that idea?

Dr Killen: Yes, and definitely people with experience with disability or carers of people with disability, because we know that the young people in the youth justice system in the ACT have high rates of disability or come from families where there are disabilities present as well.

MR BRADDOCK: Also, the police mentioned the importance of 24/7 deliveries, when they out at 3 am on a Sunday morning—

Dr Killen: Yes; that is something that we are definitely supportive of.

MR BRADDOCK: Thank you. Does anything need to be clarified in terms of how the responsibilities of that panel are set out? I am reading from the Youth Coalition submission where they mention that its role and function need to be clear. Is there anything that you think needs to be incorporated into making sure that is clear?

Dr Killen: Good question. It is important that it is clear, especially for oversight and for review of the process as we go forward, because we are doing this first in Australia. We need to make sure that we are doing it right and that the bodies involved are held to a strong level of responsibility for the young people that they are caring for. I do not know if there is anything specific.

Dr Bowles: The terms of reference for that group will prove critical and will need to be focused on the development of the young people they are charged with. The other thing to think about is that the resources they have available to help young people will very much influence the natural interpretation of those terms of reference. Bodies tend to want to do something, right? A child who has faced a lot of headwinds in their life comes before this panel and the panel wants to do something to help them, recognising that the community has suffered because of something that this child has done. There is a clear desire to do something. As a community and as the government, if we do not develop a set of resources that is fairly comprehensive for that body, then it may be less focused and be less able to be focused on good outcomes for that young person.

MR BRADDOCK: How does the body determine what services are delivered? For example, we have heard the virtues of the PCYC being extolled this morning. That is one service delivery model. How will you decide what is most appropriate for an individual?

Dr Bowles: A mapping task of what services are available and could be available will need to be undertaken. I note that the government is undertaking commissioning processes right now that could be used to feed into that. There are a lot of services in the community that are of potential benefit. Many of them have long waiting lists, as you heard PCYC does, if I recall correctly. An ability to fast-track young people who are involved would be useful, and setting up appropriate mechanisms with agencies that are appropriately funded would be a very good start. The government can

leverage the current commissioning processes to start that mapping but also employ some experts to decide what resources should be available on demand and what resources should be procured on a case-by-case basis.

MR BRADDOCK: Thank you.

Ms Esguerra: I agree with all the things that Gemma and Devin just said. The most important thing on the way to developing all the detail of that is to ensure that the government keep up a good consultation process. It has been a very consultative process until now, but it has also been very slow. That is going to need to speed up and they will probably need to set up some sort of more structured consultation process. I would hope that they would think about setting up something like a community reference panel or something like that—an advisory group. If we are going to be the first people in the country doing it, everyone is going to need to watch how it is going and be ready to adapt. We need to have a process or an advisory group where we can see what is going on and then people can advise along the way. Having the services that are involved and the broad range of groups that will need to be represented will be important.

What we know in the ACT is that there are not a lot of children and young people in this space, luckily, compared to other places. That means we have a very small cohort. There might be quite a diverse range of services needed. Rather than saying we are always going to need the PCYC or this group or that group, I think we are going to need a diversity of services and we are probably going to want something like a panel of services available, depending on the needs of each individual as we go. Again, we need personalised wraparound services and a case manager who understands the really diverse needs of individuals. There are going to be really complex kids in this situation and we are going to want them to be able to access a diverse range of services. That might be mental health for some or it might be more family care. To pick up each individual's needs is not going to necessarily take just one provider.

THE CHAIR: Thank you. Are there any supplementaries?

DR PATERSON: I have a substantive.

THE CHAIR: That was Mr Braddock's substantive. As you might be aware, ACT Policing do not support going to the age of 14; they support going to the age of 12. The Police Association say that we should review the change to the age of 12 before we jump to 14. For ACT Policing the bill goes too far, and for the Police Association it goes too fast. What is your view on raising the age to 12 and then doing a review of the impact of that, including on the service support that is available for that new community, so to speak, before we jump to the age of 14?

Dr Killen: Having the age of 14 in the legislation after two years will be a significant impetus to get the service system up to scratch as quickly as possible, and I think that there is strong community support for that. There has been a lot of critical feedback in Victoria, for example, where they are proposing a review before they commit to raising it to 14, and I think that would be replicated here in the ACT if we did not have it written in the legislation that it would automatically raise to 14 after two years.

Ms Esguerra: As it is, there is already a review process being built into the legislation, which is great. In fact, we—

THE CHAIR: Five years after—

Ms Esguerra: Yes. In fact, the JRI's recommendation is that the review be brought forward. There are going to be such small numbers, but we will be able to see earlier.

Mr Humphries: I would also say that we know now that the sorts of interventions you would need for a child of 12 or 13 are not likely to be available within the corrections system. You do not need a review to tell you that. That is already very apparent. In those circumstances, creating the setting for those people to be in therapeutic interventions is not a good idea.

THE CHAIR: Dr Paterson, a substantive?

DR PATERSON: We heard from police in a previous hearing that the process to access restorative justice is sometimes so lengthy that it defeats its purpose. The process needs to occur in a timely way since the offence. Also, in terms of what Mr Humphries said before around the impact on victims, where do victims sit in all this? There could be very violent crimes that are committed by a 13-year-old that have a significant number of victims who have been very impacted. Can you speak to the restorative process and if we need further funding and investment in restorative justice in the ACT?

Ms Esguerra: I personally would always back more funding for the restorative justice processes. The ACT has been one of the forerunners in the country in rolling it out and extending it to more offences, and it has been shown to be really worthwhile. As you say, it is really important for the victims in each case, but also for the people who are in the criminal justice system. It really can change behaviours later much more than a lot of other things. We know that putting people in prison does not stop the offences occurring, but having to front up to the victims and looking at all the different consequences makes a huge difference. I think that is part of the whole situation, especially with young people. The cognition at that age is about understanding the consequences of what you do. Restorative justice is exactly the place for that to happen, and I really support restorative justice happening alongside therapeutic interventions. Yes; funding needs to be found for it. As we know in the ACT, it is not for that many people, so I think it is imperative that the funding is found.

THE CHAIR: ACTCOSS, perhaps in closing, do you have any thoughts on that?

Dr Killen: I was just going to say that we are also very supportive of restorative justice processes. Many of the young people who might be involved in dangerous behaviour or violent behaviour are probably also victims themselves of previous violent crimes and could participate in restorative justice practices in a way that helps their therapeutic responses too, to reflect on their own trauma and respond in more positive and productive ways as well. Restorative justice is a win-win for everyone. We know that the criminal justice system and detention in particular do not have space for healing or necessarily for responding to victims in a timely and helpful way.

Ms Esguerra: Dr Paterson, you asked about the timing. You are absolutely right: getting the timing right of this is imperative. Having a restorative justice process about two or three years after the event is not pointless, but it is not going to do the job. One of the problems we have with the process at the moment is that people do not get access to restorative justice until the whole criminal justice process has been done first. Obviously, you cannot let it interfere with the legal situation and it depends on how people are pleading, but the sooner we can get access to restorative justice the better for all sides, including the ACT government.

DR PATERSON: Very quickly, the thing is, though, that there would not be a criminal justice process for these kids, so should restorative justice be offered to these kids outside of the criminal justice process that we currently offer?

Ms Esguerra: That is a good question.

Dr Bowles: I would say that would often be integral to an offender's therapy. The passing of this legislation opens an opportunity to the ACT government to enable much more rapid restorative justice processes. The details would need to be worked out in a community forum type of setting, as was previously suggested, but it seems to me that we are coming at the same issue from two different ways and, if we do not make them meet in the middle, then we have missed something.

THE CHAIR: Thank you so much for those closing words. Thank you both for your attendance on behalf of your organisations, for your very informative submissions and for the ongoing work you do to make the ACT a healthier society.

Hearing suspended from 12.31 pm to 1.15 pm.

DONOHUE, MR CHRIS
BOERSIG, DR JOHN, Chief Executive Officer, Legal Aid ACT
CLIFFORD, MR JAMES, Managing Solicitor, Children's Criminal Practice, Aboriginal Legal Service NSW and ACT

THE CHAIR: I would like to welcome everyone back to our public hearing on the committee's inquiry into the Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023. Proceedings today are being recorded and transcribed by Hansard and will be published. Proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice." This will help the committee and witnesses to confirm questions taken on notice.

I would like to welcome Mr Chris Donohue, Mr James Clifford and Dr John Boersig. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered as contempt of the Assembly. Please confirm that you each understand the implications of the statement and that you agree to comply with it.

Mr Donohue: Yes, I do.

Dr Boersig: Yes, I do.

Mr Clifford: Yes, I do.

THE CHAIR: Thank you very much. We are not taking opening statements. There may be an opportunity at the end, depending on how our questions are going. I will hand over to Mr Braddock.

MR BRADDOCK: We heard this morning from ACT Policing and the Australian Federal Police Association.

Mr Donohue: Yes.

MR BRADDOCK: You are aware of that. I do not think there seems to be any question that children aged 10 to 12 are not able to form criminal intent, but they seemed to indicate that they were of the view that children could between the ages of 12 to 13. Would you care to respond to that?

Mr Donohue: Yes. The medical legal opinions that I have included in my submission say that a child up to the age of 14 at least does not have the capacity to form an intent necessary to commit a crime. I do understand that police and others might have difficulty in organising themselves, but I do not see that as a sufficient rationale for imposing on children under the age of 14 the justice system that currently prevails.

Dr Boersig: We refer to medical evidence also in our submission, so I will not say anything more than that, except to note the premise of doli incapax is one that we have been operating with for a long time.

MR BRADDOCK: Mr Donohue, you mentioned "at least 14", so do children older than 14 potentially still lack the capability to form that intent?

Mr Donohue: That is right. The United Nations' statement says:

> … raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the upper age of 14 years at which doli incapax applies.

The way I read that is that there is no criminal responsibility below the age of 14, but beyond that it may well be that there is a need to establish that a child—a 15-year-old is still a child in my books—has the mental capacity to commit a crime. That is probably a statement of the criminal law anyway, but that is how it was stated by the United Nations in criticising Australia in 2019 for not already having raised the age, without exceptions, to 14 at that time.

MR BRADDOCK: Sorry, Mr Clifford, did I cut you off with that additional question? Your screen just came on, so I was not sure if I had accidentally cut you off.

Mr Clifford: No, you did not cut me off. My screen just came alive abruptly. I would say that I agree with the comments of Mr Donohue regarding the medical evidence supporting that the age should be raised to 14. My understanding of that evidence is that there is not a demarcation of meaning between 12 and 14. That distinction may have some sense in common experience to say that someone would be more satisfied that a 13-year-old might know something is seriously wrong. The medical evidence that is referred to in our submissions as well does not support that. I think that the protections of the presumption of doli incapax are insufficient to provide an answer to that question of whether a child of under 14 has the capacity to understand that something is seriously, morally wrong.

What we see is that the use of that presumption means that children are still arrested, charged, brought before the courts prior to that presumption being determined. That process, given that the children is ultimately found not guilty as a result of the presumption, is incredibly harmful, and perhaps a terrible lesson to the child as well, being brought through those systems only to be found not guilty on that basis. Certainly, I do not think that the presumption is a cure for those children under 14 but over 12.

Dr Boersig: I think we have got some data as well that supports this. I have only got two copies here, unfortunately, but it shows the number of people we acted for in criminal proceedings aged between 10 and 13, and the number of children we acted for at 14. The figures there are nine children 13 and below, and 29 children at 14. This gives the nature of the offences and the number. Sorry; I only have two copies.

THE CHAIR: Thank you. We will accept those.

Dr Boersig: They are of some assistance, I hope.

DR PATERSON: I was saying in the last hearing that everyone is referencing all the medical evidence, but I cannot actually find the overwhelming medical evidence. In

the differentiation between 12 and 14-year-olds there seems to be a lot of conflicting evidence out there. That is not to say that the United Nations is wrong and the whole process that they used to form their opinions is wrong, but, as is pointed out in one of the submissions, that is a suggested benchmark. To the point that you suddenly become culpable at 14—I question that. I question whether this is a discussion around whether culpability exists or not, or whether it is the right thing or not to have children in the criminal justice system. I would ask you, on the balance of those two arguments: what would be the strongest argument you think to not have the carve-outs?

Dr Boersig: I am a bit more pragmatic about this. We were talking about this outside. I think there probably should be carve-outs, for the moment, because this is such a significant change. We need to bed this carefully, and unless we intersect this change with support for CYPS and diversionary programs, we need to recognise that this will be quite a momentous impact on the way we manage young people.

I am a proponent of going slow and steady on this. There are some studies overseas which support that view, and we have pointed that out in the past. Ultimately, I think it is the right direction—the one you are talking about—in terms of culpability and recognising where is the best place that we would want to deal with young people, whether it is through a criminal justice process or through other processes. I think that is the right question to ask. This is going in the right direction, from my point of view, anyway.

Mr Donohue: I will also comment on that, Dr Paterson. The notion that a child has a different mental capacity in committing a serious crime to what that child would have in committing a not so serious crime seems to make not a lot of sense. In fact, I am happy to dig up the medical references that I can find—there is heaps of information; it is a matter of compiling it into one place—and to get that to you in relation to whether you really should have carve-outs at all, because the impact on the child is that the child might see a little bit of shoplifting as equivalent to burning a building down. One is very serious; one is not so serious. But it is the same mind that is doing the crime, and it needs to be treated in that way. There is a lot of reference material which I can produce. The Law Council of Australia and the AMA produced a report which is referred to in my submission—albeit their preliminary report; I think it was in 2020—where they discussed and addressed this issue very squarely.

DR PATERSON: Okay. Great.

Mr Donohue: That was followed up in another report to the Council of Attorneys-General about a year later, where they went into more detail on that. That is also referenced in my submission, and the links are there that can be fairly easily followed. If you like, I will dig those up and get them to you.

THE CHAIR: To dig deeper into the carve-out exemptions, each of you, to various degrees, is saying that it is not a good idea to exempt serious crimes from a criminal responsibility age limit. What would be the impact, do you think, practically, if these carve-outs were in the legislation, if the bill was passed in its current form? What would be the practical impact? You can talk about the logic of it as well, if you do not mind.

Dr Boersig: From my point of view, I think we would still be dealing with doli incapax. In relation to all of those serious offences, we would still be looking at the mental state of each of those children for those two years. For me, the legislation goes in the right direction, but we need to do this gradually and embrace community support. We have seen how important community support is for this kind of change in public policy. Going slower, it seems to me—and to be well-supported by CYPS and the police—would contextualise movement through to after 14. Fundamentally, it is around the application of doli incapax.

THE CHAIR: Your view is that the community would not look favourably on a 13-year-old committing murder who was not found criminally responsible?

Dr Boersig: I do not think we need to look far to know what can happen in community debate—like Queensland at the moment, for example—to know the risks here. We need to make sure we do this carefully and properly, which seems to me to be the way it is gradually going. The practical protections are there at the moment for those two years, and we have got time to build community support for this very important initiative.

THE CHAIR: Mr Clifford, your thoughts?

Mr Clifford: I think, practically, what that would look like, where we maintain the carve-outs, is that we would still have a situation where a very small number of young people would then be going through the criminal justice system at a younger age than their counterparts and may ultimately end up in a situation, as happens, where they are found genuinely not guilty because they lack the mental capacity to form criminal intent.

I think we would still end up with situations where a young person, say, was charged with grievous bodily harm with intent, one of the scheduled offences, and could then be spending a significant period of time on remand. These matters are not settled overnight. Doli incapax is an element of an offence that has to be proved beyond reasonable doubt, along with the other elements of the offence. The explanatory statement discusses how they lack the mental capacity under 14, and that is the international standard. So we will have situations where a young person exists in the criminal justice system for a long time on remand, potentially even under this system being found not guilty according to doli incapax.

That young person alternatively would receive the quite intensive support and intervention that exists under a model focusing on the welfare of that young child. If a child is involved in that kind of behaviour, that is obviously a serious concern. But if you have a child that has pleaded not guilty, because of doli incapax they remain on remand and no intervention can take place around that offending behaviour because it is open to debate about whether or not they are guilty. We have then basically lost out on a year to get to a trial, prior to that child receiving meaningful intervention. Alternatively, under the system where there were no carve-outs, it was treated as a welfare consideration from the start. You could really deal with it straight away in a way that I think the community would ultimately favour. I think that is probably the messaging that needs to run counter to the idea that the current system works,

protecting community and protecting our people as well.

THE CHAIR: Thank you.

Mr Donohue: Yes. If there are any carve-outs at all for children below the age of 14, then the doli incapax system would apply under the legislation as it is put up. The problem is that it is very well set out in a case that is referred to in my submission: RP v The Queen. It was 2016, in the High Court. There was a boy of the age of 11.5 years when prosecuted for a serious crime. It was a serious sexual crime. In the High Court, ultimately, the only substantive issue to decide was whether the presumption of doli incapax had been rebutted, and it was held to have not been.

We had the lower courts saying, "Yes it has been rebutted." But when it got to the High Court, the High Court said, "No, it has not been rebutted". By that time the child was 17 years of age and had endured five to six years of the anxiety and trauma of prosecution and being under the criminal justice system. If a proper assessment of doli incapax had been made at the outset, there may have been no criminal justice system and, instead, the therapeutic approach that is set out in the legislation now, which in general terms I support. I think it is going to need some reviewing as time goes by.

That may have got this child out of a system which you could say probably or possibly led him into recidivism and continuing to commit crimes in the future. That is the purpose of keeping children out of the criminal justice system for as long as possible. The younger they are when they go into the system, the more likely they are to go on to a path of crime, rather than looking for a better life.

THE CHAIR: Thank you.

DR PATERSON: I am very interested in the Law Society submission, where they say that this will have an impact on family violence orders, in terms of who the order can be made against, and that that needs to be addressed for under-14-year-olds. Do you have any ideas on how that could be addressed so that you can take out a family violence order against a 13-year-old, for example?

Mr Donohue: I am not here representing the Law Society, but I think you are talking about family violence protection orders—

DR PATERSON: Yes, I am.

Mr Donohue: and personal protection orders, generally. I can comment on that. I am not saying this on behalf of the Law Society, and I want to make that clear. I will talk about proper personal protection orders, because I am more familiar with them. The process is that if somebody has breached your rights in a way that is set out in the legislation, you can get an interim order very quickly from the registrar of a court. That order is in force immediately, and it prevents the person subject to that order from doing certain things. It then goes back to the court later on, to assess whether that should be made a permanent order. At the second stage, the person who is subject to the order appears. The first order is made on an ex parte basis.

My view is that to change that system and not allow personal protection orders against

children misbehaving in the way that is envisaged in the act would be not a good thing. It is proposed to not allow any orders to be made against children. I think the community needs the protection of the opportunity to say, "I am in my home alone. My next-door neighbours have got rampant children. I need to get an order to stop them from coming over my fence and chasing my dog, cutting things and generally terrorising me." So they get the order. If it is made permanent and there is a breach of the order, then that is the point when it becomes criminal and that is where the criminal sanctions do not apply. It goes into the therapeutic approach.

Dr Boersig: I have not read the Law Society submission, but, from our point of view, there is a real and palpable reason for protections being in place in certain circumstances. Here is a good example of where, if we are proposing an alternative, you need to have some process to catch those issues that would otherwise be managed through family violence orders. They are very important, currently, for the protection of some young people. We need a viable alternative before we want to go down this way.

Mr Clifford: What I would add today is that where you have the situation that Mr Donohue mentioned, where those neighbours want some sort of safety and some sort of intervention, often that kind of criminal justice response—imposing an AVO that may be in terms a young person struggles to understand, and then leaving it there and saying, "Here is your order. Please do not breach it again."—is probably not the most effective way to get a 12-year-old to do what you want them to do.

I think what is really encouraging about this bill is that it is talking about a lot of different approaches that are not carceral, based on the criminal justice system response, which often children do not understand. They are traumatised by them, but they do not necessarily have the same meaning or deterrent as they would to an adult. Alternatively, suppose someone came into that home and said, "What is going on? Why are you treating your neighbour this way?" They would then say, "You are bored. You are climbing up the walls because there is no TV in the house and there is nothing for you to do and you have not been to school for two weeks. Let's get you back in school." They then engage this child away from the neighbour, or maybe there is some conflict with the neighbour that can be mediated through a third party.

We are talking about small numbers here, which allows us to have an opportunity to actually intervene in a meaningful way, as opposed to, say, imposing an order that a child might not understand and respect. It gives it the veneer of safety but does not actually provide that safety. I think the apparatus created here, where a matter can be referred to a panel and can strengthen the intersect of whether people can actually respond where these instances come up, is going to be a lot more effective than putting an order like this on a 12 or 13-year-old.

DR PATERSON: We are just focusing on the offender, though. For a victim, a protection order is an important mechanism. Yes, you can argue how effective it is, but in terms of a victim's rights and ability to take action to try to protect themselves when they know there is an imminent threat, where do victims sit in that?

Mr Clifford: I am happy to speak to that.

DR PATERSON: Yes.

Mr Clifford: I am happy to speak to that. The bill thoughtfully considers the importance that victims play in the criminal justice system and making sure that they are heard and that their experience is heard as well. Many of the children we are talking about are victims as well. They have also been exposed to a lot of family and domestic violence. That line between victim and perpetrator is quite blurred. What the act provides is ways for those statements to be given and heard.

One of the advantages of having that dealt with outside of a criminal justice system response is that you can step back from saying, "This needs to be proved beyond reasonable doubt, if we do something about it, or on the balance of probabilities in a court with evidence that will take months and months." It allows you to have that sit-down conversation where someone could go to the victim and say, "What would make you feel safe here?" I would be surprised if they said, "A court order would make me feel safe, and nothing else." They would probably want to see some way to address the behaviour that is going on and which started a year ago—"We got along before that. I do not know why it has changed." It allows you to have those more honest and frank conversations that are not filtered through the lens of the criminal justice system, which can be quite cumbersome, and it would allow for a genuine hearing of the victim. We hear that all the time—the difficulty that victims often have in the criminal justice system in having their needs respected and responded to. It is an opportunity to have a more frank, honest and realistic conversation when situations like that arise.

DR PATERSON: Thank you.

THE CHAIR: Thank you. We might move to Mr Braddock for a substantive.

MR BRADDOCK: Thank you. I want to understand the impacts of doli incapax for the exceptions. Mr Donohue, you mentioned that case where they spent five or six years going through the criminal justice system. ACTCOSS, I believe, mentioned earlier today that a racial bias element may arise in the process. Is someone able to talk me through the impacts that will arise from applying that process?

THE CHAIR: In your opinion, of course.

MR BRADDOCK: In your opinion—sorry.

Dr Boersig: Was it ACTCOSS's argument that people who were Aboriginal or Torres Strait Islander—

MR BRADDOCK: May be disproportionately affected.

Dr Boersig: I will give my colleague the first opportunity to respond to that, then.

Mr Clifford: I have to say that I have not viewed their submission in its submitted form. But I would say that, effectively, by having that doli incapax system as it currently exists and then perhaps considering how it may be, following this bill, you are placing decision-making about who to charge in police discretion. We know that

often that discretion can miscarry in a way that unfair prejudices Aboriginal and Torres Strait Islander children. I think that the idea is that, when you have a discretion that exists, you can assume that it is likely to be used against those children. What that can look like is that, for example, you might have a police officer who is dealing with an 11-year-old and thinks, "An 11-year-old non-Aboriginal child is clearly a child. I do not want to go through a criminal system to deal with them. I would rather just speak to the parents, speak to their school or get other services involved," whereas they might look at an 11-year old Aboriginal child and think, "This is not a child. This is a perpetrator, and this requires a criminal justice system response."

Doli incapax would not be in the letter of the law, but it can play out in some of the implementation where those unconscious biases can come into play when considering when a criminal justice system is appropriate and then going through the whole process of trying to rebut the presumption put forward in all of the court dates, bail conditions and remand periods that go with it, versus saying, "This is a child and they need a response at this stage, so I am not going to go down that path." I would imagine that is what their submission was getting at, because I certainly do see that it can play out for children who are Aboriginal or Torres Strait Islander interacting with police.

MR BRADDOCK: Would it be fair to say it also means a delay in restorative justice options while you are trying to resolve these legal questions?

Mr Clifford: That is right. You then have the legal question that is dragging through while the situation persists and often worsens. To the point about why these children who come into contact so young are not rehabilitated and bounce back in that system, part of it is because the system takes over. It kind of takes the hands away from teachers, health workers and whoever else could intervene, because they say, "There are legal proceedings afoot. We have to wait to see what happens," and the problem is unaddressed.

Mr Donohue: I have to say that the gathering of the evidence to rebut the presumption of doli incapax will usually start at the police level. I am saying this because I am relying on the research of Phillipa Daniel. I have produced a copy of her very good assessment, entitled, "The role of police interviews in the assessment of children's moral culpability under the doctrine of doli incapax: psychological perspectives." The assessment will usually start with something like: "Did you know what you did was wrong?" At that point, the child has already been made very well aware by the circumstances of their apprehension that it was wrong. You mentioned Aboriginal children, and that is referred to in Ms Daniel's assessment. They may be more likely to try and appease the interrogator by agreeing with them and therefore admit to having a moral culpability. That was one of the aspects in the case that I mentioned.

I invite you to read the whole paper that I have just referred to. It is very instructive and very readable. It leaves you with a sense that police should not be the people who gather the evidence to present to the court to determine the question of doli incapax; it should be a child psychologist, and any evidence that is given to the police should be left to one side and not taken into account in determining that question.

MR BRADDOCK: Thank you.

THE CHAIR: I will go to a fresh substantive. As you are all aware, part of the approach in this bill is to establish a new therapeutic support panel and to issue therapeutic correction orders and intensive therapy orders, and even provide intensive therapy places as a last resort. If you were in a position to advise the government, what sort of resourcing should be either strengthened or introduced to accompany the passage of this bill? What would your suggestions be?

Mr Donohue: How much it is going to cost? It is going to cost. I would not—

THE CHAIR: We will be talking to ministers this afternoon about that.

Mr Donohue: My opinion would be that the cost of the first-line response compared to the cost of running the judicial process and the incarceration that might follow should be measured against each other. If the cost of the initial therapeutic approach is very high, I think that, over time, experience will work through that and the cost will be correspondingly reduced over time. But it is the better option than paying for children in jail.

THE CHAIR: I am particularly interested in what kind of additional quality types of services might be needed or the approach to delivery of services?

Mr Donohue: The chair of the panel is the person that is going to get the first message. The responsibility is that the chair must consider the referral promptly. If it is 2 am, as the AFP referred to, that is a very genuine concern from their point of view. Maybe you need to pay the chair some overtime and respond at that time. The other thing is that they must refer matters to the panel when they have a child of a certain age. There is a list of people that may refer to the panel. That is essential because, if there is a discretion about making the referral, it is likely to leave the child in police custody for longer than is necessary.

THE CHAIR: Dr Boersig.

Dr Boersig: In part, we addressed this at page 3 of our submission. The list of people who are to comprise the panel is a very admirable list. The skills base is important. What I am concerned about, as we say in the submission, is that, without legal representation and ultimately at the legal point of looking at the due process issues and ensuring those processes are followed, we have risks around human rights breaches. We are dealing here with young people's incarceration, detention, and there should be appropriate protections. Quite frankly, I think that is missing here. The argument, ultimately, is that you have a very good model in the independent children lawyers' approach in the family courts that could be used here to make sure the young person is shepherded through appropriately and that due process is followed. I am concerned that this process will give rise to administrative review and/or questions around human rights.

THE CHAIR: Thank you. Mr Clifford.

Mr Clifford: On the question of the sorts of services that will need to be bolstered, I

heard the comment about the chairman's overtime. Ultimately, having responses, in terms of support outside of business hours, is a real question. Some of the frustration we hear from police is about after-hours services and that they are forced to respond to situations that perhaps are not best suited to respond to. Looking at having after-hours community workers and Aboriginal community workers is something that would be of value. In that way, fast responses can be made in a way that does not require police response. I think that the reason that police end up in those situations is that workers are not funded to work after hours. We need to build up a capacity to have people respond to situations. We do have that capacity now, but it could be amended to respond to those situations while they are unfolding after hours. It is something that I know the sector has been looking at for a long time. The feedback we hear from families and communities is that they want to talk to people after hours as well. You would see fewer referrals in the process because it can be addressed pre-emptively.

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

DR PATERSON: Thank you. My substantive is probably directed to Mr Clifford. You work across jurisdictions—the ACT and New South Wales. The police pointed out in their submission that there may be some complexity with extraditions, in handing over a child to another jurisdiction, where the child may be detained. Is there a problem?

Mr Clifford: Just to confirm I understand the question: the police concern was where, say, a child had matters in New South Wales, where the matter had been raised, but they live in the ACT—

DR PATERSON: Yes.

Mr Clifford: That is an interesting question and one that I cannot say that I have considered at length. Perhaps it is something that I will take on notice. It is not something I have thought about. It would be fairly unusual, but it is an interesting question that does arise. The ACT is taking a leadership role here. That might mean that there are some differences between the two jurisdictions.

DR PATERSON: Thank you.

Dr Boersig: It is an issue that affects us now in a whole range of ways when we are dealing with people who commit offences back and forth across the border. We look at having a hard border. Most people do not live like that. They live as though Queanbeyan is integral to Canberra, so we are faced with this kind of issue all the time.

DR PATERSON: Thank you.

THE CHAIR: Mr Braddock, a substantive.

MR BRADDOCK: Dr Boersig, in your submission you talk about the records of youth offences to be supplied to court. Can you walk me through that, in terms of what the impacts of that are and why you are arguing that it should be not allowed?

Dr Boersig: One of the benefits of young people not being dealt with through a criminal justice system is the way in which criminal records are used in the sentencing process. This type of legislation is aimed at mitigating and minimising the impact of the fact that someone has a prior history in the process. Because this cuts off at the age of 14, we are saying, "The records here should be kept silent. You are dealing with children after that in a different way."

MR BRADDOCK: Thank you.

THE CHAIR: Would each of you like the opportunity to make a closing statement—we have five minutes or so to go—for just a minute or two?

Mr Donohue: I will take only a minute. My view is that the age should be raised, not to 12 but to 14, in this legislation. There should be no carve-outs. If the legislation proceeds in the way it is, the date of 1 July 2025 for raising the age to 14 should be cut back to something like, say, the end of this year. I am very much of the view that the 12- and 13-year-olds who are in or likely to be subject to the system are going to be completely left out, despite everyone applauding the change. Fixing that now would be a good thing. It is all about the difference between punishment and therapy when dealing with children. Therapy hopefully works. I do not think punishment does.

THE CHAIR: Thank you. Dr Boersig.

Dr Boersig: I am endorsing the current process because I think it has the best chance of long-term acceptance by the community. It will allow an evidence base to be built so that we can explain that, in doing this, we have dealt with 10- and 12-year-olds and it has been successful, and we should extend it to 14-year-olds. That will be seen as a sensible position by the community. I am fearful that a debate, as you have seen in other places, will undermine that and undermine the importance of what we are doing here, particularly given the stats overall around Australia.

THE CHAIR: Just to clarify: you are comfortable with the carve-outs but not in the long term?

Dr Boersig: Correct—I am comfortable with the carve-outs as put forward in the legislation, but not in the long term.

THE CHAIR: Thank you. Mr Clifford.

Mr Clifford: I will conclude by saying that we welcome the leadership in terms of looking at raising the age. We certainly are firm in the view that, with carve-outs, the idea that one can be responsible for a more serious offence but not a less serious offence does not make sense. The point about delaying raising the age to 14 really does a disservice to the young people currently in the system experiencing the adverse impacts of the system. What is really encouraging to see is that the discussion acknowledges that raising the age does not mean no response to children who present concerning behaviours. What it in fact means, from our perspective, is a more meaningful and effective response. If that can be brought in line throughout the process, I think we will see much better outcomes for the safety of the community and

the children.

THE CHAIR: Thank you very much. Thank you all for your contributions, through your submissions and your attendance today. On behalf of the committee, I thank you.

Short suspension.

MINTY, MS REBECCA, Inspector of Correctional Services, Office of the Inspector of Correctional Services

THE CHAIR: I would now like to welcome Ms Rebecca Minty, from the Office of the Inspector of Correctional Services. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth, giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Ms Minty: Yes, I understand the obligations of the privilege statement and agree to abide by it.

THE CHAIR: Thank you very much. We are not taking opening statements and will just move straight to questions.

We have asked many witnesses the same questions, as you can understand, but we are always interested in the different perspectives. Could we have your view on the carve-outs, please? If the bill is passed in its current form, what do you see as practical implications of those carve-outs being in the law?

Ms Minty: Thank you for the question and for the opportunity to appear today. As stated in our submission, we really welcome this initiative. It is a fantastic leadership that the jurisdiction is putting forward, because, really, young people should not be in detention.

To have carve-outs below the age of 14 goes against the very scientific evidence and developmental basis of actually raising the age in the first place. The evidence shows that very few children under the age of 14 commit those most serious offences. So we are talking about very few children, but, nevertheless, it undermines the evidence base, I believe—and I think that has been well documented in various sources.

If it were to occur that children under the age of 14 were incarcerated for those offences, it would go against the therapeutic approach of the whole legislative scheme in that these young people need that support and the therapeutic approach, rather than being incarcerated. We know that detention is inherently not a therapeutic place and it can really retraumatise and present ongoing trauma for children and young people that are already very traumatised.

THE CHAIR: Thank you.

DR PATERSON: My question is with respect to your recommendation that therapeutic places should be declared explicitly and also—I think it is recommendations 6 and 7—and that you still have the monitoring capabilities in therapeutic settings as well. I am interested in that because that, again, seems contradictory—that is, are they in detention or are they not?

Ms Minty: It is a good question. I guess one of the key points in the submission really is that any place where someone is not free to leave by order of a judicial, administrative or other authority is considered, under the optional protocol to the

convention against torture, a place of detention, a place of deprivation of liberty.

As committee members would be aware, my office as well as the Human Rights Commission and the ACT Ombudsman in February this year were jointly designated as the National Preventive Mechanism, with the role set up to conduct regular visits with a preventive lens to any place where someone can be required to remain—to be deprived of their liberty.

It includes the obvious settings like gaols and youth detention. But the pattern and the way deprivation of liberty and detention is now interpreted under the OPCAT is really looking at the substance—not what it is labelled but whether someone is free to leave. It also includes secure mental health facilities. A place can be therapeutic focused and still be a place of detention.

The main point in my submission is really that these intensive therapy places, where a young person can be required to remain, should be subject to preventive oversight by the ACT NPM.

The way the bill is currently drafted, it has "accredited people", which does not include my office. It includes the Human Rights Commission, the Public Advocate and so on. But I think it is important, as the ACT is attempting to fulfil obligations under the OPCAT that all bodies in the NPM be given the power to visit.

That is really important because there are certain safeguards that are written into legislation, including things like time periods, registers and records and ensuring that the two-week period is adhered to. In my view, there is a real value in preventive monitoring bodies having the option and the right to visit places and do things like check registers to ensure that these safeguards are being appropriately adhered to.

DR PATERSON: Thank you for that. We have talked a lot about the very first 24 hours where a child might be picked up by police, and there does not seem a clear pathway for where this child would go. Is that concerning to you from the lens that you bring to this, in that wherever they go should be inspected?

Ms Minty: Yes. I think it must be very clear under what authority a young person or a child is not free to come and go at will. The first period of incarceration, detention, or whatever scheme it is under can be particularly traumatising and traumatic.

There are also risks associated with the chain of custody—who is responsible for the young person and handing over. It is also high risk because it is really important that appropriate information sharing about, for example, any mental health risks and so on. So, yes, I think it is really important that it be clear what the sequence of events is in terms of who is responsible and the place or the nature of the detention.

Going back to the optional protocol to the convention against torture and how that defines deprivation of liberty, it talks about a place of detention but also circumstances of the detention and, like I said before, the order of a judicial, administrative or other body. So the order itself can be the detention.

We saw with the COVID pandemic—and I know the ACT Human Rights

Commission did work in this space around requiring home detention—that it is an emerging area of potential for oversight. Certainly things like house arrest, under the international approach, is well within the OPCAT. Does that answer your question?

DR PATERSON: Yes. Thank you.

MR BRADDOCK: Your recommendation 2, talks about raising the minimum age of incarceration to 16 years of age. Would you also apply that to these examples of secure therapeutic orders, as being a place of detention and subject to that age limit?

Ms Minty: It is an interesting question, and I would leave that to other people more qualified to answer that. But, in noting your question, I would want to separate the actual detention. Recommendation 2 is about having a minimum age of detention, being 16—being above the minimum age of criminal responsibility—but it would not mean that it is separate from the legal framework of criminal responsibility, which could be below 16.

The reason for that recommendation is that different countries have said that there is a minimum age of detention, and the Committee on the Rights of the Child has recommended age 16. I think that the longer we can keep children and young people out of detention the better. The trajectory for keeping away from the criminal justice system are improved the later they enter. So that is the rationale behind that. But I do acknowledge the importance of the therapeutic approach and the therapeutic wraparound services, because there is harm caused by children under the age of 16.

MR BRADDOCK: Why is 16 the most appropriate age to have that? Is there an evidence basis for that?

Ms Minty: I think there is a data base showing the longer you can keep a young person out the better their prospects of avoiding contact with the criminal justice system in the future. So, yes, I think it is an important issue. It is one that the Standing Council of Attorneys-General working group raised in their discussion paper too. So I think it is important.

THE CHAIR: I note your recommendation 6, would preclude Bimberi Youth Centre, for example, being used or any part of it.

Ms Minty: Yes.

THE CHAIR: What do you envisage these intensive therapy places actually to be? From an ideal point of view, how would they operate?

Ms Minty: The imagining of what those places look like is probably a question best put to others. My focus, as the Inspector of Correctional Services, is on Bimberi. The reason for putting that recommendation is essentially that a detention centre has a security focus. There is a secure perimeter and there are various arrangements that are focused on safety and security.

I definitely acknowledge there are services for children and young people in Bimberi. There is a lot of great work being done by staff in Bimberi that have a therapeutic

focus. But, if we are to realise the objective of wraparound intensive therapy, an environment that is a correctional centre or a former correctional centre, in my view, is not an appropriate place for those to be.

THE CHAIR: According to your recommendation 5, you do see a role for you in visiting these places and monitoring them.

Ms Minty: Yes, I think the ACT National Preventive Mechanism do have a role. Because the focus of an NPM is essentially preventing ill treatment—and ill treatment can occur in a range of settings. So, across the NPM, it is really important that there is access to those places to provide transparency and scrutiny and instead of looking at things through a reactive lens to look at them through a lens of ensuring that safeguards et cetera are met.

DR PATERSON: We went to Bimberi and had a chat to people out there. One of the concerns was the lack through-care for young people, and I think that has come up in the hearings today. Has that been your experience or finding as well? Do you think we need to do more in that respect?

Ms Minty: To be completely frank, due to our resourcing, we have had a fairly limited role in the oversight of Bimberi. We did a Healthy Centre Review in 2020, which we were required to do by legislation. But we were never funded, as I am sure the committee have heard myself and the former inspector talk about, to oversight Bimberi. So we were not able to visit with the regulatory that is desired under the OPCAT.

But certainly when we were there in 2020 the through-care issue was a live one, and we included a recommendation in that Healthy Centre Review that really augmented or reiterated the recommendations of the Human Rights Commission that they had previously made about through-care.

We actually did a pilot NPM visit recently to Bimberi. Whilst we did not specifically look at through-care, I do hear concerns about trying to set up measures to keep young people out.

I think the high proportion of young people on remand is really problematic. They are presumed innocent. I understand it is a complex issue but I think the through-care support is going to be essential because detention for older children and young people will still exist once this bill is passed.

THE CHAIR: I will use my opportunity to give you an opportunity to make a closing statement.

Ms Minty: I thank the committee for inviting me to attend. I welcome this initiative. I think it is a really important one. I think there are a few things that can be done to strengthen the bill—the most obviously being the no carve-outs. But also ensuring that the safeguards are in place so that there is independent preventive monitoring.

Although my role is to inspect a place of detention, as part of the ACT NPM, the role is broader to comment on draft laws and policies which impact detention. In that

capacity, I think the best form of prevention of ill treatment is for younger people not to be in detention and to come up with alternatives to detention.

THE CHAIR: Thank you.

MR BRADDOCK: I would like to say congratulations on your appointment to the role.

Ms Minty: Thank you very much.

DR PATERSON: Yes, congratulations.

THE CHAIR: Yes; well done. Thank you for your attendance and for your submission.

Ms Minty: Thank you.

Short suspension.

SMALL, DR JACQUELINE, President, Royal Australasian College of Physicians

THE CHAIR: I now welcome Dr Jacqueline Small, from the Royal Australasian College of Physicians. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the privilege statement and that you agree to comply with it.

Dr Small: I understand the requirements and I agree to comply.

THE CHAIR: Thank you. I will lead off with a question. I note in your submission—and I thank you for your submission—that you support raising the minimum age of criminal responsibility to 14. Thinking as a medical expert now, what has led you to the conclusion that 14 is the appropriate age? We have heard submissions that it should only be 12 or should even be higher. What, from a medical point of view, has led you to that conclusion?

Dr Small: Thank you for the opportunity to appear today and for your initiative in looking to raise the age. The RACPs position is that 14 should be the minimum age of criminal responsibility. That is in line with a United Nations recommendation that it is the minimum age.

We are supporting that because of a wealth of evidence that speaks to the immaturity of children under 14 and that really even at 12 they are still often very immature and, in some cases, indistinguishable from the maturity of a 10-year-old. So we do not see that 12 years as the minimum age of criminal responsibility is substantially different.

There is growing evidence about brain development and maturity. That speaks to very significant changes that are in the brain that are triggered by the onset of puberty. Puberty may not start until 13 or 14 years in many children. So the range of puberty is from eight to nine to 13 to 14. That is the normal range of onset of puberty. So normal children's development may be delayed.

We know that other factors can also have an impact on maturity and development. They can include past history of trauma, cognitive deficits, drug and alcohol use, prenatal experience and abuse and neglect. So there is a range of things that can also delay maturity. So we are very concerned about the child of 12 still being immature.

There is growing evidence around the development of the brain that is essentially underpinning and instrumental in a person's ability to make decisions and manage their behaviour. Really, it is the onset of puberty that triggers quite a lot of that structural change.

It is really not until 25 years of age that we are now accepting that the brain is more fully mature. That is the more advanced frontal parts of the brain that are much more instrumental in higher executive functions, problem solving and integrating information like risk, future outcomes et cetera, and that is the last part of the brain

to mature.

THE CHAIR: Thank you.

MR BRADDOCK: In terms of the ability to assess doli incapax, do you have any medical view on how that can actually be assessed dispassionately and accurately without potentially influencing the outcome of that? Do you have a view on that?

Dr Small: The RACP does not address the assessment of doli incapax. But, if you are happy for me to make some general statements as a developmental paediatrician, I am happy to make a few comments.

MR BRADDOCK: Yes.

Dr Small: On an individual basis, it would be about cognitive assessment and behavioural assessment that builds on information from other sources as well as assessing the child themselves. We know that brain imagery can help us understand brain development, but it is not able to translate into understanding the individual child's capacities. Things like cognitive assessment and executive function assessment may help make some of that determination. But the RACP itself does not have a position on that assessment.

MR BRADDOCK: I would assume there is quite a lot of expertise required in order to accurately assess that.

Dr Small: Yes, in general assessment of cognition, that is correct. I am speaking about general assessment of cognition in executive function. That can provide some guide. Yes, it does take a lot of expertise to assess that.

MR BRADDOCK: Would that be like a child psychologist, as a previous submitter said?

Dr Small: Child psychologist and paediatricians—yes, that sort of expertise.

MR BRADDOCK: Thank you.

THE CHAIR: I would just put in an apology from Dr Paterson, the deputy chair. She may be joining us during this session from via Webex.

Do you have a view on the carve-outs of certain serious offences where, for example, a 13-year-old commits murder, they are deemed to be 12 years old and hence not criminally liable? That is basically the proposal in raising the age to 14.

Dr Small: As I say, generally, our position is on the health issues that are very relevant. Our position does support that there are no carve-outs.

THE CHAIR: Thank you.

MR BRADDOCK: In terms of the wraparound services to help 10- to 13-year-olds be able to undergo therapy orders and treatments, what do you expect to see in order

to be able to support their healthy development?

Dr Small: We see that a range of services working collaboratively are required, both for assessment and for ongoing care. These should be community based. They should be culturally safe. They should be developmentally appropriate and engage, as far as possible, in the community where the child lives and goes to school. Health services need to work with education services and community support services as well as the allied health services.

We are really keen to see some of those principles in place, as well as reporting on the outcomes, both for the individual children and collectively to know that we are achieving the right outcomes for children.

MR BRADDOCK: Coming to reporting, a previous submitter, Legal Aid, mentioned they were concerned about the provision of the records related to that therapeutic care potentially going into the court system. Do you have a view on that issue?

Dr Small: We would generally support community-based care. Any release of the reports to the court system would need to be carefully managed by the existing processes.

MR BRADDOCK: What is your view on those secure therapy orders, where potentially a person's liberty may be deprived at a place where they do receive therapy?

Dr Small: The RACP does not actually address the secure therapeutic places in our submission. We talk more generally about the types of services that are needed.

But I would draw your attention to a previous position statement from the RACP, which is about the health and wellbeing of incarcerated adolescents. It is not over 10 years old. Some of the principles would remain, and those principles would be the same approaches that we would want to see in the community: child-centred care; that the adolescent has a role in their own services; that there is integration with education; holistic healthcare services; and continuity of services for those adolescents as well.

MR BRADDOCK: Thank you.

THE CHAIR: Again, we are referring to your submission of August 2021, which was to do with the government consultation on this. You recommend on page 4 some principles to be included in an alternative model to a youth justice system. Have you observed where this has happening really well? I am talking, not just nationally but also internationally.

Dr Small: There are some examples. Next week, we are holding a Child Health Summit in Canberra to explore and look at some models of care. We think, in some ways, the models of care that children who are in the care and protection system require are similar to the models of care for older children who may be at risk of coming in contact with the juvenile justice system. So we are looking at that quite extensively.

There are some models locally and internationally. Some reflect the importance of Indigenous-led health services, because we know there is a very higher proportion of children who are Indigenous in detention. But, of course, it must be developmentally appropriate and diagnose intellectual disability. So there are some models, and we will be looking at those next week here in Canberra.

THE CHAIR: Are there any functioning models that seem to be working, nationally or internationally?

Dr Small: There are some functional models, but they are certainly not systemically implemented. We would also, of course, call for all the governments to ensure that these are more widely available.

In general within the health system, there is limited casework support where there is family vulnerabilities. But, again, there are some isolated models where it is working well where the children are vulnerable and the parents might have mental health problems, drug and alcohol use or some other health issues that put the children at risk. So there are some isolated models in the country.

THE CHAIR: Do you mind saying where they might be?

Dr Small: That one is actually in the Sydney Local Health District, Healthy Homes and Neighbourhoods. It is one model of providing health-based casework to support children in vulnerable families.

But what is important, particularly for children who are in out-of-home care or in contact with the justice system, is that there is an intensity and that the model of care is sustained over time. That takes quite a lot of effort and casework support to ensure that engagement is maintained.

THE CHAIR: I guess following on from my theme in the last question, one of the criticisms we hear is that on occasions there is a very siloed approach—for example, drug support not necessarily talking very well to mental health support. Of course, then there is the whole physical trauma side of things and then family services support. What do you think are some mechanisms to get rid of those silos and have an encompassing health approach to someone in need?

Dr Small: I just would like to reiterate your comments that in fact that is a widespread experience that we have, which is unfortunate, not just for these children but also for other people with complex and chronic health problems.

We would firstly say that it is a whole-of-government responsibility—so both a national and a state based responsibility—because there are differing responsibilities for different parts of the health system. We see it is crucial to bring governments together to own the issues and the needs of these children.

We know that these are some of the most disadvantaged children, because of a range of factors within their family and their experience. We also know that addressing inequities benefits the whole of the community and costs our community lots of money.

The RACP is advocating for new models of care that are integrated not only within health but also with other services outside health, such as education. Schools see children in many cases almost more than their families do. So schools are a vital part of the service system for young children with disabilities and those who are risking coming into contact with the justice system as well.

We think that there needs to be new funding models to really support this sort of sustained model that engages primary health care, specialist health care, allied health care and across the range of different domains that you highlighted earlier. So it really is a systems response to ensure that is embedded.

We see that children in out-of-home care are highly represented within the justice system. So we are also encouraging early preventative health care—picking up those children to try and prevent them from going down the path that we see often happens—using trauma informed family-based care, community-based care and, particularly for Indigenous children, one that is led by and supported by Indigenous communities and health services.

THE CHAIR: Is there anything you would like to say in closing?

Dr Small: We would like to congratulate the ACT government for looking at raising the age of criminal responsibility. But we do still contend that 12 years is too young. We are also pleased that you are looking at a health-based solution that is not isolated in health but collaborative with other agencies.

Many of these children have missed out on the opportunity to have their disability diagnosed, to have their health needs diagnosed and to attend school. So we see that these children are almost triply disadvantaged and deserve the support to have a different future—to reset their future.

THE CHAIR: On behalf of the committee, I would like to thank you for your attendance and wish you all the best with your seminar next week.

Dr Small: Thank you very much. We have invited the ACT government.

THE CHAIR: Excellent.

The committee suspended from 2.34 pm to 2.55 pm.

AXLEBY, MS CHERYL, Co-Chair, Change the Record
MUNN, MS MAGGIE, Acting Executive Officer, Change the Record

THE CHAIR: Welcome back to the public hearing for the committee's inquiry into the Justice (Age of Criminal Responsibility)Legislation Amendment Bill 2023. 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 witnesses used these words: "I will take that question on notice." I welcome witnesses from Change the Record. Do you have anything to add about the capacity in which you each appear?

Ms Axleby: Thank you. I am a Narungga woman from South Australia.

Ms Munn: I am a Gunggari person from south-west Queensland.

THE CHAIR: Thank you. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you each understand the implications of the statement and that you agree to comply with it.

Ms Axleby: Yes.

Ms Munn: Yes, I do.

THE CHAIR: Thank you. We are not taking opening statements. I have an apology from our committee co-chair, who is home, unwell, with some unwell children. She may be able to join us on Webex. It will just be Mr Braddock and me otherwise.

Thank you for your submission and for your interest in this piece of legislation and this committee's inquiry. You certainly are amongst many who are concerned about carving out certain offences so that someone could be criminally responsible when aged between 12 and 14. Can you explain your concerns about that? If the bill passes in its current form, with those carve-outs included, what practical implications do you see?

Ms Munn: I can take that. To address the first part of your question, Change the Record has led the campaign nationally to raise the age for a number of years. We have a series of underlying principles as part of our campaign. One of those is that the age must be raised to 14 without exception or carve-outs. The reason for that, as some have probably explained throughout the process of the hearing, is that a neurotypical child, with no impairment or disability, under the age of 14 simply lacks the capacity to understand the gravity, the seriousness and the consequence in terms of the long-lasting effect of their actions. That is not to say that they do not understand right from wrong, but their capacity to entertain long-term consequences and the impact is just not there when they are under the age of 14—

MR BRADDOCK: Sorry; can I just jump in? That is irrelevant of the severity of the offence?

Ms Munn: Yes.

MR BRADDOCK: Thank you.

Ms Munn: The reason that we have settled on no carve-outs is that often we can see, when there are carve-outs or exceptions in that process, that it might lead to, in a number of instances, the upgrading of charges. You might see in particular circumstances that, if there is a carve-out or an exception for theft or stealing, a simple offence or a minor offence in comparison to that could have the potential to be upgraded, which would see a greater number of children come into contact with the system for a higher charged offence.

Additionally, it is our view that all children under the age of 14, regardless of their ability or neurodivergent, neurotypical status, lack that capacity. That is supported by medical evidence and psychological evidence as well. Having a blanket rule on no carve-outs or exceptions gives us the opportunity, and gives government the opportunity, to really address the issues at hand.

THE CHAIR: Thank you.

Ms Axleby: Can I add to that?

THE CHAIR: Yes.

Ms Axleby: I come from a background of having worked in the justice area for probably 15 to 20 years. The context of our call for not having any carve-outs is that a lot of children have been already exposed to trauma themselves and failed to receive the relevant therapeutic supports and responses that they should be receiving within the system.

The other thing that is really important to point out, in the context, is that the reason there is a strong push for also raising the age of criminal responsibility is the issues for Aboriginal and Torres Strait Islander children, in particular, with racial profiling by police. That is a really critical point, besides the medical evidence, that I would like to really highlight today, particularly when we have, on average, 60 to 70 per cent of Aboriginal and Torres Strait Islander children between the ages of 10 to 14 making up kids in detention, in comparison to non-Aboriginal children. So there is also a systemic issue in that context if we continue to have carve-outs. To be quite frank, I am not sure whether there actually have been any serious offences committed by young children in this jurisdiction.

MR BRADDOCK: Okay.

Ms Munn: And there was a second part to your question about the practical implications—

THE CHAIR: Yes: if the bill passes with these carve-outs, what practical implications are there and which of those would concern you?

Ms Munn: Yes. Thank you for restating that. As I mentioned, there is the possibility for the upgrading of charges, which is a very real risk that could occur. Additionally, if the bill were to pass in its current form, the issues that arise from those four offences, from memory, are the carve-outs. A lot of the issues that we are seeing for children who are coming into contact with the legal system are behavioural in nature, not necessarily criminal in nature. I worry that if there are carve-outs for the four offences listed within the bill then that reduces the opportunity for those children to gain access to the services and support mechanisms that will help them navigate their behaviour and address the root causes of what it is that they are doing.

Ms Axleby: My response to that is: it really goes against the intent of raising the age of minimal criminal responsibility, in the context of having diversions and therapeutic responses to keep children out of the system. The concern is—and there is a lot of evidence that demonstrates it—that children who come into contact with the criminal justice system at such a young age are more likely to be entrenched longer within the justice system as well.

THE CHAIR: Thank you.

MR BRADDOCK: In your submission you say the doli incapax presumption is ineffective in practice and fails to protect the rights of the children. Can you please expand on that statement and the basis for that statement, please?

Ms Munn: Absolutely. I am happy to take that one. Doli incapax is great in theory because it is intended to provide support for children under the age of 14 who are engaging in the system. Its intention is that there is no capacity to understand and to navigate that criminal responsibility element of what it is that these kids are doing.

The reason it is ineffective is that it is very inconsistently applied. The situation for legal practitioners on the ground is that their bills are full when they are representing young offenders, for want of a better word, and so they are spending very, very little time with kids—perhaps 20 minutes as a duty solicitor, on a Monday morning—navigating the pleas and their charges. There are simply not enough resources or capacity for duty lawyers or Legal Aid or ATSILS to be able to entertain doli incapax and to be able to apply it.

It is also very, very rarely exercised in rural areas and more remote communities outside of the big city, because there is not a great deal of understanding from children and their representatives about how to navigate the logistics of entering the protection of doli incapax. It requires a pretty intensive number of assessments to be able to prove that you are not capable of understanding that. There is simply, in reality, not enough time, capacity or resources for a lot of Legal Aid, ATSILS or duty lawyers to be able to entertain that.

MR BRADDOCK: We heard previously from the Royal Australasian College of Physicians that, basically, you require expertise and skills in order to apply this test accurately.

Ms Munn: Yes.

MR BRADDOCK: Is that, in your experience, done?

Ms Axleby: It is not done. From the area that I have been involved in—and, like I said, I have been in that area for quite some time—and as the previous CEO of the Aboriginal Legal Service in SA, I know from feedback from solicitors the context of it not being applied. The onus usually is on police to prove doli incapax. In the context of the tools that are utilised, we need to ensure that we have culturally appropriate tools to assess that in comparison for Aboriginal and Torres Strait Islander children. There is a lot of evidence that mainstream tools, in actual fact, are quite deficient and bring our kids further into the deficit context of assessments.

THE CHAIR: I am sure you have heard this question many times before, but how do we most effectively keep people away from the criminal justice system—other words, so that they do not harm themselves or others or damage property? I wonder whether you have any insight into the ACT situation as well? I would appreciate your thoughts.

Ms Axleby: I think it really is about investment in early intervention and prevention, but also looking at the disengagement of young children, particularly at the education level. That is normally the first point of contact where children are noticed to be disengaging. We know there is a lot of evidence, particularly for Aboriginal and Torres Strait Islander children, of the high rates of disengagement from school. Kids with behavioural issues are excluded from the school environment, and there is no other option for children in terms of support services. There is quite a big gap in the context of support services for young people who may need also to access therapeutic support services. The types of services that are available or accessible have quite lengthy waiting lists. Also, there is a lack of ability for children to be assessed and to actually to receive those supports.

From my experience, to date—and I believe this does apply to the ACT—for quite a number of years now the ACT government have been reviewing and looking into what types of services and supports could be provided for young people. We would encourage them to continue to invest and explore that further, rather than having a punitive response to children, who are further traumatised through the system. There is lots of evidence. For Aboriginal and Torres Strait Islander children, we are seeing this as a really great opportunity to break the intergenerational cycle of incarceration.

MR BRADDOCK: In your submission you raise your concerns about confinement in intensive therapy places. I want to explore your concerns about those places. If we were to adopt your recommendation that they cannot be confined to them, what would be your proposed alternative to that?

Ms Munn: That is a great question. It was concerning for us. I am a Queenslander, and we are seeing in Queensland similar practices of confinement, but they are being called "segregation" or "separation". This practice exists in one way or another in every youth detention centre across the country. It is often applied where there are concerns about children self-harming or who are, perhaps, suicidal. It is our view, informed and supported by mental health practitioners as well, that when a child is confined in that state that is the most harmful practice for them.

When we are looking at what is contained within the bill with respect to confinement, it is at times somewhat unclear what form that confinement would take. One of our

key concerns is that if it is forcible confinement it is not different from placing a child in solitary or in a detention facility. We do not want to see that happen. If there is a need to separate a child and address any behavioural, mental health or complex trauma needs then that needs to be done in a way that is safe culturally, as well as emotionally, to make sure that that child is not on their own to deal with what is going on, because when you are left alone when you are feeling pretty average, things escalate quite quickly.

In terms of alternatives, there is a lengthy shopping list that we could look at to support children in those particular instances. Our key recommendation on alternatives to confinement is making sure that, at every step of the way, a child is supported. Whether they are hurting themselves, a risk to others or exhibiting antisocial behaviour, there is always a way to address that with support and care. Through a trauma informed, therapeutic informed, culturally safe lens, there are always answers, prior to separating a child from contact with others.

Ms Axleby: It is not really clear what form these places will take place. Are we, realistically, just replacing them with a label, rather than actually having a therapeutic support that should be informed, in my view, by medical professionals, as well as Aboriginal and Torres Strait Islander communities? We have Aboriginal health services who provide quite a lot of culturally safe services within our communities. There could be opportunities for greater investments to have a focus on therapeutic responses, not just for children but also for the family.

What I have experienced and seen throughout my career—and I have also worked in child protection—is that we deal with the child and the family in silos, instead of having the therapeutic wraparound support. There is an intergenerational impact of the stolen generations. When we have looked at the trajectory, parents have gone through the current system that we have in regard to incarceration. What we see is that—and evidence demonstrates this—people come out more traumatised than they would if they were receiving any therapeutic-type response and supports.

The other aspect to this is the need for voluntary and non-coercive treatment support services. As a parent myself, I would want to be able to tap into the available resources in community to help my child, rather than them being taken in. However well-intentioned it may be, it will always be a punitive response for that child who is experiencing trauma. Is that the sort of society we want to be? This is where I am really passionate about raising the age: the criminalised, punitive response that we currently provide does not get to the core of the issues and the reason people are actually in the system. If we can build systems in the community then we will see fewer people coming into that system in the future.

Ms Munn: I was reminded of the Inspector of Custodial Services submission earlier around OPCAT compliance. I think it is noted within our submission that if confinement is to exist within the bill it should, at the very least, be compliant with the Optional Protocol to the Convention Against Torture.

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

Short suspension.

WATCHIRS, DR HELEN, President and Human Rights Commissioner, ACT Human Rights Commission
GRIFFITHS-COOK, MS JODIE, Public Advocate and Children and Young People Commissioner, ACT Human Rights Commission
YATES, MS HEIDI, Victims of Crime Commissioner, ACT Human Rights Commission

THE CHAIR: We now welcome witnesses from the ACT Human Rights Commission. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Could you each confirm that you understand the implications of the privilege statement and that you agree to comply with it.

Dr Watchirs: Yes; I do.

Ms Griffiths-Cook: Yes; I do.

Ms Yates: Yes.

THE CHAIR: Thank you. We are not taking opening statements. I thank you for your submission. We will get straight to questions. I put in an apology for Dr Paterson for the rest of the afternoon. She is not well and she has children unwell at home as well. There are four offences that are going to be exempted from protecting a 13-year-old, for example, from being criminally liable. Your view is stated. Today, you have heard from others, I am sure, that it seems there is general opposition to the carve-outs. The majority view is to oppose them. Could you give your reasons, in brief, for opposing the carve-outs? What are the implications if these were actually passed and made part of the legislation?

Dr Watchirs: There are a number of reasons for why we oppose the exceptions. The first one is that it is incompatible with the Human Rights Act—that is, the rights of the child and the right to non-discrimination and equality under sections 11 and 8. We think it is a breach of the international standards of the International Covenant on Civil and Political Rights, on which the Human Rights Act is based. The Human Rights Committee made a general comment in 2019—comment No. 24—saying that 14 is the median age internationally, and that is the minimum age that they recommend.

The commission has been of this view since 2005, when I did the Quamby audit. We recommended it then, and the government rejected it because the age had been eight and it had been changed to 10 in 2000. It is hard to now imagine that eight was the age, so it has been a long time coming. There is also the medical evidence about development of the brain and decision-making capacity, which earlier witnesses have talked about and is in the AMA submission.

Also, it is unlikely to deter future offending, and therefore it will not protect the community, because the younger the person comes into detention the more likely they are to be a recidivist, and, of course, there is the disproportionate impact on

Aboriginal and Torres Strait Islander young people in compounding their disadvantage. The national average is 14 times, and in the ACT it is slightly lower at 12½ times, but that is still very significant, and we would not want that to be the picture in the ACT.

On a practical level, we do not understand what would happen if there was a series of behaviour and some were criminally liable and some were not. It would not make sense to the police, the prosecutors or even the court as to how to distinguish between those behaviours. I will open it to my colleagues.

Ms Griffiths-Cook: I think you have covered most of that. Thanks, Helen.

THE CHAIR: What is your understanding of the government's reasoning, or the Attorney General's reasoning, in having these carve-outs?

Dr Watchirs: They have quoted the right to life of people in the community and security, but, in our view, there is an alternative system proposed and it is quite comprehensive. We think that provides that security for the community. We do not think the bill is compatible by having exceptions.

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

MR BRADDOCK: I would like to understand exactly why it is incompatible with the Human Rights Act. Can someone very simply take me through that?

THE CHAIR: It sounds like a supplementary.

MR BRADDOCK: I have taken a supplementary.

Dr Watchirs: It is because those older children are not having the benefit of the law reform in being held to a different level of accountability and responsibility when the medical evidence is that 14 is the general age, and that was the human rights recommendation of the UN. The DPP has talked about a margin of appreciation. We disagree with that. That is a principle used in Europe by the regional system, in the European Court of Human Rights. It is not something that is used in the UN system. We do not even have a regional system in the Asia-Pacific. We are the only region in the world without one. We do not find the argument of the DPP persuasive.

MR BRADDOCK: Secondly, does that mean that our existing laws are also incompatible?

Dr Watchirs: Yes. We have said that since 2005 but definitively since we had the 2019 general comment, and two reviews have repeated that. In 2005, we said it should be the age of 12, because that was the UN standard, but, since that UN recommendation, we have agreed with the age of 14, and that is the median internationally, in terms of practice.

MR BRADDOCK: Further, Change the Record raised concern about the risk of upgrading charging to potentially line up with those four exceptions. Is that a risk you also perceive should those exceptions remain in place?

Dr Watchirs: It is certainly a concern, and allegations of profiling by police have been made. We do not have jurisdiction over police under the Anti-Discrimination Act, but they are a public authority under the Human Rights Act.

MR BRADDOCK: That is enough for the time being. I will gather my breath and keep going.

THE CHAIR: In terms of resourcing a support for people who are going to be under these therapeutic orders, do you see the case as just more of what we currently have or do you see some sort of new model or some quality type of support that is not available at the moment?

Ms Griffiths-Cook: We definitely need more than we currently have. This reform is not just about keeping kids out of the system; it is actually about changing their lives, changing their trajectories and making things different for them. Certainly, in some of my experiences, both as a psychologist by background and in terms of my practice experience across the board, many of the behaviours that are evidenced by children and young people, where they cause harm to themselves or others, have come about as a direct result of the interactions they have had with others and/or are reinforced by that. Behaviours are generally taught through the actions of others or the environmental limitations that exist around them. That is where we have to start. It is around recognising and seeing those behaviours at the earliest possible stage or even before they become harmful behaviours to the point of concern, and at that point starting the process of intervention.

I absolutely support the panel concept that exists within the bill and wholeheartedly believe it can be a strong mechanism for change in children—the ability to bring children to that panel at the earliest possible opportunity and utilise the expertise of that panel to identify additional assessments that might be required, to undertake those assessments should they be required, and then to look at what kinds of supports are needed in response to any identified concerns that are there. As many have no doubt said, a significant proportion of this population have either diagnosed or undiagnosed mental health issues, developmental disabilities or neurodivergence. Putting kids in prison is not the answer to that, but neither is doing nothing.

Dr Watchirs: I understand that the current system is expensive. It is just under $5,000 a day per child. I do not think the new system will be hugely more expensive than that.

THE CHAIR: Mr Donohue made the point earlier that comparing the cost of therapeutic restorative justice compared with maintaining incarceration can always be calculated and compared.

Ms Griffiths-Cook: I have heard the story from Kate Alexander, who is the senior practitioner in New South Wales. In one particular example of a young person, he did not want to engage and was not willing to talk to her, so she just rocked up at his house every day and sat at his kitchen table, working on her laptop, until one day he said, "You are not going to go away until I start talking to you, are you?" and she said, "No, and neither am I giving up on you." I think it is those kinds of practice examples we need to embed.

THE CHAIR: Thank you. Mr Braddock.

MR BRADDOCK: The ACT Inspector of Correctional Services was here earlier talking about the intensive therapy places of detention and the importance that comes underneath OPCAT. The question I have is: what is the role for the Children's Commissioner in such places, and is there some consideration of that that I should be aware of?

Ms Griffiths-Cook: I would probably pick that one up more under my Public Advocate hat than my Children and Young People Commissioner's hat. Certainly, there are a number of points within the legislation that point to oversight by the Public Advocate within the new constructs that would come about with this reform. Certainly, in terms of those places, I would anticipate that my team would have a very active role if such a place or places were designated.

The way that I see the bill constructed is that it does not necessarily have to be a single place that becomes a purpose-built environment. That may or may not be warranted. Certainly, some of the early feedback that we provided on early iterations of the bill allowed for the possibility that confinement could actually occur within a family home, and I would be strongly supportive of that. Taking a child out of the environment in which the behaviours are occurring means you may or may not get an accurate representation and assessment of the behaviours and what is contributing to and reinforcing those behaviours in practice. Certainly from my perspective, if that did occur, I would anticipate that my staff and I would have a role in terms of making sure we have eyes on kids within those kinds of locations. I would very strongly advocate, in any of these matters, were they brought to our attention, that, first and foremost, kids should actually be supported in situ, with supports around them and their family.

Dr Watchirs: In our submission, we talk about the need for minimum standards of intensive therapy places. We have them for AMC and Bimberi. If we have designated places, then they should be regulated in the primary act—the bill we are looking at—not in the regulations. We need to be transparent about it and ensure that is it OPCAT compliant.

MR BRADDOCK: Would that also apply in the offender's home, if they were kept in the home?

Dr Watchirs: No. I think it would be if it were residential.

MR BRADDOCK: Thank you. I was just clarifying.

THE CHAIR: We must ask the Victims of Crime Commissioner a question. I note that on page 7, paragraph 30, you welcome an amendment to confirm that those affected by a child's harmful behaviour get victim support. When to say "confirm", does the bill bring in any changes for victims of a child's harmful behaviour or is there something extra being provided in this bill? If it is to confirm, does the legislation need to be changed at all, if it is already there?

Ms Yates: These are very sensitive and important matters from the perspective of people harmed by crime in the community. As a jurisdiction that is really leading on this issue nationally, I have welcomed the significant weight that has been given to considering victim rights and interests in the context of these amendments. The amendments that are coming with the bill, including to the Victims of Crime Act, are necessary just to make abundantly clear that people harmed by the conduct of young people between the ages of 10 and 12, and then 10 to 14, will remain eligible for advocacy, support and assistance under the Victims of Crime Act and under other acts like the Victims of Crime (Financial Assistance) Act.

We recommend in that submission a number of relatively minor improvements to the current proposed amendments. I can speak to those if that is helpful. It is really about making sure that it is abundantly clear on the face of the legislation that people who are harmed by young people between the ages of 10 and 14 will remain entitled to that crucial support throughout the administration of justice, which will look quite different in some of the matters affected by the amendments. For example, as you would be aware, victims can generally give a victim impact statement and have the option of doing so at sentence. I am pleased to see that, under the amendments, people harmed by a child's behaviour will still get to give what is being called a statement of harm regarding the impacts of that behaviour, and the therapeutic panel has to consider that statement when deciding how to respond to the child.

Similarly, the option for someone harmed by the behaviour of a young person to request that the matter be referred to restorative justice will remain. Similarly, at present, under the victims registers, if someone is being sentenced, the person affected by that person's criminal conduct is able to get information about what is happening—where are they; are they in community or are they in custody; and how is the sentence being served? We are looking at similar provisions to make sure that someone harmed by a young person's conduct that will no longer be criminal will still have information that might give them peace of mind about their own safety, such as whether they are going to run into that young person at the local shops or what is going on. It is really important that those rights and interests are protected under the new regime.

THE CHAIR: Is that simply because it is not a crime now and, hence, you need to acknowledge the victim of an action that is not necessarily going to be called a crime or leads to a criminal offence? Is that simply the reason for the amendments to the victims of crime legislation?

Ms Yates: Yes; that is a good summary—to make sure that people do not lose any entitlements or rights to support that they would currently have, but also to make sure that, in the context of the new framework for engagement with those young people—which, from what the evidence tells us, actually has far greater likelihood of reducing recidivism and, therefore, increasing community safety overall—the victim's voice remains heard and their right to participation, consultation and information is protected in that new framework.

Ms Griffiths-Cook: Those opportunities that exist also present opportunities for important learnings for children who might be using these behaviours, and that is part of what we are trying to shift and change. I have certainly seen in other jurisdictions

that those restorative justice type processes, for example, where a child or a young person for the first time actually recognises and realises the impact that their behaviours have had on other people, can make a huge difference to the chances of them offending again.

MR BRADDOCK: That was evidence we received earlier today—that the access to restorative justice will be more timely and, hence, more affective. Is that something you would anticipate as result of this bill?

Ms Griffiths-Cook: I would certainly hope to see that would be the outcome—yes—again, at the earliest stage at which we can intervene, whether that is an early concern stage or if there has actually been a behaviour that has resulted in harm, to be able to get onto that quickly and provide the opportunity for a child to understand the consequences within a supportive environment, but, importantly, to then have supports behind that. It is not just at a point in time, saying "You have heard this person say that this is the impact on them," but then what do we do to help that child on a pathway that is actually going to take them in a different direction?

Ms Yates: We know that having that option of restorative justice is really important for some victims. It is not "the" answer. Our office certainly has worked with families who have been grievously harmed by the actions of a young person between the age of 10 and 14. It is not always the case that a person harmed will want to participate in a restorative justice process, but it is really important that it is there for those who feel that would aid their recovery or want to engage with that young person to support their understanding and, perhaps, also their rehabilitation.

Ms Griffiths-Cook: Having the option to have a victim impact statement, if the person themselves does not feel that the restorative process is one they can engage with, also enables the panel to utilise that in a supportive therapeutic way to, again, take that child on a path of learning and understanding.

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

MR BRADDOCK: I have just delivered one. I have another one. In terms of the therapeutic support panel, from the HRC perspective, what would you be looking for from that panel in order to set it up for success?

Ms Griffiths-Cook: It needs to be able to be set up relatively quickly. That is the challenge: you do not want it to be something that is just running once every six weeks, once a quarter or something like that. When a child comes into a space where there are behaviours that are either at risk of harm to others or causing harm to others, we need to be able to stand that panel up fairly quickly. It needs to have the right people around, the right expertise. From my reading of the bill, it provides for a range of different people, not all of whom who will necessarily be required around the table for every child that comes before the panel. For early identification of what might be the needs, the panel needs to have those people around the table, and then, if additional needs are identified, it needs to be able to bring in the expertise quickly to enable the provision of support that will hopefully see a change in the young person's behaviour.

MR BRADDOCK: In paragraph 34, you mention that young people need to be transitioned to alternative supports for a minimum of one hour post police intervention. What is the importance of that one hour? Why do you need that?

Ms Griffiths-Cook: It is always a risk but particularly after hours. In standard business hours, there is a far greater range of options in terms of where you can potentially take a child or a young person when there might have been some form of police intervention. After hours, that becomes intrinsically important. You do not want to have a kid sitting around in Maccas for three hours with a police officer trying to fill the time when that is actually an important time when they could have support, with family ideally, but, if that is not an option, in a supportive environment where, again, you can start that process, understanding that in many of those instances the children themselves will have experienced a level of trauma, even if it is their own behaviour that has been the issue at hand. There needs to be the ability to quickly get on top of that and start to assist that child to process that and understand what has occurred. Again, we are talking about young kids. The behaviour and its result may have come out of something where the child was already escalated. I can think about many young kids. I am not suggesting this group are necessarily at the tantrum throwing age, but, when you are already escalated, it is very hard to bring yourself down without support from someone else. That is where you need the right people around a child to be able to do that.

Ms Yates: That speaks to the broader point about the fact that young people who come into contact with the criminal justice process at this age are disproportionately likely to have themselves experienced victimisation. Whether that is exposure to family violence or child sexual assault, their experience of victimisation and the trauma associated with that can lead to pathways of offending. Again, the faster we can actually get support to that young person following an incident the better understanding we will have of what those drivers were.

Ms Griffiths-Cook: I quite often use the term "maladaptive resilience". Many of these kids have had to fight their whole lives, every single day, just to survive. The behaviours that we see are, from a strength perspective, resilience. Unfortunately, they are maladaptive in that form because of what that child has experienced and come up against throughout their life.

THE CHAIR: You are probably aware that ACT Policing do not support going to the age of 14, and the Police Association—this was earlier today and in their submission—support the idea of taking it to the age of 12 and say that doing a review of the impact is important before considering going to 14. So police say it goes too far and the Police Association say it goes too fast. Do you have thoughts on taking the age to 12, doing a review of the impact of that, and then perhaps seeing what the options are for the age of 14?

Dr Watchirs: The current review is in five years and I think that is too long. Two or three years would be optimal. It is certainly what we did with the Human Rights Act. We did it quickly because things are changing on a daily basis. For those four exceptions, there is a small number of children, but raising the minimum age of all offences will have a broader impact.

Ms Griffiths-Cook: I question whether there is even a small number of children for the four offences. I have not been in the ACT for as long as my esteemed colleagues, but I have certainly seen none in my seven years in the jurisdiction to date. I would agree with Dr Watchirs: having a shorter review period also enables us to look at whether we have the right structures and systems in place or the right services at the back end supporting and making changes for these children and young people.

THE CHAIR: You are obviously supporting a shorter review period but not a staged implementation, or to implement it to the age of 12, review it, and then decide the next step.

Ms Griffiths-Cook: I am supportive of the current approach which embeds the increase first to the age of 12 and then to 14 in the legislation as it moves forward, primarily because it allows time to make sure that we are adequately equipping the sector and resourcing that, both in terms of perhaps propping up and extending the capability and capacity of existing services and in terms of providing the opportunity, as we put in our submission, to introduce some of the evidence based programs that I think are vitally needed to better respond to kids who are evidencing these behaviours.

Dr Watchirs: In the Northern Territory, we do not favour that—a 12-year-old immediately but nothing for the future. Having the age of 14 in black and white in the bill is really good while we get that system ready—making that commitment up front.

ME BRADDOCK: The Inspector of Correctional Services also recommended a minimum age for detention of 16. I would be interested in your perspective on that recommendation.

Ms Griffiths-Cook: That is consistent with a number of overseas jurisdictions, and also it aligns well with the understanding of developmental capacity. I am not sure that it is something that I would necessarily anticipate the ACT government would consider at this stage.

Dr Watchirs: Tasmania has legislation, but it is for the age of 14, not 16. That is my understanding.

Ms Griffiths-Cook: Yes.

THE CHAIR: Would you each like an opportunity for a closing statement of a minute or so?

Ms Griffiths-Cook: I would like to say that a lot of this conversation dwells on the negative sides of behaviour, and understandably so, given what we are talking about, but I also want to recognise that, regardless, or perhaps because of the backgrounds that many of these children come from, they have incredible resilience and incredible strength. That is what this is about. It is honestly about getting to the heart of treating children and young people as children, recognising the opportunities that exist for them growing into teenagers and adulthood and doing the best job that we can to actually change their pathways forward.

THE CHAIR: Thank you. On behalf of the committee, I would like to thank you for

your attendance today. I do not believe that any questions were taken on notice. Thank you again for your contribution.

Short suspension.

STEPHEN-SMITH, MS RACHEL, Minister for Aboriginal and Torres Strait Islander Affairs, Minister for Families and Community Services and Minister for Health
DAVIDSON, MS EMMA, Assistant Minister for Families and Community Services, Minister for Disability, Minister for Justice Health, Minister for Mental Health, Minister for Veterans and Seniors
RULE, MS CATHERINE, Director-General, Community Services Directorate
RATTENBURY, MR SHANE, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction
McNEILL, MS JENNIFER, Deputy Director-General, Justice, Justice and Community Safety Directorate

THE CHAIR: On behalf of the committee, I welcome Ms Emma Davidson, Assistant Minister for Families and Community Services, Ms Rachel Stephen-Smith, Minister for Families and Community Services, Mr Shane Rattenbury, Attorney-General, and officials. Thank you for being here.

I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading information or evidence will be treated as a serious matter and may be considered contempt of the Assembly. Could you each please indicate that you understand the implications of the privilege statement and that you agree to comply with it?

Ms McNeill: Agree.

Ms Rule: Agree.

Ms Stephen-Smith: Yes.

Ms Davidson: Yes.

Mr Rattenbury: Yes.

THE CHAIR: Thank you very much. I pass on apologies from Dr Paterson, deputy chair of this committee. She is home unwell and with some unwell children as well, I think.

We are not taking opening statements. I might lead off with probably an unsurprising question to do with the carve-outs. The vast majority of those who have appeared today do not support the carve-outs, and I would say the vast majority of those who submitted do not support the carve-outs. What is your justification for not providing that protection to a 13-year-old who commits one of those four serious offences?

Mr Rattenbury: The overall purpose of the bill is to reduce the contact of 10- to 13-year-olds with the criminal justice system. That is the abiding purpose of the reform. Overall, this is a ground-breaking reform in Australia, where the government has taken a strong justice reinvestment approach to seeking to ensure that young people who do find themselves involved in harmful conduct have a therapeutic response, not a criminal justice response. That applies to the vast majority of cases.

As you note, there are four offences, which are identified in schedule 1, that the government has created as exceptions. This is a heavily contested part of the legislation. It is, I think, a known fact that the Greens ministers did not support this during the cabinet process but, nonetheless, the cabinet has resolved to proceed on this basis.

The government has determined that there are those four offences that require intention and result serious harm as being the threshold that is considered to strike a principle balanced approach. This will be reviewed after a period of time, which is specified in the legislation. I guess the hope of many people is that, once we reach that review point, it may be possible to remove the exceptions.

This is a very large reform—and my colleagues will talk more, I am sure, about the service system response—and part of this is taking a cautious approach to ensure that the service system is strong enough to, in the event of these very serious matters, deal with the young people involved in those four categories.

Ms Stephen-Smith: If I can just add to that. Obviously, Minister Rattenbury has indicated that Greens members did not support this particular element of the reform, which clearly indicates that Labor members did support this element of the reform—and I will just go through some of thinking around that.

Chair, just by way of background, I want to put it on the record that I come to this conversation having held the child protection and related portfolios for more than 6½ years and having been minister with the youth justice portfolio for four years in the last term.

So I have seen the practical side of the children and young people that we are talking about and how they are managed and supported through the system, including how Bimberi Youth Justice Centre operates. There have been some very difficult decisions that we have had to make in a real-world sense for young people under the age of 14 who have engaged in some quite seriously harmful behaviours in our community.

So from my perspective, there are a couple of issues here. I think ACTCOSS pointed out in their evidence today that in fact no young person aged between 10 and 13 have committed any of these four offences in the ACT. Their conclusion from that was that, if it did happen, we could deal with it. My conclusion from a practical sense is that, if it did happen, I am not convinced that we could deal with it in a non-criminal way.

I look at, for example, the very tragic event that recently occurred in Belgrade where a 13-year-old murdered a number of their school classmates. They have a minimum age of criminal responsibility of 14. That young person, I understand from media reporting, has been detained in a psychiatric facility. So they have still been detained. They have still been confined. They do not have any access to a criminal process to determine any culpability or any reasons why they might have undertaken that action.

What we would do in such a case in the ACT, I do not know, and I do not believe that we have a service system that could respond. We do not have a psychiatric facility that would be appropriate for confining and detaining a 13-year-old. We could not

establish a bespoke response in a short period of time and, if we did establish a bespoke response in a short period of time, it would effectively mean segregating, detaining and confining a young person.

I note that Change the Record expressed some concerns around the option of confinement under intensive therapeutic orders. That is, I think, one of our key considerations. It is about community expectations and protecting the wider community, where a young person aged 12 or 13 acts with intent in this extremely harmful way. But it is also a matter of the best interests of children and young people in the incredibly unlikely circumstance that one of these events occur.

I do not think at this point in time that we have a service system that could respond appropriately. When I compare the harm that could occur to a young person being confined in Bimberi, which I understand you have now visited Bimberi, which has a school, enables young people to socialise with other young people and where young people are very rarely segregated, I am comparing a service response that would effectively segregate and confine a young person with a service response that enables them to continue their education and to continue socialising with other young people.

Sure, it is not ideal, and in an ideal world we would raise the age to 14 without exceptions because we would have an appropriate service response. But I am not confident that today and in two years time we will have an appropriate service response. But maybe we will be satisfied of that by the time we get to the review. That is why we structured the legislation in the way that we have so that those things can be removed if, on review, we determine that, actually, we are okay and in the context of other states and territories moving as well.

As Minister Rattenbury indicated, we are the first jurisdiction to take this action. We need to do it in a way that maintains community confidence and where we can be confident that the service system can in fact respond in the extraordinarily unlikely event that one of these situations occurs—and it is extraordinarily unlikely that these exceptions will come into play.

THE CHAIR: You mentioned intensive therapy places to be used only where necessary as a last resort. If there is that very unfortunate circumstance where a 13-year-old commits one of those four offences, I must admit, from reading the explanatory statement, I was assuming that was the last resort that would be available to such an individual without necessarily the criminal sanction.

Ms Davidson: I think it is really worth keeping in mind that we are talking about an extraordinarily small number of young people in that age group of 10 to 13 years who end up in contact with the justice system as it is at present.

With the things that we are putting in place as an alternative service response to the justice system, we will hopefully be able to work with young people and their families at a much earlier stage than we have been able to previously to prevent some of those harmful behaviours occurring in the first place.

When we are talking about such a small number of people, it means that you want a service response that has the flexibility to respond to individual circumstances and

needs. Being able to describe what an appropriate place might look like for all of those young people in advance is not necessarily going to be the right answer for everyone.

Having the flexibility to take recommendations from a panel of experts that includes First Nations representation and then talk through what the possibilities are with people who are already working with some of these families in the community sector really gives us the opportunity to address what the needs are for that individual young person and their family, because quite often we are not only talking about what the young person themselves has been engaged in but also what kind of family support they need around them as well.

Ms Stephen-Smith: To go to the specifics of your question, Chair, I think the way that we consider the intensive therapeutic order would almost always be an escalation. Most of these children and young people are known to the system. They will already be being supported in some way, shape or form, and the intensive therapy order as an order of the court is considered to be a last resort escalation point where voluntary engagement has not been possible. But that does enable the time to understand what the bespoke response to that individual young person is.

Confinement would be a very last resort in relation to that, but it might include a requirement to reside in a particular place and to only engage in particular activities, with a lot of therapeutic support wrapped around that young person.

One of the reasons that the therapeutic protection orders that currently exist in the act have not been used is because they required confinement in a therapeutic place, which we considered was not human rights compliant, because it would be confining a young person effectively in segregation, but would also require the establishment of a therapeutic place for that purpose, which would be a very expensive facility to have ready to use in a rare circumstance.

This is a much more flexible model of statutory but non-criminal response. But, as Minister Davidson said, it has to be designed to support that individual young person. We do have, for example, one young person in our system that we have been supporting effectively in an intensive therapy kind of place. That is a very expensive solution to keeping that young person safe and keeping the community safe.

So we already do some of this work. I think it is really important to understand what we are doing in the context of the ACT system, both in relation to what Bimberi is like—it is not Don Dale—and what we already do in the community to try to support young people with extreme therapeutic support needs, which actually have been demonstrated to be successful.

THE CHAIR: Referring back to the Attorney-General's almost opening statement in response to my question, I want to confirm that you said that the Greens ministers opposed the carve-outs?

Mr Rattenbury: Yes.

THE CHAIR: Including Minister Davidson?

Ms Davidson: Yes.

THE CHAIR: For what reasons did you oppose the carve-outs?

Mr Rattenbury: I think many of the reasons have been articulated by the witnesses that you have heard from already. There is extensive and growing medical evidence that young people cannot form criminal intent. If you accept that evidence, then you would take that approach across the board.

Nonetheless, our view is that, overall, this legislation is a really important reform, and we think we are delivering this reform for, frankly, the vast swathe of young people in this age category. As Minister Stephen-Smith has highlighted, we have never had an offence in these categories committed by children of this age in the territory, and the likelihood of it happening remains extremely low.

So, whilst this has been a significant focal point of the public discussion, I think it is actually a very small part of this overall reform. The significant reforms to the therapeutic support system and the like are far more significant than this issue of exceptions.

THE CHAIR: Despite it being, in your view, a very small part of it, it certainly has attracted a lot of criticism and attention.

Mr Rattenbury: That is because the rest of the reform is so good that people are focused on this.

THE CHAIR: I guess it begs the question: why have something that many view as an inconsistent treatment of an individual in there at all?

Ms Davidson: From my perspective, as one of the ministers in there that would ideally like to see this happen without the exceptions, the reason that I am supporting this bill as it is is because we really, really want to get on with the delivery of some better alternatives to a justice system response for young people and their families, who are really struggling with a lot of complexity.

I am quite confident that, by the time we get to reviewing the legislation after its implementation, we will have that service system in place, having demonstrated that it can deal with complexity and that it can deal with having to find flexible solutions to some really difficult circumstances.

Even though I do not expect that we will have seen any cases that meet that exception criteria, we will have seen some circumstances that are quite difficult to find the right solution for, and we will have had some time to see the service response be able to deliver on that.

This, to me, makes it possible for us to start the work and demonstrate to the community that we can achieve a safer community and better outcomes for children and their families.

Ms Stephen-Smith: I think it is important to recognise, Chair, that many of the people that you are hearing from are people who are advocates in this space who are deeply embedded in the way youth justice systems work and medical evidence. The wider ACT community is not necessarily in that space. Most people in the ACT have no idea that the minimum age of criminal responsibility is currently 10 and, when you tell them that, they are very surprised and think that is too low. We know from the research that we have done that, once you start getting to 12 and 13, those views in the community start to change.

THE CHAIR: We are still talking about the carve-outs.

Ms Stephen-Smith: Yes. In a broad sense, everybody thinks that 10- and 11-year-old children are too young to be involved in the criminal justice system. It is almost a universal view when you start doing focus group research and talking to community. When you get to 12 and then particularly when you get to 13, community views are mixed on that. Once you start getting to that year 7 and particularly year 8 kind of age group—which I think is also drawn out in some of the submissions—there is no difference between young people who are 13 and 360 days versus 14 and one day and yet we are drawing a line.

It is also about giving the community confidence and not running the risk of completely unravelling a change on the basis of an argument about, "What if there is a really serious offence?" given that we are the first in the country that is doing this.

I absolutely think that it is actually consistent with human rights, but it is also about recognising that there is a lot of expertise that you are hearing from and there is a broader community view, and we need to maintain community confidence in this change because we are the first people to do it.

MR BRADDOCK: Minister Davidson, I would be keen for an assessment of the current state of service delivery here in the ACT and what services we need in size, scope and scale to be able to deliver as part of this reform.

Ms Davidson: When we are thinking about what sorts of changes we actually need in the service system, the MacArthur report made it really clear that, if we just keep doing more of the same things, we are going to get more of the same results.

Two-thirds of those children in that 10- to 13-year old age group who currently come into contact with the youth justice system are not children who are already on child protection orders or have previously had contact with police or been engaged in the justice system. So we need to look at, "Okay, what can we do? What kinds of service responses do we need that are not focused on police and child protection?" If we just do more of the same, we will get more of the same result.

It might be useful to think about an example of the kind of situation for a young person that might need to be addressed differently. Let us take for example the case of a girl who at seven years old is experiencing family violence and sexual abuse at home and then, by the time she is 10 years old, she is starting to engage in things like petty theft and she has emerging mental health issues relating to that trauma that are not adequately being addressed within our existing health and social services system.

Sometimes those things do not get picked up, because you might have a 10-year-old who is not aware that she needs to be asking for some help here.

By the time that young person is, say, 12 or 13 years old, she might be engaging in behaviour relating to alcohol and drugs, those mental health issues are becoming more apparent and really needing some treatment, they are disengaging from school and then starting to come into contact with police related to things like getting into fights or some of the drug and alcohol-related behaviour or that kind of thing.

By the time things get to that point, that is where you start to see that police might be picking up that young person and having to take them to Bimberi because they have been engaged in, say, getting into fights and there might be some charges that relate to that or it might be something related to drug and alcohol use.

At the moment, taking that young person to Bimberi is an opportunity for us to start to address some of those issues. But what we are looking at putting into place as part of these changes are some referral pathways that enable us to pick up things like that disengagement from the school system a little bit earlier, addressing some of those emerging mental health issues a bit earlier and wrapping around that family support at an earlier stage.

If we can have a response that starts to look at what we can do for children in a younger age group with our existing youth mental health, drug and alcohol support, homelessness support and family and relationship support and can start looking at what we can do at an earlier age for the handful of children who are in need of those services and how we can do that flexibly, we can really start to make some change for that young person's life ahead of them, so that they do not end up with a lifetime of engagement with the justice system, with homelessness services, with domestic and family violence, and drug and alcohol and lifetime mental health issues.

That is why we are doing what we are doing. It might look like some of the things that we have looked at around our pilots of functional family therapy programs in both child protection and youth justice. It might look like some of the things that we have tried around youth mental health trauma responses and how we connect up all of those things. It might look like "How do we get good referral pathways into multi-therapy panels, where we can address the whole of that child and their family circumstances?"

MR BRADDOCK: How is the government going to work with service providers to be able to develop these therapeutic models for the 10- to 13-year-olds?

Ms Davidson: will pass to Catherine Rule, who can talk in some more detail about that. But we have already started the work of how we design that service response. Catherine can talk to you more about it.

Ms Rule: Thanks, Minister. This is not a scenario where we can build a one-size-fits-all large-scale service system, partly because we expect the numbers will be very, very, small and we also expect that the young people that we will be working with will have different and individualised needs.

We are anticipating a scenario where we have the flexibility to work with a number of

service providers, depending on the needs of that child,, and the needs of that child will be determined through therapeutic advice. So it is not like child protection where we follow certain steps and processes and certain things will happen at certain points in time. We expect that every case will be different.

We are working with government about flexible funding arrangements—so things like, how do we do case management; how do we have brokerage funds to go and purchase the services that we need and what providers are in the market that we can work with to provide those services? As I said, this is not a scenario where we will go out for tender to buy a certain set of services; we will source those services with flexible funding based on good case management.

Ms Stephen-Smith: But, in order to that, I think it is important to also recognise that you need the service system there to be able to purchase from. Things that we are doing at the moment which are relevant in this context includes Safe and Connected Youth, which we established over the last few years, which is a specific service for eight- to 15-year-olds who are disengaging from their family, starting to disengage from school and potentially coming into contact with police and youth justice system.

It is a service that was co-designed and genuinely co-produced with the sector. We used a try, test, and learn model. The Youth Coalition came to us with an idea for a service, along with Rotary. We supported a pilot. We learnt lessons from that and then we ended up tendering for a particular service model as a result.

That is now part of the system work that will support these children and young people. Eight to 15 is exactly the age group and it is exactly the kind of early intervention support that Minister Davidson was talking about. The therapeutic panel might refer a child into that service, but it needs to exist for that.

We also have the CYFSP, the Child Youth and Family Support Program. That is currently going through a commissioning process in partnership with the non-government organisations that provide it and other non-government organisations that sit in that space.

One of the things that CSD is talking to them about is the bigger picture context of, we raise the minimum age of criminal responsibility, we have got the next steps, reform work in child and youth protection and out-of-home care, and how you keep families safe. It also, as Minister Davidson talked about, has a focus on early intervention.

All of these things are actually coming together to build a service system that has the services that meet the multiple needs of children and young people and their families, and then, as Ms Rule talked about, the panel and the case managers will then be able to say, "Actually, this service is going to be the best thing," for the child, young person or family. "We know the service exists," and we can purchase an additional amount of it if that is what is needed if there is, for example, a wait list and we need to get someone into that service quickly.

Ms Rule: The other aspect of that is the investment that has been made in the development of the Aboriginal community controlled sector so that, for Aboriginal

and Torres Strait Islander children, we can work with the service system that exists, and also the developing organisations like Winnunga, Gugan Gulwan and Yerrabi Yurwang, to provide culturally appropriate services for those children. It is about looking at the sum of all the different parts of the service system that exist now and basing it on the individual needs of those particular young people.

THE CHAIR: Thank you. Minister Stephen-Smith, you said that, in your view, the carve-outs are not inconsistent with the Human Rights Act. I refer to page 3 of the Human Rights Commission's submission. It states:

> … we broadly support the Bill as drafted, we continue to have serious concerns—

These are the specified exemptions—

> … which is, in our view, incompatible with rights protected in the Human Rights Act …

So you are disagreeing with the Human Rights Commissioner and their submission?

Ms Stephen-Smith: I will throw to the Attorney-General because he has signed the human rights compatibility statement for the bill. It is very clearly laid out in the explanatory statement for the bill why we—not just me but the cabinet—believe that the bill is compliant with human rights. It is important to recognise that human rights are a range of rights. It is often a matter of balancing one person's right against another. In this case, it is about ensuring that the community can be protected from harm. But, as I said, from my point of view—and I recognise that the Human Rights Commission may disagree—there is an argument that this approach is actually in the best interests of children and young people themselves as well, at least in the short term, and it can then be reviewed. Minister Rattenbury might talk about the human rights aspects specifically—

THE CHAIR: I am just prefacing. If you are comfortable with human rights compliance, I assume that is not one of the reasons you opposed the carve-outs. I am interested in particular in your actual reasons for opposing the carve-outs.

Mr Rattenbury: You asked a question about compatibility, so which question do you want me to cover?

THE CHAIR: Both.

Mr Rattenbury: Sure. In 180 pages of legislation—I know you are fascinated by the politics, Mr Cain, but I am sure we can get onto more substantive questions at some point.

THE CHAIR: Forgive me, Attorney, but you were the one who volunteered the Greens minister's position at the very beginning of this session, and you are here in your executive capacity.

Mr Rattenbury: Yes; indeed. In terms of human rights compatibility, as I said in my

earlier remarks, this is one of the most contested parts of the discussion, as you have highlighted yourself. It is fair to say—and I think Minister Stephen-Smith explained it well—that human rights considerations are often a balance of a range of rights and considerations. I note that the Human Rights Commission submission notes there is a risk that, if challenged as incompatible, the proposed exceptions will be found incompatible. They talk about a risk. I think that is a fair observation because there will be a range of interpretations. The government has sought advice from a range of agencies, and I was comfortable to sign the compatibility statement that says that the government believes this is compatible, on balance, with human rights considerations.

THE CHAIR: Thank you. What are the Greens minister's objections to the carve-outs—the reasons for that?

Mr Rattenbury: We have explained that. And I think—

THE CHAIR: I am not sure you have.

Mr Rattenbury: Read the *Hansard* when it comes out. I explained it earlier.

Ms Stephen-Smith: Minister Rattenbury said earlier it is for the same reasons that others have identified, and I think it is articulated in the justice reform initiatives. If a child is not able to be held criminally responsible for offences that might be considered less serious, then there is no reason why they could be held criminally responsible for more serious offences.

THE CHAIR: That is what I was—

Ms Stephen-Smith: The DPP obviously holds a different view—

THE CHAIR: That is your answer—

Ms Stephen-Smith: but that is what Minister Rattenbury pointed to at the very beginning of this hearing.

THE CHAIR: Are there any supplementaries?

MR BRADDOCK: Not on that note.

THE CHAIR: A fresh substantive?

MR BRADDOCK: Mr Rattenbury, coming to the review period, quite a few submitters have suggested that the review period should be cut down from five years to make it shorter. Can you please explain why the government's position is for five years or whether an alternative review period is appropriate?

Mr Rattenbury: Yes; certainly. The five years is premised on the fact that the legislation has a two-stage implementation period, as you know. Immediately on passage, the minimum age is raised to 12, and then subsequently, by 1 July 2025 at the latest, it will raise to 14. The review will come sometime after that. By the time we raise the age to 14, it will be about three years, depending on when the legislation

finally passes and the review takes place. Given both the complexity of the reforms and the relatively small number of young people, our view was that would provide sufficient time for the services to be tested and to have enough young people pass through the system. You would have a reasonable number of case studies to consider whether the model was working or not.

That does not mean the government would necessarily stand still in the meantime. If matters arose through our normal consideration of legislation that is passed, certainly the government would be quite open to making reforms or tweaks to the legislation, if necessary, before the review period. The short answer is it is to allow enough time for enough of the system to roll out to actually base a review on.

MR BRADDOCK: Thank you.

THE CHAIR: Back to me. Minister Stephen-Smith, you said something about the community view of 10- to 11-years-olds versus 13- to 14-year-olds. What evidence are you basing that conclusion on?

Ms Stephen-Smith: The government undertook some focus group research in relation to this. I am not sure whether that has previously been made public, but I am sure that we can provide it to the committee if it has not been. I am totally speaking out of turn here, so I will need to check and take it on notice. I think it is important to recognise that the community does have views in relation to this matter. That was informing cabinet considerations, so I will need to take on notice whether I can provide it. I think that, in the context of the conversation we have been having, it would be useful to the committee. I am not the owner of that information, so I will need to check.

THE CHAIR: Obviously, the committee would be very interested in that information, so we do request it. We will await your answer.

Ms Davidson: We are talking about the difference between, say, a 12- or 13-year-old versus a 10- or 11-year-old and community expectations or understandings of what, developmentally, that child might be ready to make decisions about. As well, it is worth thinking through how someone's physical appearance may not necessarily match up to their intellectual developmental capacity to understand criminal responsibility and intent. In that example that I was talking about earlier, about the girl and her trajectory from seven years of age through to 10 or 12 years of age and how she ends up engaging with the justice system—because this is a real person that we are talking about—that particular girl is someone who is tall for her age and might dress or engage in activities that someone else of her age would typically not be participating in.

From appearances, that young person might look like they are developmentally able to understand criminal responsibility for some of the behaviour that they are engaging in, but actually, when you look at what they have experienced in their life—the amount of trauma they have experienced, the mental health concerns that they are dealing with, and the fact that they are under the age of 14 years—the fact that they look older than that does not change the fact that they are not developmentally capable of understanding the criminal responsibility for some of the behaviour they are engaging in. It means that we need to put in place a response that is respectful of where they are

at so that we can help them to understand better ways of dealing with some of the choices that are being presented to them.

THE CHAIR: Sorry—were you talking specifically about the carve-outs or more generally or about a particular approach?

Ms Davidson: It goes to the reason why some of those carve-outs are there. I believe it is because there are some very real concerns that some people in the community have about community safety. But, when you think about the behaviour that they might be talking about and whether they think that the young person at the age of 12 or 13 years old should be capable of understanding criminal responsibility, they sometimes do not necessarily fully understand what has happened in that young person's life that puts them in a position where that behaviour is a choice that is presented to them and where they can be expected to fully understand the impact of what is happening.

Ms Stephen-Smith: On top of that, because people do not understand either the youth justice system or the broader potential for service response, there tends to be the thought that, if you are out of the justice system, nothing is going to happen to you; you are not going to be held responsible in any way. That is clearly not the case.

I know you have heard evidence already today about some of the restorative work in terms of victim impact statements, restorative conferences and other ways to hold young people to account for their behaviour in a supportive, therapeutic way. The other element of community sentiment is, as Ms Davidson has talked about, a sort of perception of maturity that may not be there but also a lack of understanding of options for holding young people to account that are not within the youth justice system. That is part of the understanding that we have to build as we implement this change, which we will be the first in the country to do.

THE CHAIR: I want to confirm, Minister Davidson, that you are still opposed to the carve-outs even though you were explaining why some people would understand the importance of them.

Ms Davidson: I think a better way of thinking about this is: what am I in favour of? I am very much in favour of passing legislative changes that enable us to put in place a much better service response for those 10- to 13-year-olds than we currently have and the opportunity, in a few years time, once that service response has had a few years to demonstrate to the community that we can create a safer community and we can achieve transformational intergenerational change for these families, to take another look at whether we really need those exceptions.

At the moment, based on the work that I am already seeing starting to happen in working with our community sector and our existing services about what flexibility we have to address younger age groups or more complex problems and how we can case manage that and provide referral pathways through, I am confident that we can build a really good strong service response that makes our community safer in the long term.

THE CHAIR: So you are confirming that you do not agree with the exceptions right now?

Ms Davidson: I think we have pretty much confirmed that, yes.

THE CHAIR: Okay.

Mr Rattenbury: But do you want to ask one more time, just so it is really clear for you?

MR BRADDOCK: Please, no; I would like to ask a question. I would like some further basis behind that statement you are making that service delivery will make the community safer. Can you please explain that to me?

Ms Davidson: Yes. We are looking at putting in place service responses that result in behavioural change that do not require us to be constantly having young people cycle through remand just to deal with the fact that they might be continuing to engage in those things.

When we look at things like the trials of functional family therapy that have already happened, when we look at what we know can be achieved through multidisciplinary approaches, team-based approaches, and how you wrap around supports that address multiple issues at the same time, like drug and alcohol, mental health and family support, it is possible for us to actually achieve behaviour change, not just punitive responses. Behaviour change is really where we want to get to. That is what makes communities safer, and not just for that young person but also for future generations.

The MacArthur report found that, quite often, we are dealing with young people whose families have had contact with the justice system over generations. So, if we can say, "We can change this here for this young person," that young person's future children also will be in a better position.

MR BRADDOCK: What is your assessment of the current situation? You seemed to indicate that you have just got people coming in and out of remand, recycling, and no behavioural change.

Ms Davidson: At the moment, the majority of young people who end up in Bimberi are young people who are cycling in and out on remand. They are not necessarily staying in for long periods of time, and they might be returning regularly. Actually, we can achieve more effective programs to support those young people outside of that system, where we can work with them on a day-to-day basis over a longer period of time than we actually get inside a place like Bimberi.

If you are looking at young people who might be on community orders, things have to get to a certain point before they even reach that stage. If we can achieve changes in our service system so that there are better referral pathways and better ways of providing the case management or the support for families before it reaches that stage, that young person is never going to have engaged in that risky behaviour in the first place.

MR BRADDOCK: I imagine it would be more cost effective and efficient and lead to longer-term change rather than using up police time and Bimberi time with this continual cycle.

Ms Davidson: It is absolutely better for everyone. Most importantly, it is better for those children and for their families, and it reduces the number of people in the community who might be impacted by the effects of what those young people might have engaged in.

MR BRADDOCK: Thank you.

Ms Stephen-Smith: If I can just add to that: this issue of cycling in and out—spending one night on remand and then going to court and getting bail and then breaching your bail and going back and spending one night on remand and then going to court and getting bail again—is the most frequent experience that children under the age of 14 have of Bimberi.

Advocates talk about this reform as getting kids out of prison. I think it is probably still the case we have never had a 10-year-old in Bimberi—just to be clear about that. We have had 11-year-olds, but they tend not to stay very long; they tend to cycle in and out. But, as Minister Davidson said earlier, that is not good for anyone. But part of the reason that they end up there on remand is that we do not have an alternative.

That is why one of the very first things that we have invested in in the mid-year budget review was $400,000 a year to set up a youth worker wraparound service that police can go to when they find a young person who they cannot safely take home or they do not have a safe place immediately to take them, just to provide an alternative to taking them to Bimberi.

So, even before this legislation comes into effect, we are already starting to change the system to give police an alternative pathway to avoid the harm that is caused by ending up in that cycle of in and out of Bimberi.

MR BRADDOCK: And that reduces the workload on the police as well, as an added advantage.

Ms Stephen-Smith: Yes.

THE CHAIR: What impact do you think this legislation will have on the resources available at Bimberi? Again, I will inform you that Mr Braddock, unfortunately, could not join the committee for a tour. I thank Ms Rule and others for showing us around.

Ms Davidson: It is important to keep in mind that the number of 10- to 13-year-olds who are going in and out of Bimberi is very small. The number of young people in total who are in Bimberi on any given day is a fairly small number. But it takes a certain base level of staffing and facilities to have Bimberi exist at all. So we will not necessarily see that cost saving, if you will, of delivering this better alternative response necessarily reflected in what happens at Bimberi.

Where we might actually see that change is in what happens for those young people

who then do not end up with a lifetime of chronic mental health conditions, are in and out of our hospital system or our community mental health system or are in and out of the AMC as adults or are in and out of family violence crisis accommodation and homelessness accommodation. That is the kind of the thing that we will see over a longer period of time, because those young people are having those problems addressed at an earlier stage and more effectively than we can do within the justice system.

THE CHAIR: So, for example, would Bimberi be considered a suitable location for an intensive therapy place, as a place of last resort?

Ms Stephen-Smith: No; the act specifically prevents an intensive therapy place from being a youth justice centre. That is why I made the comment earlier that it is not something that you can just set up overnight if you were going to have a specific place.

The act has deliberately provided flexibility that the director-general can declare something an intensive therapy place. That might, for example, be an existing residential care home in the child protection system, where maybe that child or young person already lives, but they are going to be subject to an intensive therapy order and they might need to be confined there. There might be some restrictive practices around either being confined in that residential home, being confined for a certain number of hours a day, not being able to go out overnight, having a curfew or whatever.

The act is deliberately moving away from the current definition of therapeutic protection place to a much more flexible definition, again, to be able to meet the needs of individual young people because it is a last resort that is going to be rarely used. And there is no one size fits all that we can predict will be required.

Ms Davidson: It really depends on what the mix of services is that that young person needs. For example, do they need mental health? Do they need drug and alcohol? Do they need family support? Do they need a safe place to live that is not the family home that they have come from? It really depends, and for each young person it is going to be slightly different.

THE CHAIR: Given that we have an existing clientele who are going to be impacted—and you what happens to them because of their behaviour—is it through them that you have a kind of draft "here is what will happen to them instead" plan?

Ms Stephen-Smith: Again, it is going to depend on the individual child or young person. So, while we do talk about the sort of revolving door of some young people going in and out of remand, other young people will only ever spend one night in remand in Bimberi and they will never go back, and they will not even need the sort of intensive end of support.

What we are really hoping to achieve with this reform is that everyone in the whole system, from education through to police, through to all of our youth services and child and youth protection, starts to take a bit of responsibility to identify challenges early that might lead to an escalation into the youth justice system. Then, either there is a support system that already exists around them that can be enhanced, or they can

be referred into the therapeutic support panel.

They can then be supported by the case managers, a multidisciplinary assessment would be done and there would be a case conference where everyone comes together and say, for example, "This young person and family are really struggling. Their behaviour is escalating. It is causing harm or it has the potential to cause harm in the community. What are we all collectively going to do about that?"

Then the panel has a level of authority to bring people to the table to say, "You are responsible for supporting this family, or this child or young person in this way, and we are going to hold you to account for that." That is a real change in the way that we think about the way services wrap around children and young people at the moment.

Unless a family is statutorily engaged with child protection or statutorily engaged with the youth justice system, often there is no-one doing that wrapping around or that coordination or holding people to account. So, quite often what I get across my desk is, "They engaged in X service but then they disengaged," and no-one really knew that the family or the child or young person had disengaged from the service until something worse went wrong. So it is not about monitoring, but it is about wrapping around and supporting and case managing in a more structured way.

THE CHAIR: Thank you.

MR BRADDOCK: The Inspector of ACT Correctional Services recommended that she be given the authority under the OPCAT to be able to inspect these places of detention. We also heard from the Children and Young People Commissioner, in her Public Advocate role, who also indicated that there might be a role for her as well. Is the government open to both of those figures playing a part in this?

Ms Stephen-Smith: I would have to check the bill, but I thought that the Public Advocate and Children and Young People Commissioner would already have a role. I am getting nods from over there that, yes, the Public Advocate would have the same oversight role that they do at Bimberi in relation to any place that is declared, as would the Aboriginal and Torres Strait Islander Children and Young People Commissioner have that role, because they have the equivalent role of the Public Advocate, once fully established.

Ms Stephen-Smith: OPCAT is an interesting question. I do not know if Ms McNeill can answer that. The challenge for me is that generally these places would likely only be declared for a short period of time in response to the needs of an individual young person. I am not envisaging a permanent place being established that could then be subject to that kind of OPCAT oversight. But Ms McNeill might have a better view of OPCAT.

Ms McNeill: I have the advantage of seeing Ms Minty's evidence earlier this afternoon. I understood her to be saying that there are already a range of oversight bodies that would like to have access to these places, and she would like it as well because there is a multiparty NPM that has been put in place.

Whether you need all those bodies to have access in order to discharge Australia's

obligations under the convention, I am not persuaded. It is something that we would consider, I think, going forward.

MR BRADDOCK: Okay. Thank you.

THE CHAIR: You talked about perhaps a different approach—a wraparound whole-of-service approach. Are there any new features of that type of service and support—not the quantity of support but the quality? Are there any new types of services you are envisaging?

Ms Stephen-Smith: Ms Davidson talked about functional family therapy, and we have also heard very clearly from the community that multisystemic therapy is a missing part of our service system overall. It is a specific type of family-based therapy.

Other than that, we have also had representations around the availability of genuine intensive case management for families, children and young people who are at risk. Within our Children, Youth and Families Support Program, we do fund intensive case management, but there is an identified gap through the commissioning process, where what is meant by intensive case management at that community level is not what we would think of as intensive case management in child, youth and families in CSD.

So there is a bit of gap that we want to look to fill both through the CYFSP commissioning and through this broader work around more intensive case management support for families where the risk is higher than our community sector either can or is willing to bear at the moment. Often there is that gap that they are not quite meeting the statutory threshold for child and youth protection to intervene but they are also too complex for the community. That is where we are seeing a gap as well.

Ms Davidson: One of the key things for the ACT in getting the service response right is that we are genuinely in conversation with existing service providers and with our community sector, who have a really good understanding of what the missing pieces are. What are the bits of the system that are really hard to navigate for these families? What are the kinds of approaches that might actually work that we are not currently engaging in? That is a really good way to design a new service response, as well as the try, test and learn model that Minister Stephen-Smith was speaking about earlier. We accept that we can always learn from what we are doing, and we want to be continually improving on that.

THE CHAIR: Thank you.

MR BRADDOCK: Mr Rattenbury, the Justice Reform Initiative applauded the extinguishment of convictions under the age of MACR but did raise concerns it might flow through to the working with vulnerable people card. Sometimes the best youth worker can be someone who has experienced the system. Has the government given consideration to that concern?

Mr Rattenbury: Just to be clear here: the convictions are extinguished except for the purposes of a working with vulnerable people card. That does not mean a person cannot get a working with vulnerable people card; it simply means that that history

needs to be disclosed for the purposes of the risk assessment.

Obviously, the purpose of a working with vulnerable people card is to make sure that, given the clients, the worker or the volunteer are vulnerable, there is a weigh-up of the risks. So it is not a preclusion of somebody getting that card; it is simply required to be assessed.

Saying that, what a person may have on their report may be completely irrelevant for the purpose for which they are applying for the card. So that is the weigh-up that sits there within the scheme.

MR BRADDOCK: Thank you.

THE CHAIR: Although there are schedule of offences under the working with vulnerable legislation that does say you can never have a card and, if you had one, you must return it. must return it if you had a conviction.

Mr Rattenbury: That is a fair point.

Ms Stephen-Smith: There is a limited number of offences under the working with vulnerable people that that applies to though and they are quite serious offences related to murder, child abuse and child sex type offences. I do not have a full list at the moment. They are unlikely to be the kind of offences that would currently sit on a young person's record as a youth justice offence under the age of 14.

THE CHAIR: Ministers and officials, I want to thank you all for presenting yourselves as witnesses today. I believe there have been a few questions taken on notice. Can you please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*?

On behalf of the committee, I would like to thank our witnesses, who have assisted the committee through their knowledge and experience. We also thank broadcasting and Hansard for their support.

If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as practical and no later than five business days after the hearing.

The committee adjourned at 4.46 pm.