LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into Penalties for Minor Offences and Vulnerable People)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 21 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 10.30 am.

HELYAR, MS SUSAN, Interim Chief Executive Officer, Alcohol Tobacco and Other Drug Association ACT
KILLEN, DR GEMMA, Head of Policy, ACT Council of Social Service
DARUWALLA, MS AVAN, Policy Officer, ACT Council of Social Service
WALLACE, MR CRAIG, Head of Policy, Advocacy for Inclusion

THE ACTING CHAIR (Dr Paterson): Good morning, and welcome to the public hearing of the justice and community safety committee inquiry into penalties for minor offences and vulnerable people. For today's hearing, I will be acting chair, while Mr Cain is appearing via Webex. Today the committee will hear from 10 organisations and one minister.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on today, 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 will be recorded and transcribed by Hansard and will be published. They are also being broadcast and webstreamed live. It is important, when taking a question on notice, that you state clearly for the record that you are taking that question on notice.

In the first session today we are hearing from Advocacy for Inclusion, ACTCOSS and ATODA. We have many witnesses for this session. I ask witnesses to acknowledge their acceptance of the privilege implications of this hearing.

Ms Helyar: I acknowledge that I have read and accept the privilege statement.

Dr Killen: I have read and accept the privilege statement.

Ms Daruwalla: I have read and accept the privilege statement.

Mr Wallace: I have read and accept the privilege statement.

DR PATERSON: Thank you very much. We will go to questions. Mr Cain, would you like to start the questioning?

MR CAIN: I am interested in the community service programs and how they could be embraced more and be more effective. How are they operating in your eyes and how can they operate better?

Ms Helyar: Thank you for the question, Mr Cain. The issue we see is that there is a problem around awareness, availability and accessibility of those pathways regarding alternative ways of recompense. The issues involve awareness, in terms of the amount of information people get at the time of the offence being committed and the order being sent to the person. There is also people's understanding through the process that that is an option. Often the process does not kick that option in until quite late in the

consideration of people's ability to pay. That is a real barrier to people entering that pathway, rather than staying on the fine default pathway. I assume that other people have more details to share.

Dr Killen: I would agree with all of that. Maybe Craig wants to speak to the accessibility of those programs.

Mr Wallace: The issues that we see are around universal design, accessibility, knowledge, willingness and an ability to take up those pathways, particularly for people with intellectual cognitive disability or communication issues, who might have issues with absorbing and being able to access information. They basically wind up on either a fine default pathway or simply pay because they are not aware that there are other pathways.

MR CAIN: With the work or development programs, how can we make that more accessible and more available to defaulters?

Mr Wallace: We should be exploring alternatives to fines where possible. One of the observations that we would make is that fines, and particularly accumulated debts, are often the thing that tips people into considerable crisis, particularly the kinds of people that might be on the verge of financial management or guardianship arrangements. If you have been watching the ABC *7.30 Report* over the last couple of days, you would have seen that that is not a place where you would want people to be. Often it is debts that wind up taking people there.

We think that people need to be made more aware of the range of alternatives and that the alternatives, particularly where they are non-financial alternatives, need to be designed in such a way that they are accessible and available to people with disabilities.

Ms Helyar: The thing to work through, and the reason why we are not able to give exact answers now, is that, in the absence of a good co-design of those measures, both with the hosts of work programs or community service orders and with the people who would most benefit from access to those, we can only talk in general terms.

Part of the issue with vulnerability is that there are barriers to work and there are barriers to engagement in the community. Those same barriers exist in the programs that are set up as alternatives to paying fines. The reasons why people are in vulnerable circumstances are the reasons why the programs are not necessarily accessible or suitable for people.

It is not easy to give a detailed answer in the absence of a co-design of those. We would say that is the sort of thing that could be considered in an updating of the targeted assistance strategy—much more detailed consideration of and engagement with the people who we would imagine could benefit from those pathways and who at the moment are not using them.

Dr Killen: In our conversations with Care Financial, someone will apply for a hardship grant for their utilities bill, for example; then Care Financial will find out that they have a number of fines. But they are not automatically being connected to

community sector organisations that could help them to organise that and navigate through what is often a really opaque process. People remain in the dark and go further into crisis because there are not necessarily always those visible pathways.

THE ACTING CHAIR: The government's submission mentions the number of people involved; 89 plans were established, out of thousands of fines.

Ms Helyar: Yes.

THE ACTING CHAIR: Do you have any scope or understanding of those people who engaged in those programs, what they were or how they worked? I will ask the government about this, too.

Ms Helyar: I think that is a good question. From ATODA's perspective, we do not have access to any lived experience feedback on those. That is the kind of thing that would be worth interrogating in a renewal of the targeted assistance strategy.

Dr Killen: We do not have any oversight either. Anecdotally, during COVID, we heard that lots of people did not have access and that those programs have been slow to come back. People, again, do not know about them, or know to apply. When you look on the website about applying for an alternative to a fine, it is very difficult to navigate. It channels you into paying the fine as much as possible. If you do not have outside supports, you might not know that you can apply for an alternative and what that might look like.

MR BRADDOCK: You have feedback from ACT residents that it is difficult to apply or to go through that process, or even find out about the process to seek that waiver?

Dr Killen: Yes. When we wrote the submission, I went on the website to try and figure out what the process was for myself, and it was very difficult for me to work it out, or even to find a list of the kinds of programs that you could apply for. I imagine that someone who is in a vulnerable situation and facing those kinds of barriers would have an even more difficult time.

MR BRADDOCK: Legal Aid mentioned that it is a 15-page application, so I am sure that is quite challenging for someone who is of a vulnerable status.

Dr Killen: Yes.

Mr Wallace: We do have some—not dozens of people, but some—testimonial evidence from people that they have found the application process difficult to navigate if they are a person with a cognitive or intellectual disability, and from others that they see some of the alternatives as inaccessible, or really hard to do, because they do not accommodate a person with a disability; or, given we are still in COVID, they are likely to put them at risk. So they choose to pay the fine and compromise on other essential expenses, rather than go through that.

THE ACTING CHAIR: One of your suggestions is for a co-design process with the community sector and people with lived experience, in order to develop a process that

could be much more accessible and workable.

Ms Helyar: To improve the process, but also to expand the options—but not expanding the options without actually talking to people around whether the options would make any difference. That is the critical thing to do in the co-design process.

THE ACTING CHAIR: The impact of fines and minor offences on the Aboriginal and Torres Strait Islander community has come up in almost every submission. It appears that we do not have great data on how fines do impact our local Aboriginal community. The AFPA's submission suggests that we unconditionally defer fines for that particular group of people in the community and align targets and alternative pathways with closing the gap initiatives and that type of thing. I am interested in your perspective on how to address this issue that Aboriginal and Torres Strait Islander people are over-represented in our prison, and that fines and minor offences may be a part of the pathway there.

Dr Killen: I would imagine that they are a part of the pathway there, but we could not find any specific data. We definitely hear from community members that things like parking fines lead to loss of licence, which escalates into detention or a more serious justice program for Aboriginal and Torres Strait Islander people. I would echo Susan's earlier comments about a co-design process, and making sure that the Aboriginal community is very involved in any shaping or design that we do of alternative pathways.

The ACT has had strong success with the alternative bail reporting sites. That could be a good model for thinking about how we organise fines. We would have to be cautious about the police interpreting someone's Aboriginal status when issuing a fine. There would have to be a pathway that connected them in with a community organisation, or something like that, to support them through the process, so that we are not just relying on police determining whether someone is Aboriginal or vulnerable in any way when they are deciding whether to issue a fine.

Ms Helyar: The commentary that we provided in our submission was around intersectionality, which is where there is an increased risk for people who are Aboriginal and Torres Strait Islander because there is also a high prevalence of other risk factors, such as having a disability, being on a low income, or having an alcohol, tobacco or other drug issue or a mental health condition.

The issue is about the stacking of risk factors, and that is why a really well-informed design of any alternatives is critical. What happens is that people can come up with sensible ideas, but they do not end up being practical or useful for people because other factors were not taken into consideration.

Mr Wallace: We know that the two groups of people most over-represented in custodial arrangements in the ACT are Aboriginal and Torres Strait Islander people and people with disability. We know what happens when that converges. The evidence—and there is evidence that we are happy to table—is that the offences for which people with cognitive disability are imprisoned are overwhelmingly in the lowest severity categories. They are low-level, non-violent offences, traffic offences, theft, breach of orders and fines. To the extent that there is crossover there, I think that

there is a clear case for flexibility and a range of alternatives to fines for both people with disability and Aboriginal people.

THE ACTING CHAIR: A suggestion in one of the submissions was to reinstate—I think it was through one of the Aboriginal law groups—a driving program.

Ms Helyar: It is critical to think about transport in all of this, because we have a public transport system that is set up for people to get to major centres for work. It is not set up for people getting around the city for other reasons, particularly for accessing health and social services. As Gemma said, if you get a speeding fine, or the big risk is that you drive an unregistered car because you cannot pay for the registration, and that escalates quite quickly into a very big offence and considerable sanctions. It is important to think about how those driving and registration offences are coalescing for people who might also have other bits and pieces of relatively low-level fines. Those things can escalate fast and have really catastrophic consequences in households.

MR BRADDOCK: You mentioned that the escalation can happen really fast. How does that happen and how are you proposing that we stop that escalation? At what point and how?

Ms Helyar: The cost of registering a vehicle bears no resemblance to people's capacity to pay. Gemma can talk more about that.

Dr Killen: We would definitely want to see it as a focus of a renewed targeted assistance strategy to ensure that people have pathways to pay their registration, and that there should be reduced registration costs if they are financially vulnerable at any point. Often, at the moment, people cannot pay, and there is not really a pathway before that to intervene; then they end up driving an unregistered vehicle and the situation compounds.

MR BRADDOCK: Hence there would need to be something put in before that point where they are unable to pay for their registration; is that what you are asking for?

Dr Killen: Yes, and some clear information on government websites about where you can go to get support for that. The targeted assistance strategy is supposed to have a government one-stop shop website associated with it that has all of the different assistance programs that are available. Many of them are run through Care Financial, but Care Financial does not feature on the website, as an example. Critical information is missing from the public sphere that would let people access the support that does exist, and some of the supports that exist are either outdated or not applicable in particular situations of vulnerability.

MR BRADDOCK: Amongst the submissions there are proposals to administer zero-dollar fines for first offences and income penalties after that. Do you have any view on that concept of zero-dollar fines for a first offence?

Dr Killen: I am supportive of a zero-dollar fine for a first offence. We would have to think very carefully about the escalation and what it would mean. Again, that stacking of risk factors might mean that certain vulnerable people are much more likely to have

multiple fines. We would not want to see someone who cannot afford to pay the first fine, at the point of the third or fourth fine, having something that they definitely cannot afford to pay, either. It would have to be coupled with strong assistance programs as well.

MR BRADDOCK: Some of the deferred payment plans call for $10 a week payment of fines. Is that still a realistic option for some people who are living on the poverty line? Can they realistically ever pay those fines back?

Dr Killen: The research that we have done on cost of living says that even $10 is out of reach of some people. We put together some example budgets in our poverty fact sheet last year. We found that a family where both parents are on minimum wage have $18 a fortnight left over after they pay for their essential expenses. So $10 would take that down quite significantly and it would mean that a health crisis, for example, or a trip to the dentist would put them into debt.

MR CAIN: My question is related to Mr Braddock's. With the deferred payment scheme that operates for traffic and parking infringement notices, what assistance are people given both from the government and from your own organisations to manage their debt and perhaps their broader financial management?

Dr Killen: There is some assistance available through financial counselling services like Care Financial, but there is limited ability for Care to remove debt, for example. They can work with organisations, with utility companies and hopefully with the government to work out payment plans. But if someone is not receiving the income that they need to meet all of those costs then there is very little that an organisation like Care Financial can do. Again, not to harp on about the targeted assistance strategy, but if we had a strong strategy in place that looked at what people can actually afford and where we need to be putting in concessions, that would go a long way towards reducing debt.

Ms Helyar: If somebody has multiple government debts, there is no way that that is visible to anyone. There is no system for lining them up and saying, "This person has 15 things going on in their lives that we could do a coordinated response to." There is no way to do that at the moment. People navigate in, often through a utility debt but maybe through some other process, and it is kind of random as to whether they end up in a position where somebody can see their whole picture and work with government on responding to that whole picture, rather than navigating multiple engagements with different parts of government.

MR BRADDOCK: Does that targeted assistance strategy need to look at how it waives the debt rather than simply seeking to defer payments?

Dr Killen: I think so, and for whom we might do that.

MR CAIN: For someone in receipt of a fine, what are the government processes like, in your opinion, and can they be enhanced?

Dr Killen: The main thing that we have found is that the process is very opaque. Unless you are connected in with a community sector organisation that can help you

to navigate that process, it is very difficult to find out what your options are and how you might manage that debt, or even what the consequences of not managing that debt might be. It can be a very anxious time, with very little support available.

Ms Helyar: For people with multiple unpaid fines, it could be a trigger for understanding a broader range of risk factors that need to be attended to. I note that ACT Policing intelligence said that their analysis of the data showed that early intervention through support services offered by welfare and support services are most likely to attend to risk factors and reduce the long-term issues around exposure to fines and being able to pay your debts.

There are two things. It is about being able to navigate the system. Also, the first point in that system—and I would say it is particularly important for people with alcohol, tobacco and other drug issues—is to be able to do that social and welfare assessment. Consideration of and response to fines is one part, but it cannot be the only point of intervention.

Mr Wallace: We also have a good body of evidence from the Robodebt debacle of cascading and multifaceted impacts of unanticipated debt on the lives of vulnerable people which might usefully be applied to some of the service responses here. It is really clear, from some of the case studies coming out of that involving people with disability, that there is limited capacity to absorb any unanticipated expenses that exist in the lives of those people, and there is opacity regarding the different areas of debt, on the part of the authorities that are responsible for supporting people to pay.

MR BRADDOCK: Following on from that issue regarding Robodebt, that was an example of vulnerable people who paid up, even when they were not required to, legally, due to the government issuing a fine or notice to them. Are there examples of similar things with the ACT government where we might have issued a fine in error, and vulnerable people decided to pay rather than go through the processes of challenging that fine?

Dr Killen: I have not seen the data. I am sure that there would be. I was looking at detention data this morning for the ACT, and breaches against justice processes is the third most common offence, and for unsentenced people as well. I think there is a cohort who, while they are waiting to navigate that process, are also being harmed or put in detention. At the end of that process they might be found not guilty, but they will have already experienced detention. I am not sure how we would collect data about people who are paying fines that they otherwise would not have had to pay. I do not know whether that data exists.

Mr Wallace: With respect to people that are under the threat of having a financial management order or guardianship arrangement applied to them, we do not have data on that, but we do know of cases where people choose to pay fines that they believe could be waived or that they actually do not owe, in order to prevent debt. When you are at risk of being placed under a guardianship order, people are questioning your ability to manage your own finances. It reaches a kind of tipping point where that control is simply taken away from you. People will do everything that they can to avoid that happening, including paying money that they do not owe, and we have seen that happen.

THE ACTING CHAIR: Going back to your suggestions, I like the idea of maybe a red flag system. Even for someone who perhaps does not classify as a vulnerable person, having multiple fines might be a red flag regarding something going on in their life in quick succession. Taking that a step further, how would you define a number of fines or a period, say, over 12 months, where there is a set number of fines, and it might put up a red flag to Access Canberra that that person may require some support? Do you have any ideas about how you might start that process?

Ms Helyar: You would want to do it with the choice and control of the person rather than the state making that determination.

THE ACTING CHAIR: Yes.

Ms Helyar: As you say, it would need to be part of a design process. It could be that it is more of a matrix model. For somebody like me, I got several of the 40-kilometre-an-hour speeding fines. I might have got flagged with three fines in quick succession but that is because I take a long time to get used to change. You do not want to have false flags. It may be that you need a few domains against which you are looking at the flags. You should always have in the process, "We've noticed you've got a number of unpaid fines. Here are some options for you. Would you like to talk to someone?"

Usually, it is better to give people the chance to have a conversation with somebody that they can trust. I am not necessarily talking about someone sitting in Access Canberra, but about someone in a community organisation that does not have the authority of the stick—someone that they can have a conversation with and explore what else might be needed to support them to fulfil their obligation.

Dr Killen: As a parallel example, when someone contacts their utilities retailer for hardship reasons, the different retailers have different approaches. ActewAGL, for example, has a mechanism by which they can ask the consumer if they want to be referred to a community sector organisation and they do the referral process for them, whereas other retailers might tell them about what supports are available but the person has to self-refer. We find that the ActewAGL model works a lot better for connecting people to support services. I would recommend some sort of similar model. If someone from Access Canberra, for example, did flag someone's multiple fines, they could have a really speedy referral process, with consent from the person involved, and without pushing it back to them to reach out for support by themselves.

DR PATERSON: Do you think there is a particular offence—for example, not paying your rego or being caught not paying your rego—that may be an initial starting flag or a good flag for saying, "Are there other unpaid fines or other fines that this person has accrued?" Is there a particular offence or group of offences that might be worthwhile having as key flags?

Ms Helyar: It is hard to answer that one off the cuff. I think the issue with not paying your rego is that it means you are uninsured. That is why it is potentially catastrophic and why the offences are more serious. That is what I meant around having a matrix. It may be that the criterion is not just a fine. It may involve the consequences of that

breach and the circumstances of the person. There is a bunch of things to think through, in terms of that assessment.

With the idea of looking at the hardship programs in the utilities sector, there has been quite a lot of analysis of the effectiveness of those. It would be good to include some data from that in the design process.

Dr Killen: I do not have all of the information, but the utilities hardship programs have a number of flags that they have set up—having this much debt or falling this far behind your payment plans will trigger further involvement.

MR BRADDOCK: Ms Helyar, I want to come back to your point about needing to think about transport. In terms of the cost of rego, the compulsory third party is probably about 60 per cent of that price, so it is very hard to get a discount on that element. If any government efforts are made to try and reduce the cost of registration for those who are in hardship situations, would that be sufficient to meet the need, or do we need to look more at public transport and other options to assist people to be more mobile in the ways they need to move around Canberra?

Ms Helyar: The issue for people who are exposed to a number of risks in their lives that can make them vulnerable is that it is very hard to design a public transport system that is tailored enough to make a difference in terms of their ability to get around. We know that people prioritise keeping their vehicle on the road because it gives them capacity to engage in ways that otherwise would be impossible.

Absolutely, it is about supporting no-cost public transport, which is a position of ACTCOSS, and improvements in public transport, especially public transport that is not associated with getting to a nine to five job, Monday to Friday, in a town centre. In the end, for many people, keeping on the road will be essential for them to live a life of dignity and to access the infrastructure that they need, the service system and a social life. Having a way of thinking through what the criteria are for supporting an income-based registration payment would be really valuable.

Dr Killen: At the moment the more that you can pay up-front on your registration, it means that you get a discount. That adds a poverty premium to people who can only afford to pay $400 for three months as opposed to $900 for 12 months. It is about looking at how that system works so that it prioritises people who cannot afford to pay up-front, large costs as opposed to people who can afford to pay those large, up-front costs.

Mr Wallace: AFI represents a whole slice of people who cannot use public transport, so the only modalities available to them are the most expensive ones—on-demand transport, taxis and Uber, which might involve a $60 trip across town. Retaining access to personal vehicles is vitally important to those people who often have no capacity to absorb anything unanticipated in their lives. A car breakdown is a tragedy for those people, let alone defaulting on their rego.

MR CAIN: I want to do a bit more exploring of income-based fines. I think you are all supportive of that approach. How would you see that working practically and are there examples of where this is working, in your opinion?

Dr Killen: My understanding is that it is very difficult in the ACT because the government does not necessarily have oversight of people's incomes. We would to some extent have to rely on self-reporting of income. I think there is anxiety around that, but I do not think it is beyond management.

Ms Helyar: It is working in some of the Nordic jurisdictions, isn't it?

Dr Killen: I believe so.

Ms Helyar: In some of them, the fine is based on weeks of pay.

MR CAIN: One way to do this is to give them the option, if they can satisfy a burden of proof, which is an extra process for them, but it is certainly one way to get some relief, if their income is below a certain level.

I made reference to the ACT Policing submission, and we touched on this earlier. They observed that, with the TINs and PINs, there is a payment plan option, but not for the criminal infringement notices or the simple cannabis offence notices. I am assuming you would be supportive of payment plans being extended to those, to the CINs and SCONs. Is there any other way that you see these two groups of infringement notices operating? Maybe they could be dealt with in one way rather than separately?

Ms Helyar: We would argue that, yes, expanding the opportunity for fines to be in the alternative pathways is absolutely critical. There are a couple of things, though. We want to make sure there is not a net-widening effect. As all of our evidence today has demonstrated, fines are not benign. It is really important, in the implementation of decriminalisation, that there is not a widening of the net of people that are captured by fines. Certainly, ATODA has been working very closely with ACT government through the consideration of the implementation of the Drugs of Dependence Act changes.

The other thing is that we think there needs to be an evaluation of all of those changes so that we can monitor what effect they are having. There is an assumption that it will reduce harm, but if there is a net-widening effect and people end up in the criminal justice system through a fines pathway rather than through the original offence pathway, that is a perverse outcome. We would like to see a proper evaluation and consideration of all of those changes in the harm minimisation framework, to check that it is delivering what we are expecting.

MR BRADDOCK: I noted in the ACT Policing submission they stated:

> It would be rare for police to encounter a driver that has limited capacity to understand an infringement notice, as legally driving a vehicle requires a certain level of comprehension.

In terms of your perspective, is there any issue with those with a limited capacity understanding when they are issued with an infringement notice?

Mr Wallace: It is a somewhat simplistic outline of competencies. The issues that might be going on with someone with a really complex life and a complex mindset are different from the skills that you might need to successfully operate a car. That would be my observation. We might be talking about a person with a psychosocial disability, for instance. There are people with cognitive disabilities that can drive quite successfully but they might have issues with needing support to process other kinds of information or manage their financial affairs.

My observation would be that I do not think we should assume that everybody who is able to operate a car does not need support and consideration around issues that they might be having with their financial affairs. Many of the people that we work with are people on fixed low incomes because of barriers to employment, so they are on the disability support pension. Modelling work that we have done has shown that those people are down around $800 a fortnight after paying for private rent, utilities, on-demand transport costs and other things. While I get their point, I cannot agree with it.

MR CAIN: I have no further questions. Thank you for your comprehensive submissions.

THE ACTING CHAIR: On behalf of the committee, thank you for your attendance today.

Short suspension.

WATCHIRS, DR HELEN, President and Human Rights Commissioner, ACT Human Rights Commission
CAMPBELL, MR KEVIN, Human Rights Legal Adviser, ACT Human Rights Commission

THE ACTING CHAIR: I welcome witnesses from the ACT Human Rights Commission to the hearing. Could you acknowledge your acceptance of the privilege statement?

Dr Watchirs: I understand and accept the privilege statement.

Mr Campbell: I understand and accept the privilege statement.

DR PATERSON: Thank you. Mr Cain, do you want to ask the first question?

MR CAIN: Yes. I note on page 7, at paragraph 29, that you welcome the introduction of the investigation management system by ACT police. Have you had any feedback on that system, or are you connected in some reporting manner so that you can monitor the impact of fines on different groups within our community?

Dr Watchirs: No, we do not have any relationship with police in that respect. They are exempt from the Discrimination Act. They are subject to the Humans Rights Act, but the complaints system that will be coming soon will not cover police. Our Victims of Crime Commissioner has regular contact with police, and the commission meets with police, but we do not have any line of sight as to that data system. My colleague may be able to add something further.

Mr Campbell: No, there is nothing further that I would add. We do not have line of sight to the IMS.

MR CAIN: If, for example, you requested data from that system, is there any reason that it would not be given to you, or perhaps redacted data?

Dr Watchirs: We have not requested, so we do not have experience. I know, with respect to the Victims of Crime Commissioner, that there is a huge backlog regarding financial assistance data that is impacting on our backlog of cases. We would be reluctant to ask for data, unless there was a very good reason.

THE ACTING CHAIR: You say that ACT Policing does not regularly publish disaggregated data about criminal infringement notices. Is that the sort of data that would be produced by that system, or would that be different?

Mr Campbell: No, not necessarily. We do not have a great understanding of what that system entails. We understand that its focus is on investigations, so it is potentially not even in relation to the issue of infringement notices.

THE ACTING CHAIR: Regardless, with respect to ACT Policing publishing better data and being more transparent around criminal infringement notices, would that be something that you would support?

Mr Campbell: Absolutely. We have raised this previously, in the context of our submission to the first COVID-19 select committee. In the wake of that, we heard from police that there are issues with the current police real-time online monitoring system information; it does not allow for searchable—

Dr Watchirs: PROMIS?

Mr Campbell: Yes, PROMIS, as it is colloquially known, does not allow for searchable data and it does not necessarily permit, as a technical function, that collection of disaggregated demographic data.

Dr Watchirs: It has been trialled in Victoria—a receipting system that my colleague could give more data on.

Mr Campbell: In 2015 Victoria Police piloted a proof-of-concept receipting system based on overseas examples. It involved the provision of paper-based forms, business cards, and consideration of, say, mobile network integrated solutions or applications. It considered a variety of ways in which a person can be given a receipt of their interaction with a police officer.

The premise was that, in four localities in Victoria, police and protective services officers would, for all interactions with a member of the public, provide these sorts of receipts, with a view to having greater transparency and accountability of how these police interactions were occurring, and some evidence for the person who has had the interaction.

An evaluation report found that the business card system was relatively efficient; however, we do not believe that it was progressed any further because the evaluation report found that the public did not see much value in it and it often lengthened interactions with police, which resulted in less positive interactions, according to the members of the public.

From our perspective, this is potentially a messaging thing. We see value in having that record where it would allow a member of a vulnerable community to say, "I had this interaction with police and I want it recorded that I am a member of this community." It would be a consent-based system. That being said, it should be designed, of course, in collaboration and close consultation with affected communities.

THE ACTING CHAIR: Rather than have an incident number, which may be another step forward, there would be a number to say, "This was your interaction with a police officer at this time, date and place"?

Mr Campbell: Yes. In theory, built on the back of that, they could register their interactions and give consent to giving their demographic data. That would be one way to get around privacy considerations and ensure consent to providing that data. Even if it is just indicative, it is better than nothing.

THE ACTING CHAIR: In your submission, you focus mostly on the criminal infringement notices. Is there a reason why, in terms of the difference between traffic

infringement notices and criminal infringement notices, the criminal ones have more human rights implications?

Mr Campbell: No, not necessarily. As we heard from ACTCOSS, ATODA and AFI this morning, they can all disproportionately impact vulnerable communities. Our submission is really focused on three discrete points, one of them being any proposals to expand criminal infringement notices beyond offences that are strict liability or absolute liability, for which there are fairly straightforward criteria about whether someone has committed the offence, and no decision is made by the authorised officer or police officer about the fault elements—whether someone has had the intention to do the offence or been dishonest in doing so.

In that regard, we see that extending infringement notice schemes to those offences creates some scope potentially for uneven, inconsistent or arbitrary exercise, especially in the context where ACT Policing, as Dr Watchirs said, is not necessarily subject to the ACT's Discrimination Act.

THE ACTING CHAIR: I am not sure if it was in your submission or another one; it was pointed out that in other jurisdictions drinking alcohol in public or disorderly conduct in public had resulted in a lot of infringements being issued to vulnerable people. Are there any particular infringements that you see in the ACT that are disproportionately impacting vulnerable people, or ones that we should not have?

Dr Watchirs: We do not have that line of sight. We have referred to interstate studies. The New South Wales Ombudsman in 2009 did a review, following the expansion of the CIN in 2008, and it showed that there was actually a net widening. In the past, people received cautions or warnings, so more people got CINs than before, and that disproportionate impact compounded the disadvantage for Aboriginal people. They were less likely to elect to be heard in court than anyone else, and 89 per cent of them failed to pay on time. That shows that it does not work.

Also, the Australian Law Reform Commission 2017 *Pathways* report talked about the challenges of criminal infringement notices for Aboriginal people throughout Australia. We do not have the ACT data, but we are expecting the same situation in ACT because of those New South Wales Ombudsman and ALRC *Pathways* reports.

Mr Campbell: While acknowledging, of course, that our populations are very different, and our size. There is that caveat.

THE ACTING CHAIR: Do you have any idea, in terms of how other jurisdictions do collect this type of data, why we do not or how we should?

Dr Watchirs: The receipting system is the only thing that we have explored.

MR BRADDOCK: In your submission, in paragraph 10, you consider it to be a flawed assumption that every recipient of a criminal infringement notice will be capable of paying a fine, disputing their liability or duly applying for the CIN to be withdrawn or serviced in instalments. On what basis do you make that statement that the assumption is flawed?

Mr Campbell: It is very similar to what we have heard from the submitters this morning. In particular, for instance, people are, as a first premise, simply unaware that they have the facility to challenge or seek a payment plan, a waiver or an extension of time to pay. It may not be accessible to them, or they may not have the capacity to engage with those processes. We do not, of course, have line of sight to the operation; but, as a principle, these observations have been made in other human rights jurisdictions around the world, and they are backed up in other submissions.

MR BRADDOCK: In paragraph 18 you talk about how just having those programs is not sufficient to ensure rights to equality and non-discrimination. You are saying that there is actually a positive duty in terms of ensuring that reasonable adjustments are made, including proactively informing people of the available hardship options. Is this what is required in order to ensure that those schemes are compliant?

Mr Campbell: We are always very cautious when we make a public statement on human rights consistency. It is a principle of human rights law that you need to avoid indirect discrimination, which is to say that you need to have steps that are tailored to the individual circumstances of the person and therefore have accessibility and flexibility to incorporate reasonable adjustments, which would logically be a condition of compatibility with the right to equality and non-discrimination. In this context it would seem to be that way, but I think we would stop short of publicly saying that is required.

Dr Watchirs: I think it is a good idea to proactively inform, but we cannot say that is a sufficient safeguard to make it human rights compatible.

MR CAIN: I am interested in your view on income-based fines and how they could be administered in a human rights compliant manner.

Dr Watchirs: We are aware that some European countries have it, but we have not had the resources to explore that. One issue would be that I am not sure that the ACT government currently holds enough data to assess income, unless people have already volunteered it; the commonwealth government would certainly hold that data for tax and other reasons.

Mr Campbell: Of course, we are supportive of any system that caters for the individual circumstances of a person, including their capacity to pay, so in principle it would seem to be a preferable approach from a human rights perspective, subject to consultation and co-design with affected communities and the authorised officers who would be administering those fines.

Dr Watchirs: We would still have populations that have higher outgoings. People with disability would have higher health care, medications and other costs that may make that income much less available. You would still have to have some mitigation and compassionate or hardship grounds. Blanket provisions are not good in human rights terms. It is looking at the individual impact that is important.

THE ACTING CHAIR: Following on from that, the Legal Aid submission says there is a 15-page form for a hardship application. Would you like to speak to that?

Dr Watchirs: It is certainly not good from the point of view of a disability justice strategy, and with a positive duty applying from February next year. I think that it will have to be made a lot more accessible for people with disabilities. It would be worth talking to Access Canberra about that.

THE ACTING CHAIR: You talk about the Magistrates Court Act changes that come in next year. Obviously, that applies to a person that has gone to the court, and the court makes those arrangements. Whatever that legislation suggests, are there grounds that could be taken from that legislation and placed in regulations around fines that would be applicable in the process?

Dr Watchirs: I think they have taken the idea from the parking and traffic offences that have payment plans, extension of time, waiver, and community and social development undertakings. The Magistrates Court has picked that up as the model.

Mr Campbell: That is my understanding, too. I am not sure that I understand the premise of the question. Is it about whether the authorised officer is the one diverting someone to those payment plans?

THE ACTING CHAIR: Yes. I was wondering whether they were included in the traffic infringement. It sounds like they already are, so that sounds like a good thing.

MR BRADDOCK: In terms of the use of discretion to issue an infringement notice or not, the argument that seems to come through in your submission is in terms of: when you open up to a discretion, you open up the possibility of, say, infringement of human rights against disadvantaged groups—for example, First Nations peoples. But in other ways you also say that a discretion can sometimes be a good thing in terms of waiving it when it is inappropriate. I am trying to understand your view of discretion and how it is utilised.

Dr Watchirs: There are two thresholds. There is the threshold of actually issuing the CIN; that is where there has been that main problem in the past, from the New South Wales Ombudsman. We know that people were given warnings and other ways of diversion. It seems that it is automatic now that you get a CIN; then we are looking at the discretion regarding ability to pay—the threshold.

Mr Campbell: One of the crucial distinctions is about an individual authorised officer who does not necessarily need to give reasons for their decision that would allow a person to challenge it. It is also about a person not expecting the interaction having the wherewithal to know that they are able to elect to have it taken to a court or otherwise, and that there are other options down the track. Once they have accessed those options, potentially with support, it is about having the administrative decision-making, with all of the review points that you would expect to be associated with that. It is more about the transparency and accountability of that initial interaction, and the reporting structures that we believe should go with that, than necessarily being at the latter end, in terms of discretion being exercised by a government official in relation to payment plans, extensions and waivers.

MR CAIN: I am assuming you would also support the extension of payment plans,

which are currently available for traffic and parking infringement notices, to CINs and SCONs?

Dr Watchirs: Absolutely; yes, we have put that in our submission.

MR CAIN: Do you have any observations on how those payment plans are working or could be improved in their administration, particularly from a human rights perspective?

Dr Watchirs: I am afraid our complaints commissioner was not able to attend today, but I am not aware of any complaints in relation to that. I could take that on notice.

MR CAIN: Okay; thank you.

MR BRADDOCK: Would you also support a waiver process for where someone is manifestly unable to pay, under a deferred payment plan?

Dr Watchirs: Yes, I think that is included in the current traffic and parking arrangements. Payment plans, extension of time, waiver and community and social developments: it is four-pronged.

THE ACTING CHAIR: The government submission talks about the number of parking infringement notices, the number of offences that proceeded to a mention in court, and the number that proceeded to a hearing stage. We talked in a previous hearing about potentially there being a way in the Access Canberra system so that if you had a number of unpaid fines there was a flag that went up. There is already a point where Access Canberra says, "This fine has not been paid," and the matter goes through some process which the court would decide, or there is a mention in court.

Do you have any thoughts on whether this would be an effective way of bringing people to the forefront of the system? There was talk about utilities services; they have red-flag points. ActewAGL will actually ask the individual if they would like to be referred to social services for support. Do you think that could be an avenue or a way forward in this context?

Dr Watchirs: It would have to be specified as a positive measure because inherently it is discriminatory and some people might be offended by that. You would have to consult the community, particularly the Aboriginal community, because they are disproportionately impacted, as well as people with disability and young people, as to whether that is a good idea. I know that the justice reform initiative, of which I am a member, have recommended a cap on the number of CINs that can be applied. That might be another way of limiting that impact.

THE ACTING CHAIR: With the cap, would that be over a 12-month period, or would it be a cap for life?

Dr Watchirs: I do not know much more about the suggestion than what was in the submission. It would be good to see one operating in practice in another jurisdiction, as a model, to see how it works.

THE ACTING CHAIR: There being no further questions, thank you very much for your attendance at the hearing today. I apologise that we are ending a bit early. We appreciate your submission and input at the hearing today.

Dr Watchirs: Thank you.

Hearing suspended from 11.40 to 11.55 am.

WHOWELL, MR PETER, ACT Policing Executive General Manager, Corporate, Australian Federal Police
WILLIAMS, MR DAVID PATRICK, ACT Policing Acting Superintendent, Family Violence and Vulnerable People, Australian Federal Police

THE ACTING CHAIR: We welcome the witnesses from ACT Policing to this next session of the hearing. Could you acknowledge the privilege implications of the statement that is in front of you and state whether you accept those implications?

Mr Williams: I acknowledge the privilege statement, and I understand and agree.

Mr Whowell: I have read, acknowledge and understand the implications of the privilege statement.

THE ACTING CHAIR: Thank you very much. Mr Cain, would you like to ask the first question?

MR CAIN: I am interested in the use of discretion as to whether or not a fine, in all of the categories, is issued. I note that you have internal guidelines. Do you keep a record of whether discretions are exercised, and in what circumstances, and how can you ensure that that is consistent, irrespective of which police officer is on site?

Mr Whowell: Mr Cain, discretion is inherent in the office of a constable. The training that we provide to people around how they exercise their duties and what their obligations are is where we start in terms of having a consistent approach to the exercise of discretion. Discretion is at the heart of the way we police, in terms of being able to deal with individual circumstances as our officers come across them. That will be caught up in the reporting that they might do, as they go about their duties. Actually being able to collate that is not something that we would necessarily be able to do. It may be recorded in different ways, but I am not aware of a central way for us to collate that.

Mr Williams: That is correct. With discretion, if it is a verbal warning only that we are referring to, it would be very difficult for us to collate all of those warnings and all of the different circumstances where they might occur. In fact, discretion in relation to what our action will be might involve a caution or a diversion. You will find that is where we are starting to step into the realm within our guidelines where there will be a record of that decision-making.

MR CAIN: Is it the default that they look for a discretion option as opposed to just automatically giving a fine? How do you get your police into that frame of mind? I know it is a tricky one.

Mr Williams: I wish it was that easy, to say it was a straight-out default to offer discretion, but there is a lot of context to every situation that has to surround that. Obviously, there are the vulnerabilities of the member of the community that we are dealing with at the time, the seriousness of the offence, the impact on the community, the impact on the person, and the impact on the constable performing their role and function within the jurisdiction.

Discretion is one of the wonderful things about policing; and, with the authority that we do carry and with our responsibility, we do have the ability to utilise our discretion. However, in that same sentence, we are also accountable for times when we do. When we are questioned as to our decision-making around our use of discretion, the expectation is that our members will be able to articulate how they came to that decision.

MR CAIN: You do not keep a reporting or record of when the discretion is exercised? You do not track the use of discretion?

Mr Williams: As mentioned earlier, in relation to discretion to issue a warning, the answer is no. In relation to discretion to proceed by a formal caution or commence a judicial process or a CIN, we would have a record of that, yes.

THE ACTING CHAIR: In your submission, you say, "If an individual does not pay their infringement notice, Access Canberra will notify ACT Policing." What information do you get on an individual? Is it just that one fine that comes to you? What information do you draw on to make a decision as to whether you proceed to refer that to the DPP?

Mr Williams: If we look at a traffic infringement notice—quite a simple one to articulate—you have 28 days for payment. The key point for us, at that 28 days, is whether the road user is making a decision to contest the offence mentioned in that traffic infringement notice or not. If it is contested, we are notified, because then we are in a position where, even though it is a strict liability offence, we will prepare a brief or turn our mind to considerations of commencing a judicial process.

If we do not receive notification after 28 days that it has been contested, it is then a matter for Access Canberra to reach out again to that road user with a reminder about payment. That can vary in relation to timings over the next six months. Eventually, there will be some sort of consequence, if that is not paid, taken by Access Canberra, which can be imposed in a variety of ways, with restrictions on licences or registration.

THE ACTING CHAIR: ACT Policing does not choose to progress things; it is Access Canberra who does?

Mr Williams: Once we issue our infringement notice, we have detected the offence. Our next involvement in that is if that offence is contested. If we are not advised that it is contested, it sits with Access Canberra.

THE ACTING CHAIR: We will ask the minister about that when he attends.

MR BRADDOCK: In your submission, you say:

> ACT Policing believe adequate education, diversion, support services, deterrence and detection will assist in maximising compliance …

What role do infringement notices or fines play within all of these other elements, and is it where it needs to be in those settings, or does it need to be adjusted?

Mr Whowell: From my perspective, that is a policy decision by government in the first instance when they go through and look at what behaviour they are trying to regulate in the community and how they apply their approach to setting penalties and fines. We are hoping that when you set a system up or adjust it, we have gone through that policy process and applied it in the right way.

Where we come in, in terms of education and those sorts of things, is hopefully with our engagement with different community groups, in terms of addressing issues around driving behaviour, behaviour in the entertainment districts and things like that. We are trying to get that education and prevention piece out. When our officers actually come across, in the course of their duties, people who may be behaving against whatever the regulation might be, which enlivens something like an offence, that is when we get into that ability to assess what is the best thing to do. Is it to give people a warning or a caution, or is it to issue whatever the infringement notice might be in that circumstance?

MR CAIN: The Human Rights Commissioner referenced a new investigation management system. Could you explain what data that will collect and what kinds of categories of our community it is based on? I am particularly asking about vulnerable and marginalised parts of our community.

Mr Whowell: The point to start with is that our PROMIS system is an old system, and it is set up in a way to provide that electronic record and case management for all of the work that the AFP does across our outcomes. The investigation management system is a new system to take the parts of PROMIS at the moment that are really focused on undertaking criminal investigations. It is designed to meet those criminal investigation needs of everything we do, nationally and internationally, as well as the criminal investigation parts of our responsibilities in the ACT.

Because it is in development, and we are going live as we develop it, we are still working out how that applies to the work that we do in the ACT. We are trialling it at the moment within our criminal investigation space, and we will be going through a progressive series of milestones where we will have groups that test it; then we will be going live, sometime in 2024, from memory.

In terms of the issues around collating information or making information available in the areas that the Human Rights Commission identified in their submission as being inadequate at the moment, we have not got to that point with IMS in its development at this stage. These are new issues to me personally, from engaging with this inquiry and working through the submissions from other parties who have made submissions to you. We will be interested in working on those issues with the Human Rights Commission. They were, rightly, quite generic statements in their submission. I did not hear their evidence before, but I am sure we can look at those sorts of things and work out what we may or may not be able to do.

MR BRADDOCK: With respect to people self-identifying as vulnerable in some category or another, and with providing that information consensually, does the system enable that to happen?

Mr Whowell: Which system are you asking about?

MR BRADDOCK: The IMS.

Mr Whowell: At this stage I would probably say no, but I will check that. At the moment—going back to what I said before—IMS is being developed for the whole of the AFP, and the focus is on protracted criminal investigations, as opposed to what I understand to be the set of circumstances that we are dealing with here, where we are dealing with minor offences and penalties. My assumption is that it is probably not built into the system right now. That is why this is an opportunity for us to see what we can do in the future.

THE ACTING CHAIR: With the criminal infringement notices, your submission says that there were 115. Are you able to provide the committee with a breakdown of what types of notices they are, and what offences they relate to?

Mr Whowell: I can give an idea of the sorts of infringement notices we have delivered this year. I am not sure whether the numbers will add up to 115. I am looking at my brief. For the financial year 2021-22, we issued 100 COVID-related CINs. That is not something we have done this financial year, to date. The situation has changed. With respect to criminal infringement notices for 2021-22, we issued 115. I cannot break that down, from the information I have here. Are you interested in the other sorts of infringement notices that we may have issued?

THE ACTING CHAIR: Mainly the criminal infringement notices. It came out in the Human Rights Commission's submission that the New South Wales Ombudsman has done some analysis of that data and those particular offences that are capturing a large group of vulnerable people. I am interested in what those 115 offences might be in relation to. That might provide a bit of insight into what is going on.

Mr Whowell: The best thing I can do is take it on notice and we will come back to you with what we can and cannot do.

MR BRADDOCK: In your submission you talk about the suitability of existing formal government guidelines for considering treatment of vulnerable people. You mentioned earlier your discretion. How does that discretion work when someone has identified or is obviously a vulnerable person? What does a police officer do in those cases?

Mr Williams: If someone identifies as a vulnerable person, depending on what the reason for the interaction is, if we go back to the issuing of a TIN, one of our key priorities would be making sure that that person understands the actual process we have placed upon them or we have commenced against them. In instances where we have concerns in relation to that understanding of our communication, we may delay the commencement of that process until we can put avenues in place to ensure that we are not adding more stress to the road user by issuing an infringement notice that they do not understand.

The reason that we are going down the path initially with the infringement notice is for the deterrence factor, outside a judicial process. It is obviously a much better

option when commencing the process. The next challenge we have as police officers is making sure that the member of the community understands exactly what process we are about to commence. It would be on a case-by-case basis, in answer to your question. We have a number of avenues available to us, be it through interpreter services, family members or other members who might be bilingual, to assist with communication, or carers, to ensure that the person receiving the infringement or the notice is fully aware of what their obligations are and the consequences of not following that up.

MR BRADDOCK: That is all about once the process has started or deferring the start of the process. Does the discretion also apply before even starting the process or issuing the TIN in the first place?

Mr Williams: That point of discretion, as I mentioned earlier, is about context. You are taking into account the context of the situation, what options are available to you and then taking a step forward. With respect to the discretion, if you are not proceeding, when I utilise—and I will speak from my experience—my discretion, I explain to the member of the community what action I am taking or why I am not taking certain action.

There have been instances, once again for me personally in my career, where I have used discretion not to proceed but I have followed it up with that member of the community, utilising family members at a later date, to ensure they fully understand. With discretion, I have the ability to make that decision and follow it through. Once I commence a TIN or a process, I then have to ensure—the onus is on me as the issuing officer—that the recipient fully understands what action we are about to embark on.

MR BRADDOCK: I am sorry if I am being dense in my question here. In the application of that discretion in the first place, you may also consider vulnerability of the person in front of you?

Mr Williams: Absolutely. I am sorry if I did not make that clear.

MR BRADDOCK: I am sorry if I did not understand.

MR CAIN: I note that on page 7 of your submission you say:

> ACT Policing believe adequate education, diversion, support services, deterrence and detection will assist in maximising compliance with legislation.

I am particularly interested in the education programs and how they operate within our schooling system or within community groups, the effectiveness of those and whether there is value in increasing that interaction.

Mr Whowell: I will probably have to take that one on notice because I do not have the details of those programs at hand. My understanding is that we were referring to things we might do as well as things that other agencies and community groups would probably do as well. I will take it on notice.

THE ACTING CHAIR: There are very high rates of Aboriginal and Torres Strait

Islander incarceration in the ACT. There seems to be a lot of data and evidence in other jurisdictions around how multiple fines lead to eventual incarceration. There does not seem to be that data here in the ACT. From your experience on the ground, is this what happens here with our Aboriginal community? There is the first contact; then there is a fine, followed by another fine; eventually you are picking that person up to go to AMC.

Mr Williams: Yes. Obviously, our First Nations people, Aboriginals, would fall into the vulnerability grouping. With respect to how we do that assessment, as I explained earlier—and I keep going back to that context, with our first interaction—if we go down the path of issuing a caution or commencing an infringement process and there are repeated processes, obviously, that is not working as a diversion or an option outside the judicial process.

In some circumstances, through our networks in the ACT, sometimes the decision may be that it is best to commence a judicial process in the first instance because it puts the judiciary in a position to put some form of treatment or process around that person which otherwise we could not have control over. That is where we start to look at the risk and the vulnerability.

Those decisions are not taken lightly. Our first preference is always deterrence away from the judiciary. I will put a caveat on that: there are instances where we will go straight to the judiciary because we can put some processes in place immediately.

THE ACTING CHAIR: That is interesting. If we had better support services, alcohol and drug services, and if the interaction between police and those services was more available, would that curb some of that immediate referral to the judiciary?

Mr Williams: Possibly, because the challenge we have as a jurisdiction, when we start looking at the support services and programs, is that we are relying on a sense of cooperation with a community member, and they are voluntary. At any point that participant can remove that consent or that interest in that program. Potentially, we could be going back to where we started, and we have to start this journey again, I suppose. It is really tricky with program delivery and participation in the ACT because there is that delineation between the consensual and voluntary, and the court imposed.

MR BRADDOCK: I would like to dig into this point further. What services, if they were available, would police be able to refer to before someone would need to be referred through the court system in order to access them? Which ones would be of value, do you think?

Mr Williams: I will take that on notice, but I want to put some context around what our answer would be. It is not just the program that we think would fit. It is also about the family group. If we are talking about our Aboriginal community members or our First Nations members, we are heavily reliant as police on getting that rapport and that trust within the family unit to provide the support to the community member to participate in a program. Culturally, that is one of the foundations.

It is not just a matter of picking a program that we think will work. It is also a matter

of looking at our engagement strategies with certain elements of the community to try and provide support for participation in the program. I will take that on notice and come back.

MR BRADDOCK: You may have partially answered this question: what cases would be suitable for that, out of the ones you have described that you currently send straight to the judiciary, so that they can access those supports and arrangements?

Mr Williams: I need to answer this one quite carefully because once again there is context around it. In my experience, there have been some elements where it could involve drug use, where the diversionary option or pathway that we have utilised with ACT Health has been unsuccessful. We find ourselves in a pattern, unfortunately, which is not very productive.

Sometimes, if we have not been successful on the diversionary pathways, which are always our first call for ACT Policing, we may say, "We need something more robust," and look for the judiciary to impose their participation in these programs as opposed to a voluntary participation, which our diversionary option is.

MR BRADDOCK: I am quite happy for you to take this on notice. Thank you for the context. What situations might be suitable for such an arrangement?

Mr Williams: Yes, okay.

Mr Whowell: It cuts across so many other issues, in terms of recidivism and things like that. We are looking at programs that are not necessarily law enforcement delivered. They go to those underlying social and economic causes as to why people find themselves in those situations.

MR BRADDOCK: A lot of the submissions have referred to income-based fines. Do ACT Policing have any views on that? Have you given any thought in terms of the challenges or issues that that might cause for ACT police?

Mr Whowell: I do not think that is something we are qualified to comment on. That is probably more a matter for government; it is a policy issue.

MR BRADDOCK: Thank you; I just wanted to check.

MR CAIN: The pending Magistrates Court (Infringement Notices) Amendment Act 2020, due to commence in February next year: what is the impact of that on the administration of TINs and PINs, particularly with defaulters?

Mr Whowell: I am sorry, Mr Cain; I will have to take that on notice. I do not have that information with me today.

MR CAIN: Okay, thank you. It is referenced at the top of page 5 of your submission.

Mr Whowell: Yes.

THE ACTING CHAIR: Mr Williams, I note that you are the Acting Superintendent,

Family Violence and Vulnerable People. Obviously, fines would come under financial hardship and stress; are you able to offer any insight into situations where people might find themselves with multiple fines, and it may lead to domestic violence incidents?

Mr Williams: If the question is whether financial hardship causes stress within the household which may contribute to or be one of the factors for family violence within the household, yes, there is lots of data to support that. In relation to our jurisdiction specifically and any policy decision that the government might make in relation to that, I would not have that data. I am unsure whether a study of similar ilk has been completed in the ACT.

THE ACTING CHAIR: I have another question that is similar to the Aboriginal and Torres Strait Islander community question. We heard from Mr Wallace, from Advocacy for Inclusion, earlier today. There are similar rates; something like 30 per cent of the prison population have some form of disability. In terms of your engagement in the community, how do you manage situations where people maybe have cognitive impairments or mental impairments that you are not necessarily aware of? How do you engage in those situations where someone may not actually understand what is happening?

Mr Whowell: In the training that we give our people, to start with, we try to give them awareness around what might be some of the common symptoms, behaviours or triggers with people who they suspect might have those sorts of vulnerabilities. People with disabilities and mental health are prominent in that. We try and get through to our people that they need to understand and recognise those factors and take that into account when they are doing their decision-making regarding how they are going to respond to the particular situation. That is something that we can always do more of. I personally was not aware that the statistic in the population was that high. That is our approach at the moment.

THE ACTING CHAIR: With the "can always do more" stuff, do you think that the current training is adequate in terms of preparing officers on the ground for the range of different vulnerabilities that they may come across?

Mr Whowell: From my perspective, it is, because we are focused on de-escalation. We are focusing on them collaborating where they need to with anybody else that can help them, such as mental health professionals, and taking a compassionate approach in those situations. It is about focusing on communication in that set of circumstances. That is my perspective. Dave might want to add something.

Mr Williams: Yes, I totally agree. We do have our disability justice liaison officer. We are always open to new ideas for training from within the jurisdiction. We do work very closely with the courts in relation to matters that we have proceeded to the court. One of the roles of our disability liaison officer is constant engagement with the community and feedback into ACT Policing, because we are continually reflecting on whether there is a way that we can improve our services and our product that we give to the community.

THE ACTING CHAIR: If members do not have any further questions, we might

wrap up the hearing for now. Thank you very much for your time today. It is greatly appreciated by the committee.

Hearing suspended from 12.26 to 2.29 pm.

LEE, MS TAMZIN, Head of Criminal Practice, Legal Aid ACT
ALATI, MR JOHN, Supervising Solicitor, Street Law, Canberra Community Law
ESGUERRA, MS INDRA, ACT Campaign and Advocacy Coordinator, Justice Reform Initiative
HUMPHRIES, MR GARY, Co-Chair, ACT Chapter, Justice Reform Initiative

THE ACTING CHAIR: Welcome. We will resume the public hearing of the committee's inquiry into penalties for minor offences and vulnerable people.

The proceedings today are being recorded and transcribed by Hansard and will be published. They are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses state, "I will take that question on notice." This helps with the transcription and confirmation of questions taken on notice.

We have a few witnesses for this session. Could you please all confirm your acceptance of the privilege implications of the statement that is on the desk, or that you have been sent?

Ms Lee: I am here on behalf of Dr John Boersig, our CEO, who was unable to attend. I pass on his apologies. I accept the privilege statement.

Mr Humphries: I also accept the privilege statement.

Ms Esguerra: I accept the privilege statement.

Mr Alati: I accept the privilege statement.

THE ACTING CHAIR: Thank you. Mr Cain, do you have a question for our panel?

MR CAIN: I do. I hope this does not take you by surprise. ACT Policing made reference to the Magistrates Court (Infringement Notices) Amendment Act 2020, which is due to commence in February next year. They have taken on notice what impact that will have on the issue of infringement notices. Are any of you aware of that act and its pending commencement?

Ms Esguerra: Would you mind reminding us, in a sentence or so, of which act that is?

MR CAIN: It is called the Magistrates Court (Infringement Notices) Amendment Act 2020. Policing say it will commence in February next year. I am not sure whether you are aware of that or not.

Ms Esguerra: I cannot remember what the content of that act is. I will have a look at it.

MR BRADDOCK: Perhaps that is a question for the ACT government.

MR CAIN: We might do that, too.

Ms Lee: I have a vague understanding that the act will allow the Magistrates Court to proceed with matters by way of infringement notice as opposed to coming into court. I have not reviewed the proposed legislation and I am not qualified to comment further at this point, unfortunately.

Ms Esguerra: I think I would have read that bill three years ago, but I do not remember the content. From memory, it is a positive move, but it will certainly not solve all of the problems when it comes to minor offences in the ACT.

THE ACTING CHAIR: Community Law may be able to answer this. It is in the submission and it is around criminal infringement notices. I asked ACT police, because they gave out 115 of these offences in the last year, for a breakdown in terms of what the actual offences are. They took that on notice. Do you have any further insight into that and what sort of offences are coming out under this category?

Mr Alati: In terms of the minor offences, we do not deal with a lot of them. In our submission we mentioned an example of someone charged with camping in a public place—a person who was actually sleeping rough in his car. We do not know the outcome of that, but it certainly raises some concerns for us. If you look at the legislation around camping, it is not defined anywhere. We assume that it is something that will have to be dealt with by way of some kind of court decision. It appeared on the surface to be a heavy-handed approach. We do not have any statistics, any numbers, around these offences.

MR BRADDOCK: I have a question in terms of Street Law. In your submission you referred to the fact that you are seeing clients referred for medical assessments as a result of an application to have their traffic or parking infringements waived, but they have subsequently had their licence suspended. Can you please walk me through that and how that resulted?

Mr Alati: Certainly. An application for waiver includes things like mental health issues. Virtually any client you have in that situation of extreme disadvantage, who might be homeless, is not in a position to pay a fine. They make an application for waiver. That triggers, over at Access Canberra, a review of their capacity to drive.

For example, we had one client recently with mental health issues, and a 40-odd-year stream of perfect driving. They certainly had some mental health issues but they were completely coherent. He was given notice—I think it was about 30 days—that his licence would be suspended and he needed to get a specialist's report. He cannot get anywhere near a specialist in that time, so it goes through this cycle of frustration.

With respect to the way that the legislation is worded—I do not have it before me—it gives Access Canberra extremely broad powers to suspend people's drivers licences pending medical review. As a result of that, our advice to clients generally is: don't go down that path because it is fraught. I am aware of one client who actually moved from the ACT to another jurisdiction to get his drivers licence—and he did, quite easily.

With this process, whilst we understand the need to literally ensure that people are

medically fit to drive, the way that it is worded seems to open up all sorts of possibilities and it can drive people to distraction. You might have a person with some low-level mental health issues—it might be anxiety or depression—diagnosed; Access Canberra becomes aware of that. It goes to the medical assessments team and it creates a whole range of problems.

In our view, that needs to be looked at carefully. We are not saying for one minute that people who are not medically fit to drive should be driving. We just think that the way the legislation is worded, and the whole procedure, impacts heavily on people.

MR BRADDOCK: Do you mind taking this one on notice? Can you please send me the details of which parts of the legislation you are referring to? That would be appreciated.

Mr Alati: Certainly.

MR CAIN: The work and development programs have been mentioned in a few submissions, including by JRI, who have recommendation No 13 about that. How effective are they and how can they become more effective?

Ms Esguerra: From what we could find—admittedly, I have only done desktop reviews; I do not have personal experience with work and development programs—they seem to yield quite good results. It looked like the number of people accessing the programs dived dramatically during COVID. As far as I can tell, it has not increased again.

There are a couple of problems there. One is that they are quite hard to access. You need to have fairly high literacy to be able to follow it up. When you get a fine, as Mr Braddock is about to discover when he goes through the process to find out how to waive it, there are a few different options for payment plans and waivers. I am sure Legal Aid will have lots of information about how to back it up. You can also get involved in a work and development program. But the process to get those approved looks quite unwieldy, and I think there are very few providers.

I feel like it is an easy fix. I feel like it is a process that could easily be expanded and made available to a lot more people, and it would be of great benefit to those people as well as the organisations who would be able to provide them.

Ms Lee: The Legal Aid Commission support the work and development programs and the alternatives that programs like that offer people who are unable to pay fines. However, in our submission, we have noted the significant administrative burden, which I think is very similar to what Mr Alati was speaking about. It requires vulnerable people, who potentially are suffering from homelessness or mental health issues, to collate their own evidence of that, and the requirements, particularly with respect to health records, involve material that is less than six months old. The process of getting that together can be difficult.

In addition, the application packages are significant. They comprise 15 pages. People who struggle with literacy have significant difficulty with the application, let alone collating all of the evidence that they have which may support their application. It is a

good initiative. We would suggest that it could be improved by considering those administrative burdens, by considering the availability of it and perhaps extending it, with respect to young people, to include educational programs or engagement with schools.

MR CAIN: Thank you. I note that the Legal Aid submission also highlights the programs and making them more accessible, too.

Ms Esguerra: I have a small follow-up to that. One of the things that we are getting a lot of feedback about at the moment involves the working with vulnerable people checks. That will not be relevant to all of the areas covered by the work and development programs, but we are hearing from many people with lived experience in the criminal justice system who are having problems with being able, for example, to go and speak in schools about what it is like to go through rehabilitation programs. If you were in prison 20 years earlier, you can talk about that journey and about how you changed your life pathway. That is a regular bit of feedback that we get. Perhaps you could look into that; it is just a small item.

MR CAIN: Thank you.

Ms Esguerra: I realise that it is really complex. We work with quite a few people with lived experience who have worked very hard to rehabilitate themselves and set up new lives; then we hear that they are having problems with working with community organisations or speaking in schools and places like that.

THE ACTING CHAIR: Almost every submission, including all of your submissions, acknowledge the over-representation of Aboriginal and Torres Strait Islander people in the prison system, and how the fines, and the layering of fines, particularly around driving offences and traffic offences, can lead to people being in prison. We spoke to ACT Policing and they said that, yes, it absolutely does happen. What suggestions do you have? I find it concerning that there is no data. There seems to be a lot of data in other jurisdictions but there is no data here. On the data, what could be improved and what is needed? Do you have any ideas in terms of addressing this issue?

Ms Lee: The gateway to the criminal justice system, most obviously, with respect to enforcement procedures for fines, is under the road transport legislation. Once somebody has not paid a fine, they are given written notice that their licence is to be suspended if they do not pay by a particular time. If they are unable to, that is a very quick way into either the youth justice court or the Magistrates Court for people who are found to be driving while they have a suspended licence.

It is common that there would then be a number of other minor criminal offences that may come from that—if their car is not insured, if it is unregistered et cetera. All of those charges would require attendance at the Magistrates Court. Particularly for young people—who, obviously, we suggest should be diverted from the criminal justice system entirely—there is no real option; when they are found to have driven while suspended, they are brought back. I think there is a place for diversion with respect to police and young people, perhaps by assisting them to become licensed. The process, in and of itself, could be the penalty and also the reward.

It is a concern, and one that we have raised with respect to over-representation of vulnerable people, including Aboriginal and Torres Strait Islander people—bringing them into the criminal justice system or exacerbating issues that they may already have within that system.

In terms of how information on this could be collated, I do not believe that the charging of somebody who drives while suspended identifies whether that suspension is a result of a non-payment of fine or some other suspension method. If some data was collected from the courts, it might be useful, in terms of the charging, if that was identified.

THE ACTING CHAIR: Would that come from Access Canberra? Would they notify the court that the fine has not been paid, or do they just—

Ms Lee: Once the licence is suspended, my understanding is that Access Canberra suspends that licence. I am not a police officer, so I am sorry if I am talking out of turn; I am sure the AFP will correct me. My understanding is that that information then becomes available to police, who, when they conduct a traffic stop or conduct their ordinary inquiries, have access to whether that person's licence is suspended or otherwise. I am confident that they are able to determine the basis for the suspension because, as defence lawyers, ordinarily we would receive that information within the alleged police statement of facts.

Mr Humphries: In answer to the question that you asked before, you asked what sort of things can be done. One thing that we probably should do, as part of the recommended review of minor offences, is to look at taking a number off the statute books. We considered that, but the reason we did not recommend it is that it is obviously important to be able to, over time, make available diversionary programs. But if you do not have an offence in the first place, and the person has a choice of going into a program or walking out the door because there is no offence, very often they will choose the latter.

Minor offences can be the hook on which these programs can be placed. Obviously, we do not want there to be offences which are of no great significance, do not reflect current values and perhaps should not be on the statute book, anyway, but where there are things that amount to activities that ought to be in the criminal legislation, we should consider how they can be used to get people into those programs as opposed to ending up in jail.

I was part of the First Assembly, which removed the option of jail for people who had not paid parking offences and minor traffic offences, because of a notorious case of a young man in New South Wales who chose to go to jail to work off his traffic fines, got bashed and ended up with brain damage. Legislation was passed around the country to get rid of that option. But decriminalising altogether may not be the answer to that residual problem.

Ms Esguerra: One other concrete proposal that we brought up during the dangerous driving inquiry—and we simply reiterate it because it has not been resolved—is funding for the Aboriginal Legal Service driver licensing program. We have known for a long time that there are major impediments to getting a drivers licence. We have

raised the requirement now to 100 hours of supervised driving. I do not want to duplicate what I said during my appearance last year, but if you do not have a family member who has 100 hours free to drive you around and you cannot afford lessons, it is really difficult for a lot of people to get their drivers licences.

That would be one really clear, easy way. That would be for Indigenous people, but obviously it goes across the board. There are a lot of people who can drive very capably and just need other supports, which probably need to be government funded, to help them to get those 100 hours in; we know that they can drive safely, we can tick those boxes and give them the paperwork that they need.

THE ACTING CHAIR: Mr Alati, do you have anything to add?

Mr Alati: No, I have nothing to add there.

MR BRADDOCK: Thank you for a very good submission with 16-odd recommendations. What would you suggest as priorities? You mentioned the Aboriginal Legal Service drivers program. What would be the priorities out of this that you think could achieve great outcomes for Canberra?

Ms Esguerra: The driver licencing program is small, low-hanging fruit. Out of all of the recommendations—I realise there is a smorgasbord there—I would suggest establishing a specialist list in the Magistrates Court. The Drug and Alcohol Court that has been running in the Supreme Court for a number of years has had an evaluation done by the ANU, which found it to be exactly hitting the mark for what it was proposed to do. It has been very successful. It saves the government a lot of money. Also, much more importantly, it helps a lot of people who are committing offences to change their lives and get off addictions.

The Magistrates Court is a place where people will appear long before they appear in front of the Supreme Court, and where we can start diverting people much earlier. It need not be a costly process. You could quite easily set up a Magistrates Court drug and alcohol court or a specialist homeless court—basically, a specialist list for people who face all kinds of disadvantage. But underpinning that, we need all of the supports to allow that to happen—homeless funding, drug and alcohol support and mental health support. They would be the first three, but it is an integrated story. Those social determinants of justice that we talked about in the other hearing last week can address that.

MR BRADDOCK: ACT police provided evidence this morning in terms of looking for diversionary programs to be put in place even earlier, so that they do not have to refer someone to the Magistrates Court; they have found that they need to do so in order that people can access some of these diversionary programs. You are nodding; I am assuming that you are in broad support of that?

Ms Lee: I am, and I think there could be some simplification of the process for referral to diversionary programs.

MR BRADDOCK: Can you please provide a bit more detail as to what you are calling for there?

Ms Lee: I am thinking particularly with respect to young people and restorative justice programs which are available. There are various points at which referrals can be made. The police may make a referral up to a particular point, after which I think it must be raised before the second mention, in order for the court to refer. My view is that time frames like that can be prohibitive. It may not be that somebody has had sufficient legal advice or that they have had an opportunity to really consider entry into a restorative justice program by that early stage.

The restorative justice unit is excellent in the way in which it conducts conferences, but the time frames for turnarounds for assessments and then for conferences to occur are significant. If a young person is on bail for a length of time and is waiting to go through those processes, it can be difficult, because you risk them coming back into contact with the courts through breaches of bail. That is always a live concern in terms of trying to assist and advise a client in their best interest, knowing that their best interest is to address some of these underlying issues so that they do not come back.

It does create a real tension in terms of knowing that if you do refer them to a program, that will have long-lasting, positive impacts, hopefully, but they are at immediate risk of coming back into custody because of the onerous bail conditions. I think that there could be some review and some simplification of, firstly, the way in which matters can be diverted from the criminal justice system and the point at which they are able to be diverted; and, secondly, the way in which that process then plays out.

Ms Esguerra: I absolutely agree. I think that it would be really effective if some of those diversionary programs were applied to younger people. We know that the earlier we can intervene, the better. We also know that people who are starting to hit the youth justice system are almost 100 per cent likely to enter the adult criminal justice system. If we did not have the resources to change all of the system, I would start with younger people.

MR CAIN: I suspect I know the answer to my question, from your point of view, regarding the merits of income-based fines as opposed to flat fines. If you are supportive of that, how do you think that could be implemented effectively?

Mr Humphries: In places where they are applied—places in Scandinavia, for example—the court system, the authority that imposes the fines, has access to a database that exposes what a person's income is, from the point of view of what they have declared for taxation purposes; so it is relatively easy to determine what a fine should be, as a proportion of a person's disposable income.

I do not think we have a system as well developed as that in Australia. I am not sure that I would recommend it, necessarily, but I would envisage that under this system people would be able to make representations about their income and, on the basis of that, you could assess a fine that was proportionate to their income and their overall means. It is probably more complex in terms of administration than in some places where it is already applied, because of our taxation system, but it is still quite possible to do that.

Mr Alati: At Street Law, we have had consultations about this very issue quite a few times over the years with various stakeholders. The conclusion has always been that it does not sit quite right culturally in Australia. Apart from the fact that our tax system has so many loopholes that allow high-income earners to hide so much income, it is basically not palatable politically here. Broadly, we have been supportive of it over the years, but we have always come across the issue where people have said to us, "It's not going to get over the line here."

THE ACTING CHAIR: In other hearings, we have heard about possibly presenting four weeks worth of pay cheques as proof. In the AFPA's submission they talk about an exponential scale, with the first offence attracting a fine of 10 per cent of your income, a second offence 20 per cent, then a third offence—an escalation. How does that sit with all of you?

Mr Humphries: I think it makes sense.

Ms Esguerra: I think it makes sense, but it needs to be supported with a diversionary program, so that we are not picking up people with disadvantage, then giving them double, triple and quadruple fines.

Ms Lee: I agree with that. It creates an opportunity to perhaps reduce some of the inequitable outcomes with standardised fining. However, is it behavioural change that you are trying to achieve through the increase in fines, and is that best done in that way or through diversionary programs and appropriate referral?

Ms Esguerra: I think that a combination would be excellent.

THE ACTING CHAIR: We discussed this morning that all of this data sits with Access Canberra, so they should be able to see whether someone has not paid fines or has not paid multiple fines. I am interested to get your perspective on the idea that was raised of almost like a red flag system. If someone has this issue of repeated non-payment of fines, it may "red flag" this individual to Access Canberra. We talked about how utilities companies often have hardship criteria and, once someone hits that mark, they ask the individual if they would like to be referred to social services for support. I also brought it up with the Human Rights Commission. Obviously, they raised concerns that it could be discriminatory. I am interested in your views on this and whether you think something like that should be explored.

Ms Esguerra: I think that is right; it would be a problem to be referred to social services. I think it would sound quite threatening to many people. Being referred to Care Financial Counselling Service might be more appropriate, but that would have to be funded, to be able to provide that. I think they are already fairly stretched. You are right; Access Canberra does collect all of that information, and I do not think anything useful is done with that, apart from multiple infringement notices being sent out, and reminders.

Mr Alati: We have discussed the idea of Access Canberra having a social worker type role, as Centrelink does. People could have conversations around these things. We had an issue a little while back where a client was illiterate and needed to fill in forms for Access Canberra. We contacted Access Canberra and said, "Is there anyone

who can help him to do this?" and they said no. From what we understand, there is not that kind of social work support there. It is a large, diverse government entity. It handles so many administrative functions. It is client facing. I think it would be very helpful if there were some sort of social work support.

I am not talking about a punitive process where people will be referred off for all sorts of medical assessments and that kind of thing. People could have confidential discussions and say, "I'm having trouble with this," and the social worker could provide support and possible referrals over to Care Financial or whoever—some of that frontline support.

Ms Lee: I agree. The opportunity to identify people who are struggling should be used to offer support. I think that what Indra said is right. We need to be careful about the level of privacy and intrusion into people's lives. The support needs to be appropriate to assist them as opposed to being something that may punitively affect them more adversely.

I agree with what John said about having a social worker, a person who is trained to sit down, help unpack issues and say, "There are so many fines here; what are we going to do about it? How can we approach this?" I think that would be an incredibly useful step.

MR BRADDOCK: I am interested in fine waivers. There seem to be very few fine waivers in the ACT of partial or even complete amounts and more emphasis on either deferred payment plans for people who might never have the money or the work and social development program for people who are probably time poor. How does the ACT compare to other jurisdictions, in your experience, in terms of the utilisation of fine waivers?

Ms Esguerra: Personally, I found it very difficult to find any information at all about how many fines were waived. I was wondering how much data is collected and where that is even accessible. I am afraid that I could not even take it on notice and do anything with it. There were a couple of things, in putting our submission together, where we realised that there are quite a few processes that exist in the paper processes for people. In actual fact—and John will be able to clarify this—I think most people would struggle to go through those processes for the waivers, the payment plans and getting onto work and development programs.

MR BRADDOCK: According to the ACT government's submission, 485 fines were waived in the 2021-22 financial year. That is out of 221,070 fines.

Ms Esguerra: John, I do not know whether you want to elaborate on that process of accessing those.

Mr Alati: Yes. That is obviously a very small percentage. I suspect most of those involve 40-kilometre zones in Civic. The criteria for a waiver are very narrow. We had a situation involving a woman; there were a whole lot of fines attached to her car. The fines, of course, were sent to her. In reality, it was her abusive ex-partner who accrued those fines. She is just going to accept the fines because it is the easiest way, and she cannot contact that person. She does not want to raise any issues with that

person because he is dangerous and abusive. She wants nothing more to do with him. It is a case of saying, "I'll just accept those fines and go on a repayment plan." She is already struggling financially.

We were thinking that it would be great if there was a possibility for an exceptional circumstances waiver in situations like that. Clearly, there is nothing they can do when issues of personal safety have been raised, for example. There is just nothing like that. The criteria are very narrow. They do not allow for that.

I know that, in Western Australia—I cannot say that I know the law there very well—a few years back I applied for a waiver for someone who was living in the ACT and who had accrued fines in WA. It was actually a fairly client-friendly process to do that, under exceptional circumstances. But you cannot do it here.

MR BRADDOCK: At lunchtime, I was talking to a lawyer who had experience of fines in both ACT and New South Wales. It took her a whole day to process ACT government's paperwork but for New South Wales she was able to get 50 per cent waived pretty much on a phone call. Would that match your experience, Ms Lee?

Ms Lee: I cannot speak from experience with respect to the difference between our jurisdiction and other jurisdictions. I would suggest that it might be interesting to consider the percentage of applications for waivers—how many of those are successful and whether it appears that the issue really is that administrative burden, in terms of people being able to apply, or whether it is the application of criteria in a way that is potentially too hard.

I have been having a look at the information on the grounds for which you can apply for a waiver of an infringement notice. The information is dense. I am a lawyer. I accept that I am reading it quite quickly, but it is difficult to digest. I wonder how many people who have a fine are able to either go through the process themselves or know who they would go to for assistance.

I do not believe that there is a service at Legal Aid which is available to people to help them fill out governmental forms. I appreciate that Street Law will be available to people in a particular cohort, but there is also that issue of access to assistance and services.

MR CAIN: With respect to police discretion at the decision point of whether or not to issue an infringement notice, we talked about that this morning with ACT police. They have internal guidelines and attempt to do that consistently, of course. What are your observations? Are there reasons to look at changing the approach of police regarding the discretion to not issue a fine?

Ms Esguerra: That is a cultural thing, I think. There is always discretion for police. I like to think that police culture is changing, aided by a lot of legislative change, but I am not really sure how that works on the ground or whether it is consistent. The problem with discretion is that it really depends on each police officer at the time.

THE ACTING CHAIR: Does anyone else have anything to offer?

Mr Alati: Only to say that I think police need very solid training on identifying various mental health issues that tend to make people appear like they are disruptive in public. It is not a criticism. Community policing is a very difficult situation, and often decisions have to be made very quickly for public safety and those sorts of reasons. We need really solid training for police to be able to identify when someone is having a psychotic episode or when they are delusional—those things that tend to trigger more intense behaviours in people. It would be great if there could be a bit more recognition there.

THE ACTING CHAIR: My question in respect of the JRI submission is around bail support programs. There are two recommendations: one is to continue funding the Indigenous bail support program and the other is to invest in other bail support programs. Can you speak to the importance of this? Are there any interstate examples of best practice that you would like to discuss?

Ms Esguerra: As far as I know, the results from the Ngurrambai bail support program have been very good. I do not have them to hand. I will take it on notice, and I will dig it up. The fact is that in the ACT that is confined to Indigenous people. That is great, because we do have a very serious problem with over-incarceration of Indigenous people in our jail, but those programs should be available to everybody.

I know that Victoria has some very good bail support programs, and they have been trialling a few different ones to see which type works. They are usually very community based, and it gives people other pathways out that are not all through government programs. If you take a trauma-informed approach to it, the sooner you get people diverted into programs where they feel a lot safer, with community sector supports rather than government supports, the better. John might also have seen how that works. With the bail support programs, there is a lot of evidence about how effective they are for very low money.

THE ACTING CHAIR: Do you have anything to add?

Mr Alati: Nothing specific there. I do not want to go off on a tangent, but the issue of people who are released from incarceration and find themselves without housing ties in with that, in a certain way—support for people coming out of incarceration to avoid recidivism. I know it was raised in one of the submissions—I cannot recall which one—and I think it is an important issue. That is something that has changed over the years. I have been working with public housing clients for many years, and that is something that has become a lot more restrictive in the last few years. I think that has had some adverse consequences there.

THE ACTING CHAIR: Ms Lee, do you have anything to add on the bail issues?

Ms Lee: Only to support the submissions of the other witnesses here today. Any support to help people reintegrate into community is important. Not only does it reduce recidivism; it can also allow for better outcomes to be achieved for that person. If they are successful during a period of bail in engaging in a program, for example, it allows submissions to be made on sentence that they should be continued to be supported in that way. My experience of the ALS-run bail support program has been incredibly positive.

THE ACTING CHAIR: Thank you all very much for your time today. We will end this session now. If you took any questions on notice, please refer them to the secretariat.

Short suspension.

BUSH, MR BILL, President, Families and Friends for Drug Law Reform

THE ACTING CHAIR: I welcome Mr Bill Bush from Families and Friends for Drug Law Reform. Could you please acknowledge the implications of the privilege statement that is on the desk in front of you?

Mr Bush: I must say I have not read the privilege statement this time, but I presume it is the same as the ones that I have read.

THE ACTING CHAIR: Do you accept the implications of that statement?

Mr Bush: I do accept those.

THE ACTING CHAIR: Do you have an opening statement that you would like to make?

Mr Bush: A brief one, if that is okay.

THE ACTING CHAIR: That would be great.

Mr Bush: I have the honour to be the current President of Families and Friends for Drug Law Reform, which, since its establishment 26 years ago, in 1995, has drawn attention to the capacity of non-punitive drug policy to promote community wellbeing, not to mention the enhancement of community safety. We are grateful to the committee for its indulgence in providing us with an opportunity to appear before your important inquiry and for accepting our late submission.

The nexus between better drug policy and your remit under your founding 2022 resolution is clear, when one recognises the high proportion of people in the criminal justice system who suffer a substance dependency, more often than not with a co-occurring mental health condition.

Criminologists identify criminogenic factors associated with crime. They are the very same constituents of disadvantage which your fellow committee has just been considering and, if they were addressed, there would be less crime.

At the heart of your remittance is the discernment of the most effective means of reducing crime. To this end I proffer a table comparing different measures. I have a copy for committee members. The nub of my point is that the primary focus should be on the reduction and prevention of crime. Column F contains references to our submission, where the data are presented in more detail. Rows 19 to 26 summarise data from the most detailed analysis of the results of the New South Wales Drug Court, the longest running one in Australia. On the basis of that, I think you will see that pharmacotherapy treatment is far more effective than the results of that senior Australian Drug Court.

Results from the initial evaluation of the ACT drug and alcohol sentencing list published just last year note in relation to recidivism that DASL has only been operational for a limited period and there have been only a small number of

participants to date. It is unrealistic to expect that its results will be significantly more favourable than those of its big sister in New South Wales. We urge you to consider the interventions listed in the sheets that I have passed to you from that point of view.

I am happy to take questions on the value and shortcomings of, for example, methadone programs and the difficulties of supporting people for whom that pharmacotherapy is unsuitable.

THE ACTING CHAIR: Mr Cain, would you like to ask the first question?

MR CAIN: Bill, thank you for that. You say your submission primarily focuses on the sixth item in the terms of reference—how to maximise compliance with the law, particularly for young people. Where do you think that could be working better, in encouraging that compliance with the law, and are there features that could be added to our governance to encourage such compliance?

Mr Bush: The position we put is that, if you take a public health approach to these very marginalised and vulnerable people, you will get very considerable benefits in terms of enhancement of security and safety—measurable in terms of reduction in crime and even crime prevention.

MR CAIN: Do you think there are some things that could be implemented that are missing at the moment? I am talking about whole-of-governance approaches, and perhaps the education system.

Mr Bush: Yes, there are some. I was going to touch upon the WOKE program. I was extremely happy that the government came to the rescue of that, to provide bridging finance for at least another 12 months. That is a program that deals with the many people with bipolar conditions, who have a very high risk—I think a 78 per cent chance—of developing a drug problem, which is far higher than in the general community. There is this direct connection between mental health aspects and a drug problem. You get better drug policies and you get better mental health. I think that is the take-home.

THE ACTING CHAIR: I am interested in what you were saying about methadone and all of these other interventions around opiates. With the Australian Drug Court, it is about any drug intervention, is that right, in comparison with the international courts shown in your table?

Mr Bush: The table is only in relation to the New South Wales one. I did not include the results of the American ones, which are pretty well documented, because the results are not nearly as favourable as the New South Wales ones.

THE ACTING CHAIR: Do you want to speak to the issues around methadone and supporting people who are either on methadone or cannot be on methadone?

Mr Bush: You will see from that table that methadone does, in fact, secure very high reductions in crime. For property crime, it is 77 per cent over 12 months. This was a very big Australian study that was done in the 1980s, and it still stands. The figure is 79 per cent for dealing. So it has an impact on the availability of drugs in the

community. I, for example, am supporting a person I have known now for about 20 years who has struggled with heroin—which he does not inject; he consumes it in another way—and he just cannot bring himself to take methadone. There are some people—I do not like using the term—who are very hardcore users who cannot hack methadone.

Another member of our family group, a mother whose son has been on methadone, is very distressed, and continues to be very distressed, because he has lost the zip in his life. It is described by many of the people who use it as a grey drug. It suppresses their enjoyment of life and their mental acuity. She really regrets that. So it is just not for everyone.

On the other hand, I know people who are much sharper than I am—which is not saying very much—so it is horses for courses. As with any medication, one drug is suitable for one person; another drug is suitable for another. But that is a good segue into why heroin-assisted treatment, which has been trialled so successfully in Switzerland, Germany and elsewhere in Europe, and in British Columbia, has been such a resounding success, with figures that surpass the methadone figures in terms of crime reduction.

It is a no-brainer. Looking at figures like these, the results can be achieved at a fraction of the cost of enhancing community safety by hiring another 150 police officers for the ACT. It is not that they are not needed; there will be quite enough work for them to do, but we are wasting precious lives in terms of adding to stigma and marginalisation. We are bolstering mental health problems because they coordinate very strongly with substance dependency problems. We are supressing the wellbeing of this community. It is a no-brainer to the likes of us.

I am sorry; I am going on and on about this. We have been hammering at this for 25 years. Even with the decriminalisation, if you look at the submission you will see the table that I made up, which shows that the key decision-making points in the decriminalisation are in the hands of the police. So it is still within the hands of law enforcement.

You can achieve these ends; you can get greater impact by intervening before the intervention and involvement of the criminal justice system. If we are serious about closing the gap, the problems experienced by the non-Indigenous community are magnified several times over. Just look at the extra number of Indigenous people that find themselves in our local prison. It is a scandal. Compare that with British Columbia, where the imprisonment rate per 100,000 is 66; whereas we are at 116. It has been at 142, so it is going in the right direction. British Columbia has a very high First Nations population, much higher than the two or three per cent of Indigenous inhabitants of the ACT. There are just so many grounds.

MR BRADDOCK: Mr Bush, I want to go back to your opening statement, when you were comparing the ACT's drug and alcohol sentencing list with that of the New South Wales court. You were saying you would not expect us to be especially better off compared to New South Wales. Can I clarify what you were trying to communicate there?

Mr Bush: Sorry, that we would be—

MR BRADDOCK: That you should not expect us to be doing better than the New South Wales list. I was curious as to what your argument was. I did not get that point.

Mr Bush: The New South Wales list has had years. It was established, I think, in 1999 or 1998, so it has had many years to bed down, with lots of experience. They have refined a lot of their procedures and they put a lot of resources into it, as we do. We are not, in principle, against the drug courts, but the cost of a drug court compared to pre-criminal law involvement is just so superior. I cannot give you a more precise example.

MR BRADDOCK: No, I appreciate that.

Mr Bush: One of our members has a son who has experienced the Drug Court, and she and he speak very highly of it, in terms of it being one on one. But you are getting Rolls Royce treatment utilising very scarce resources. Those resources have to come from somewhere, and there are less of those resources in the non-criminal law community. It is sucking up scarce resources. It is wonderful to have it. You, as a politician, are charged with finding the best and wisest utilisation of our tax dollars. It is about more than tax dollars; it is about human beings and stigma.

You can look at the Productivity Commission, with respect to the crisis in the mental health system in Australia. The Productivity Commission put it down to the stigma. What better way of putting stigma on someone than labelling them as a criminal because they have a drug problem?

MR BRADDOCK: Thank you for the table. That was definitely very enlightening.

THE ACTING CHAIR: Yes.

Mr Bush: I do not know whether any further clarification is needed. I will mention a final thing. With borderline personality disorder, the rate of lifetime substance use is 78 per cent. You can read some very enlightening stuff from Women's Health Matters in the ACT, as to why people take drugs. People who have borderline personality disorder take opioids. In a natural or synthetic form, it reduces pain. Eighty per cent of people with BPD abuse opioids to reduce the experience of rage or aggression. It is self-medication for many people. It is how they function.

Cocaine elevates moods, increases confidence, decreases fatigue and increases energy and productivity. About 16.8 per cent of those dependent on cocaine have a BPD diagnosis. In general, cocaine users desire to rid themselves of feelings of emptiness, boredom, depressive states or restlessness. People take this stuff for a serious health reason—not always, but people take alcohol and smoke, and get addicted.

This booklet from the Department of Defence speaks of the intimate connection regarding service personnel who experience PTSD. For very many of them, an associated harm with that is alcohol and drug dependency. You read about police officers in this country with very high rates of suicide. That is another big correlate of the marginalisation and stigmatisation.

THE ACTING CHAIR: Thank you very much for your time today, Bill. The committee very much appreciates your submission and thanks you for taking the time to come and have a chat with us.

Short suspension.

CARUANA, MR ALEX, President, Australian Federal Police Association
ROBERTS, MR TROY, Media and Government Relations Manager, Australian Federal Police Association

THE ACTING CHAIR: I welcome the witnesses from the Australian Federal Police Association. Could you both please acknowledge the privilege implications of the statement that is in front of you?

Mr Caruana: I acknowledge the privilege statement.

Mr Roberts: I acknowledge the statement.

THE ACTING CHAIR: Mr Cain, would you like to ask the first question?

MR CAIN: Thank you. I notice that you came out pretty specifically and boldly with a tiered set of fines, based on income. What has led you to do that? That is a fairly bold thing for you to come out with. It is something that many of the submissions called for—an income-based system of fines. What led you to think that this was the appropriate approach, and how easy would it be to administer?

Mr Caruana: There are two parts to that question, Mr Cain. With the second part—how easy it is to administer—I am not sure that I could answer that, but I do not think it would be too hard to administer, given that the myGov website does have most people's income earnings on there—people that pay their taxes—so the calculation could be based on that.

In terms of how we get there, we were looking at other options that were available and how we could support vulnerable members of the community who cannot afford to pay it. Is there any point in continuing to fine them for not paying the original fine? It then becomes a police matter and a court matter, and it ties up police and court resources.

Some other countries do have an income-based penalty system. We know that there are a lot of people out there who are quite well off that will often—and I will use parking as an example—park in a place and say, "That's just a $75 fine or a $175 fine; it means nothing to me." There is no deterrent for them not to do that particular offence. A $175 fine—and I am being stereotypical here—for someone that is a refugee or someone that is from a low income family is probably worth a lot more in a real sense, in a value sense, than for someone that is earning millions of dollars a year. Is that fine an equivalent deterrent for the different segments of our community?

That is why we have come up with that suggestion in that area. But we are open to all alternatives or all options that are available to help those vulnerable people. I want to be clear: I think we need to be very specific and very careful about how we define who a vulnerable person is, because it can be quite broad or it can be quite narrow. I think we need to be very clear about it. Just because someone is from a culturally and linguistically diverse family does not necessarily mean that they are a vulnerable person. It could. Similarly, people's religion, gender or other things do not necessarily mean that they fall into one area or another. There need to be very clear criteria as to what defines that "vulnerable person".

MR CAIN: You say that the information is on myGov. Obviously, we are looking at significant privacy issues with the police, for example, having access to income information. That might be a fairly big hurdle to overcome—the privacy issue.

Mr Caruana: I agree. There will be a number of hurdles in terms of administering this model. I do not disagree; hence we are open to other alternatives or other options as to how we could do it. With the tiered approach, maybe the fine gets exponentially greater or exponentially worse if someone is a first-time offender versus a fifth, sixth or seventh-time offender. There are other options out there, but I have to concede that, yes, from that privacy point of view, it could be a hurdle.

MR CAIN: Obviously, for a third offence, at 20 per cent of weekly income—if someone is, as you have mentioned, extremely wealthy, we could be looking at a parking ticket costing them tens of thousands of dollars. I am not sure that that would sell well. What about having the maximum fine set, and people who are under that would pay according to a percentage of their weekly income?

Mr Caruana: We are open to all options. I think that the original concept or the original idea of the fine was to deter people—and I will use parking as an example—from parking in certain places where they should not be parking, or parking in spaces which are designated for people that are differently abled, in loading zones, truck zones, bus zones, or whatever it happens to be. There needs to be a relevant and a firm enough deterrent for those people that are fortunate enough to be earning enough money to be able to pay the fine, instead of driving around to find a more appropriate parking space.

If the other option is to cap it and have a base system, where it is based on income, we are open to that. We have just put up a suggestion, and we are open to all of the options that are out there. Certainly, Mr Cain, that is something that we would be open to. In saying that, the cap needs to be a significant enough deterrent to stop people that are much more fortunate than other members of the community doing that particular offence.

THE ACTING CHAIR: We have heard a lot from other witnesses around the layering of fines and how someone who does not pay fines has their licence suspended; then they get caught on the road without a licence and it suddenly escalates very quickly into the criminal justice space.

Do you have ideas or thoughts on how we could manage that process? For example, some witnesses have said that in Access Canberra's database there should potentially be a red flag system so that, if someone has multiple unpaid fines, an alert goes up. Perhaps they may be referred to Care Financial or something like that. Do you think that if we focus on that end of things, there could be improvement in reducing the number of people coming into engagement with the courts and police?

Mr Caruana: I think that is an option as well. As Mr Cain said earlier, there might be some privacy issues with that. Another option could be other alternative methods to pay off that fine, or to work off that fine. One option might be to work in your school tuckshop. We know that lots of public schools are having trouble finding tuckshop

ladies, as an example. That might be an option: you do a certain number of hours of community-type service that helps the community, in order to work off your fine—painting bus stations and those community-based things. Obviously, that will not be for everybody because people will have different abilities, but that is certainly an option that we can see there.

In relation to driving offences, we have to be really careful. There needs to be a strong deterrent. If someone has lost their licence, they have generally lost it for a reason, so the deterrent needs to be equal and it should match what the crime was, for want of a better term. We need to be able to deter them from getting behind the wheel if they are not supposed to be doing that. It needs to be tough.

MR BRADDOCK: Can we please delineate between those who have lost their licence due to unsafe driving behaviour versus those who have lost their licence because they might have failed to pay a particular fine?

Mr Caruana: Yes. I agree that there should be a difference between the two. If someone has a driving offence, we should be saying there is a tougher penalty versus someone that has not paid a parking ticket or a speeding fine because they cannot afford it. It probably should be dealt with in a different manner. We feel there could be a difference in how you deal with that. But there still needs to be a deterrent. The fines are put in place for a reason—to ensure that people are doing the right thing on the roads, for a driving offence. If you remove the deterrent, you are not going to stop people doing those things.

Mr Roberts: One of the powers to arrest someone is for repetition or continuation of the offence. The next thing you know, if people continually commit that offence and there is no deterrent, the next option is the watch-house or getting arrested and being taken into custody. For traffic matters and things like that, as a police officer, as long as there is no community safety issue, you would rather deal with the matter then and there, on the side of the road. You issue an infringement notice; away you go.

Mr Caruana: I think what you are getting at is someone who gets a speeding ticket and does not pay it. The penalty is that they get a ticket for speeding, but they have not paid it, so they have lost their licence—not for the speeding offence but for not paying that speeding ticket. There needs to be an option available that is a strong enough deterrent to prevent them from wanting to carry on with that behaviour. It is about meeting community expectations as well as enabling that person to pay back or work off, for want of a better term, that fine or penalty.

MR BRADDOCK: This morning, when ACT Policing appeared, they had an appetite for more diversionary discretion to be available to police officers rather than having to resort to the courts to be able to do that. I want to check whether the AFPA and your members would be supportive of that.

Mr Caruana: We are; our members are. We would be supportive of that, with the caveat that we need to spend money. The government needs to spend money on those options. There are limited diversionary options, alternative therapies or therapeutic measures in place for police officers to use their powers of discretion to divert people into those options, whether that be driver training or other options that are out there.

Mr Roberts: There is no point in a diversion option if it takes six to eight months or longer for that person to receive that option. As long as there are options there and it is relatively quick, yes, bring on diversions.

MR CAIN: I asked ACT police this morning about the use of discretions at the point of contact with an infringer, whether it is about just issuing a warning, and they are going to get back to us on how they ensure consistency in that, so that it should not matter which police officer is on site. What is the understanding of how your members are instructed to administer discretions? What kind of individual capacity do they have for using their own judgement, or are there fixed guidelines on this?

Mr Caruana: I will speak broadly; then I will refer to Troy to speak more granularly on it. Ultimately, it is about the feeling that the police officer gets at that time as to whether the person committing an offence deserves the penalty. There could be a number of factors that are leading up to that police officer using a particular type of discretion, going down a particular road.

There are guidelines, and I will let Troy speak to them. However, ultimately, the police officer assesses the situation—what he or she is feeling, seeing and sensing at the time to make the decision as to what the next step is. Troy, do you want to add to that?

Mr Roberts: As a police officer, one of your most important tools is discretion. A lot of that comes into the type of offence, and the person's criminal history, if they do have a criminal history. I would probably suggest that, with a lot of the minor offences, for first-time offenders, you will more than likely be looking at a caution before you would go down the path of any type of court appearance.

With minor shoplifting and stuff like that, obviously, you also have to take into consideration the victim and what their wishes are. A major shop like Kmart or something like that may be quite happy that, once you have done your job with the offender, if that person pays for the goods, there is no theft. They get their money, at the end of the day, so most of the time they are quite happy about that. It is the recidivism, the repeat offending, when things get diverted more towards a court outcome.

Mr Caruana: It is also important to note that the more guidelines you add and the more parameters you put on it, the more you are taking away that discretionary power. You are actually removing the discretionary power. It is very difficult to judge a situation until you are in that particular situation.

One of the most extreme cases is the use of force. Police officers do not use force lightly. They do it because of what they are feeling and what they are sensing at the time, and they are using their discretion to do that. If you start putting guidelines around it, people will hesitate or people will become robotic, and there will be a standard response—something has happened, so there is a cause and then an effect.

If a person is shoplifting, and the guidelines say, in this case, 90 per cent of the time you should be putting them through the court system, or whatever it happens to be, it

would just be very robotic—customer in, customer out—instead of saying, "Hang on a minute; this is this person's first-time offence. I'm going to give them a warning"—for want of a better word, scare them straight. Once we have done that, and we have Kmart or the victim on board with it, they go out there and they do not do it again. But if I catch Troy again, or the offender again, it has not worked, so I have to be able to use my discretion as to how I can process that or divert that person into other options, and criminal justice is a possibility.

Mr Roberts: With the lower-level offences, education is better than incarceration or a court outcome. If we can educate people and they change their path via that education, that is a win. With these types of minor offences, that is what most police officers will try to do. There will be education. Sometimes we will achieve it; they need that remembrance that what they have done is bad. As I said, by the time you take them into custody and take them to the police station, you then call in a parent, because you have to hand over their custody to someone; you cannot just march them out the door. If you have that chat with them in the station, a lot of the time that does work. At the end of the day, you would rather educate than arrest or lock up. Obviously, there still needs to be that case to arrest, if you have to.

Mr Caruana: And a deterrent. There still needs to be the deterrent.

Mr Roberts: Or divert, yes.

THE ACTING CHAIR: In your submission you look at two circumstances of youth courts and programs. You talk about diversionary programs in other jurisdictions and preventing recidivist behaviour. Are there things coming out of those examples in either Canada or New Zealand that you think we could implement here or that would be really useful here?

Mr Caruana: I think there are a couple. I will let Troy talk about it in detail. One of the good parts is that the court has to be satisfied that the offender is able to pay the fine when they are making the judgement. That could be retrospective or prospective. Alex has not paid his fine; he is now before the court because his licence is now suspended and he has been caught driving again. Could Alex have reasonably paid that fine originally? If the answer is no then there are other options that are available to the courts to divert Alex into.

The main key takeaway is that New Zealand and Canada have invested quite extensively in other therapeutic or diversionary options in this space so that police officers have a discretionary power to divert, in this instance, young people to another option. I think that is the important takeaway.

There are a lot of good things from a lot of different countries. We only focused on the two that spoke to us. Ultimately, the ones that do it best have invested really heavily in that space, and have invested in that space before the legislative changes, so that they could be tried and tested. We can then say that this works and this doesn't work; we can change the legislation here or we can, for one of a better word, soften it.

In some cases, like in Canada, they have not legislated. They have broadened the discretionary powers for the police officer to say, "This is a court offence," or "It's

not a court offence." It is done there, on the spot. That is lessening court appearances, times at court and time before police officers. There are enforceable outcomes that come out of it, which will take up police time et cetera. However, the diversionary options appear, on paper at least, to be working. Through our research, they appear to be working.

Mr Roberts: I am not sure whether you have seen the movie *Field of Dreams*: if you build it, they will come. Police are the same: if you give them the diversion pathways, they will use them. It is a lengthy process, to undergo any type of apprehension process; it involves a lot of paperwork and a lot of time. If police can easily and quickly divert someone, and the person is eligible to be diverted, that diversion will occur. If you give police the tools, they will use them. At the moment I do not think that the tools are in place.

MR BRADDOCK: This is probably crossing over into the age of criminal responsibility inquiry: would the panels under that proposed legislation match up? Do you have the expectation that that could meet the requirement you are talking about here?

Mr Caruana: Certainly, for offenders up to 12 years old, yes. It is still very much our opinion that courts should be making the decision for 12 and above, as to whether that person is criminally culpable. That being said, we could give the police the discretionary powers there and then, on the spot, to say, "Hey Troy, this is a terrible thing that you're doing", about whatever the offence happens to be. "I'm going to use my discretionary powers. I'm not going to put you before the court, but I am going to speak to your parents, and you will be going through this therapeutic option," or whatever the diversionary option is, or "This is the consequence if you don't." I certainly think they could be used together. In terms of criminal culpability, I still think the age should be 12 and above.

Giving police the discretion could very easily alleviate that path, and the decision could be made there and then, on the spot. "You know what? I know you're a good kid. You play footy at the local footy club. What are you doing? Let's go for a ride. Let's see the ramifications of what you've actually done." Again, scare them straight; then get them into a diversionary option. I think it is a great option. Again, police need the resources, and they need the options there to do that.

MR CAIN: On that theme, ACT Policing, yourselves and Families and Friends for Drug Law Reform have mentioned the importance of encouraging compliance with the law. Obviously, we would not be having such a conversation if people did not infringe. What is your understanding of the programs that police undertake to get into the hearts and minds of young people and young adults? I am also particularly interested in the role of the Malunggang Indigenous Officers Network and how they reach into the Indigenous community in our city.

Mr Caruana: I think there is a valid point there: if people did not do the crime, they would not have to pay the fine. I think that is a fair cop. In terms of education, and educating people not to do it, ACT Policing is stretched. The work that they are currently doing in the education space, whether that is for young people, young adults or adults, is very limited. The resources are limited, notwithstanding the recent

injection of funding. It could certainly be much better. As we have said, so could the alternative options or the diversionary options and the therapeutic options.

In terms of First Nations people, AFP do have a network and they do have an outreach program. That is both for the national side and for the ACT side. If we had the resources and the funding, it could be done better. Everything could be done better. Nothing is without hindrance. I can say that the people that are working in those areas are very professional, and they are doing the very best they can with the resources they have to reach out to those First Nations people. We have found, whether it is for our Middle Eastern outreach program, our African outreach program or our First Nations outreach program, that there are a lot of good results when it comes to getting out there and educating people.

The good results generally come from removing that stigma of police officers being certain figures in society; they are human beings and they can be talked to. You can walk up to them and say, "Hey, hypothetically, my friend is doing this. What should I do? How do I best respond to that?" The only way we can do that, though, and we can improve on that and grow that, is with the correct funding and the correct resourcing of those particular aspects.

Mr Roberts: An important element here is early intervention. If police identify a young person who may not be going in the right direction, they might not quite be committing offences yet; with experience, you know where they will end up. There are really limited options. It goes back to that age of criminal responsibility. Why isn't there a PCYC on the north side of Canberra? It would give police that option to divert those kids who are not quite there yet; they just need a bit of assistance or a bit of guidance. Where is that option here in the ACT?

The PCYC do a fantastic job. Once again, they are handcuffed by funding and resource limitations. The government needs to step up in that space, in the early intervention space. Once again, if you give police the tools and the pathways, they will use them.

Mr Caruana: An example of that is the PACER model. You have given us the tools and they are doing really good stuff.

Mr Roberts: I have been around for long enough that I remember there was a PCYC in Turner that was actually run by a uniformed police officer. It would be great to get back to those days. Because of staffing, resourcing and a whole raft of other issues, it is sad that we do not do that. It really built a bridge between youth, and brought youth and police together.

THE ACTING CHAIR: There is something that has come up a few times. We heard from Advocacy for Inclusion and Canberra Community Law—I think it was Street Law—that disabilities may be hidden, such as cognitive or mental health disabilities. People who may be experiencing challenges are issued with a fine, and situations that escalate and which might involve a mental health incident should be treated in that way, but someone may be given a fine on the spot. Could there be more police training around recognising signs of mental illness or cognitive impairment, in terms of how to work with people in our community with those experiences?

Mr Caruana: I have said a couple of times that we can always do things better. Again, that will cost more money, so it comes down to resources and time. Certainly, a good example is foetal alcohol syndrome. Some of those symptoms or signs are very difficult to identify. Police officers are not clinicians; they are not doctors, and they are not dealing with these types of ailments every day. It is no secret: sometimes these things go unnoticed, and these mental illnesses go unnoticed. I am sure our members would be open to it. Again, that takes time. We do not have the resources now to have our members do the current prerequisite training or the training that they are required to do now. We are adding an additional impost, but not giving them the resources on the other side to alleviate it.

Yes, we are open to it. I am aware that the AFP have explored some of these options, and they are probably better placed to answer as to what the training is at the moment. Troy and I have been away from the AFP for a sufficient amount of time to understand that we are not contemporaneous with the training that is there, but we do know that they have looked into it. We do know that they are working with their state counterparts to see what, for instance, Queensland and the Northern Territory are doing with their First Nations people; and with Autism Australia and what they are doing with people with those types of ailments.

We are definitely open to it. Again, if you give police the resources and you give them the options to do it, they will take up the training. The important thing to remember is that just because someone has done the training it does not mean that they will recognise it every time they are confronted with it, so there needs to be leniency. Sometimes police officers make decisions using their discretion as to what they see in the field and hear at the time. In hindsight they go, "Actually, away from that aggravated, heightened adrenaline situation, I can see the signs." But when you are in the situation, it is difficult. We have to be really careful not to be overly critical of police officers that are dealing with a situation on the spot. Until you are in that same situation, you do not know how you would also react. Whilst the training is good, we still have to acknowledge that there might be some unwanted outcomes still occurring.

THE ACTING CHAIR: On behalf of the committee, thank you very much for taking the time to appear today and for your submission to this inquiry.

Mr Caruana: Thank you for your time.

MR BRADDOCK: Thank you for the comparison with New Zealand and Canada, too. That was interesting.

Mr Caruana: There is heaps of data out there, and I know you will do your due diligence. We picked the ones that resonated with us. At the end of the day, we understand that there is a different range of vulnerable people. Having a court outcome is not ideal in some situations, but we need to have those deterrents there, and the police need to be able to say, "Here's some chocolate," and "Here's a stick," in certain situations.

Short suspension.

RATTENBURY, MR SHANE, Attorney-General, Minister for Consumer Affairs, Minister for Gaming and Minister for Water, Energy and Emissions Reduction
NG, MR DANIEL, Acting Executive Group Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate
HAKELIS, MS ROBYN, Executive Branch Manager, Criminal Law Branch, Justice and Community Safety Directorate
RYNEHART, MR JOSH, Executive Branch Manager, Fair Trading and Compliance, Access Canberra, Chief Minister, Treasury and Economic Development Directorate

THE ACTING CHAIR: I welcome the Attorney-General, Mr Shane Rattenbury MLA, and officials to our hearing this afternoon. Could each of you acknowledge the privilege implications of the statement that is in front of you?

Mr Ng: I have read and acknowledge the privilege statement.

Ms Hakelis: I have read and acknowledge the privilege statement.

Mr Rattenbury: I understand the privilege statement.

Mr Rynehart: I have read and acknowledge the privilege statement.

THE ACTING CHAIR: Mr Cain, would you like to start with the first question?

MR CAIN: We have heard both positive and negative statements about work and development programs as an option for those who default. One was that there should be greater uptake of these; and the other was that it is perhaps not obvious to infringers that that is an option. Do you have any comment to make on how effectively you feel that those programs are working, and how they could perhaps be more accessible and more available?

Mr Rattenbury: One comment I might make up-front is that, in listening to the questions today and noting the breadth of the inquiry, we are conscious that some of the issues that have come up will be right across government. We will endeavour to cover those as best we can. We have brought with us an officer from Access Canberra; they actually operate that scheme. I will ask Mr Rynehart to take that particular question.

Mr Rynehart: A work and development program is one of a number of options available to people who incur a traffic or a parking infringement. The basic options available to a person when the infringement is issued are, firstly, to pay the infringement. They may dispute the infringement. Disputing the infringement is where the person does not believe they are liable for having committed the offence; or they make seek to withdraw. They are the three primary options. Withdrawal is generally an admission of having committed the offence, but seeking it to be withdrawn on reasonable grounds, and there are a range of steps that we go through there.

Where a person accepts liability, within the payment options there are options to pay

up-front and immediately. There is also an option to enter into a payment management plan. You can enter into a fortnightly payment of your infringement for as low as, I believe, either $10 or $20 a fortnight for a person, and you can pay it off over time. The work and development program is also one of those options there.

From our perspective, we have 36 organisations who provide services under the work and development program. We are in the process of reaching out to all of those providers to ascertain whether they intend to continue to provide those services in the future. That work is underway. As part of that process, we will be having conversations with those providers about where they see the benefits and the potential opportunities for the program moving forward.

MR CAIN: Are you planning to provide an update on how that engagement is going, or changes to the program?

Mr Rynehart: The perspective of it at the moment is largely contained to whether or not those providers intend to continue in the future. We would be happy to provide an update when we have been through that process on the feedback we get from those providers regarding how they see it operating and what the outcome is from that perspective.

MR CAIN: Is there a publicly available list of those organisations, the current ones? Are you happy to make that available to the committee?

Mr Rynehart: I am happy to make it available to the committee. I will have to confirm whether it is available on our website. I am happy to provide it to the committee.

Mr Rattenbury: We will take that on notice.

MR BRADDOCK: We have received evidence today regarding accessibility issues with the work and social development program, in terms of it being a 15-page form, it is not necessarily understandable to those with vulnerabilities, and it is not really made apparent. Could you please respond with some further information on those elements?

Mr Rynehart: With accessibility, are you talking about web accessibility or more general accessibility issues?

MR BRADDOCK: Both; if someone has a vulnerability, they might not be able to access it via the web or not be able to know how to fill out the form.

Mr Rynehart: On the more general accessibility questions, the options available to people for our services are that they can go online to apply for the various options available, they can call us at the contact centre or they can speak to us in a service centre. Those options are available for all people. The Access Canberra website, as part of the larger piece of work going on in CMTEDD, is under review at the moment. We are working through improving the accessibility there, including simplifying the information, and making it clearer and easier for people to engage with. We need to ensure that the information is simple and easily accessible to people and that the

legislation is applied in a correct way. There are questions that we need to ask and there is information we need to gather to be able to determine whether somebody meets the criteria. We are certainly actively looking at the accessibility of our information and how easy it is for people to engage with us, and this sort of information is captured in that work.

MR BRADDOCK: Whilst I understand that there is information that you have to collect, a 15-page form can be daunting for some members of our community. What support is there to assist them to do that?

Mr Rynehart: Certainly, for this type of thing, the best option would be for somebody to give us a call and contact someone at the service centre. We could support the individual through that process in that way. As I said, we are continuing to look at how we can make it easier and simpler for people to engage with the process.

THE ACTING CHAIR: There seems to be a big opportunity here, in that Access Canberra holds all of this information. With unpaid fines, Access Canberra holds the trigger for losing licences. We are very much hearing that the gateway into the criminal justice system is people having this layering effect of fines. Something that has come up this morning was around a red flag system, an identifying system, with Access Canberra. If someone had multiple unpaid fines over a period of time, Access Canberra may be alerted to this and that may trigger a hardship process, or some kind of engagement, whether it be a social worker, a referral to Care Financial or something like that. Utilities companies apparently do that. I would like to hear your views on the possibility of doing that.

Mr Rynehart: I can speak to how we operate at the moment and the arrangements that exist rather than whether it is suitable. There is always a tension between how much information we need in order to make a decision about a speeding infringement, for example, as opposed to gathering. Gathering too much information for all people might be problematic and challenging; also, not gathering information at all about people can cause problems. There is always a tension between those two opportunities.

Infringements are dealt with individually within the process. At this stage there is not a flag, as you have described it, which would indicate that a person might have hardship issues and might have incurred infringements. Effectively, all infringements are treated in the same process. The infringement is issued and the process follows from there. As I described before, there are various options available for people.

I will say that entering into a payment management plan does, from our perspective, treat the infringement as paid. As soon as the person enters into that plan, from our perspective, and from the RTA's perspective, that infringement is paid and the person just goes through the process of making the payment. They are not continuing to have that infringement active in the system.

THE ACTING CHAIR: Do you think there is potential for the system to be able to, for example, be programmed so that, if an individual has four unpaid fines, an alert may be flagged?

Mr Rynehart: Without going into whether the system could do that or not, there are

always opportunities for us to look at where individuals might have high rates of infringements or whatever the data is telling us. The challenge with that type of absolute approach is that a person with four infringements may or may not be vulnerable, but they may have four infringements. We operate within the way that the legislation is constructed, and we are always really conscious of the need to maintain privacy and to be sensitive about that. While we are always looking at our datasets and there may be opportunities for us to give some of that consideration, we do always have to balance it.

THE ACTING CHAIR: Again, there is the linking of age of licence holders to infringements. A lot of what we are hearing is that this is how young people come into contact with the criminal justice system. There is the possibility that, until the end of your P plate licence, you might be considered vulnerable, or where you are at high risk of not being able to pay your fines. Are there ways that the system could work like that?

Mr Rattenbury: One thing that might be worth noting is that Access Canberra does not initiate prosecutions for failure to pay fines. I think that is an appropriate approach. That avoids some of that immediate escalation into the criminal justice system. As you have touched on, it can lead to loss of licence. We are certainly aware of circumstances where loss of licence becomes a point of escalation because a young person will still drive; then you get into a more serious set of offences. That is certainly one of the pathways, but there is not a direct prosecution pathway out of Access Canberra.

MR BRADDOCK: Pretty much universally through all of the submissions was the idea of some income-based fines or fines that are proportionate to people's ability to pay. Could you please respond in terms of how the government could see such a model working, and maybe the challenges or the opportunities that arise with such an approach?

Mr Rattenbury: It is worth saying that the government is committed to ensuring that the administrative penalty schemes do not create hardship for people. That is why all of those other mechanisms are there. Certainly, for me personally, the notion of an income-based fine is very attractive. The largest barrier for the ACT government is that we do not have a reliable source of understanding what people's incomes are, as you well know. It has probably been discussed already, but I have not heard the evidence of all of the witnesses.

The federal government holds that information through the taxation system, and the ACT government's ability to accurately draw on that information is the biggest barrier for us. You could seek to gather all of the information, but there would be questions of intrusion of privacy, and accuracy, because we do not have the legislative powers to require the gathering of that information. That is the biggest barrier to it. It is not one of principle; rather, it is one of practicality.

MR BRADDOCK: The federal government has not indicated a willingness to provide that information?

Mr Rattenbury: I do not believe so.

THE ACTING CHAIR: Some of the submissions have suggested perhaps presenting the last four weeks of pay cheques, for example, as proof of your income. Could a system like that potentially be implemented?

Mr Rattenbury: Potentially, yes. I do not know the full technical implications of that. Clearly, these days, I am not sure whether everyone gets a payslip anymore. I understand the idea. There is an administrative load to that; the government would need to consider that as well. I would be interested to know what other witnesses have said about the practicalities of that and the impost on individuals to provide that information.

MR BRADDOCK: For example, the AFPA suggested maybe an escalating approach to fines, where it might be zero for the first fine, 10 per cent for the next one, then 20 per cent and upwards. Is that an approach that the government has considered before?

Mr Rattenbury: No. It is a very progressive idea, literally, by definition, but it is the first I have heard of it. Yes, I saw the AFPA's comment on that. It is certainly a model. It still comes back to that central question of access to income data.

MR BRADDOCK: There is that element, but there is also the element of an escalatory approach to fines, where the first fine for a certain offence might be—

THE ACTING CHAIR: It is like a warning.

MR BRADDOCK: It might be just a warning, then you will start cranking up the levels.

Mr Rattenbury: I see. For a lot of matters outside parking and traffic infringements, which are very much a strict liability offence and just get implemented, certainly, as the government submission indicated, Access Canberra do operate the educate—

MR BRADDOCK: Engage.

Mr Rattenbury: engage and enforce approach. You will see that in those more discretionary areas or where there is engagement. The difficulty with that approach would be that, if you had someone on a low income who did offend repeatedly and saw a very significantly escalated fine, you would get quite a significant impact on them. I think the model points to saying, "You've got a chance to not do it again, but if you do, we'll punish you harder," but if the person is on a low income, that harder punishment will obviously become more disproportionate over time. That would be the challenge with that approach. It is an interesting idea, but I think that would be a risk point.

MR CAIN: I note that ACT Policing made a statement about the value of education, diversion and support services, deterrence and detection to encourage compliance with legislation. I asked the police what kind of education programs they were a part of. Obviously, resourcing would seem to prevent them from getting into schools, for example. Are there plans to get into our education system with a strong message about

the importance of complying with the law and the implications of noncompliance?

Mr Rattenbury: I have not had that conversation with either the police minister or the Chief Police Officer, so I am not specifically aware. Of course, we have seen this week that the government has made a significant budget investment to increase the resourcing of ACT Policing, with 126 new police over the next five years. I imagine Policing will be having a think about how to allocate those resources.

Certainly, the government very clearly has a justice reinvestment agenda where we want to see more of our resources put in at the front end of prevention. I know ACT Policing are supportive of that approach, so it may well be that the Chief Police Officer is considering more prevention. They have certainly indicated part of their concern with their resourcing levels has been that it leaves them in a more reactive space than a preventive or proactive space. The police services model is very much oriented towards pre-emptive or proactive measures. But I am not sure about the specifics of their operational planning with these new resources.

THE ACTING CHAIR: One of the issues that has come up around policing has been diversion. It goes to the inquiry last week around the programs in place to be able to take people, and for police to divert these people to, so that they do not have to give them the fine and they do not have to start this process. What can we do to improve the diversionary pathways, particularly for young offenders but generally as well?

Mr Rattenbury: It is a really important point, Dr Paterson. Certainly, in the government submission we highlight the example of the recent reforms in the drugs of dependence legislation; we have seen the option where people can either accept the fine or attend the course. It is a great example of the kind of diversionary options that we would like to see more of.

Certainly, with the development of the service system around raising the minimum age of criminal responsibility, again, there is a similar approach. As a result of that legislation, assuming that it passes the Assembly, we will need to ensure that police do have those alternative options. We are certainly seeing an increased emphasis on those opportunities. Again, I am sure this committee has heard some examples in recent days, and I am sure there are more opportunities to think about things, even in the context of seeking to reduce recidivism.

I am interested in the work that ACT Policing is doing in bringing in a psychologist to consider what motivates people in terms of their continued offending behaviour. I am most interested in how we come up with options that go to the underlying drivers of behaviour. What can the diversion options be that offer people assistance, life lessons and alternative activities that go to the heart of that issue? Anything that we would want to do in this space would be best guided by that sort of thinking as well.

THE ACTING CHAIR: Do you think there needs to be a gap analysis in terms of diversion programs? Everyone acknowledges the drug and alcohol diversionary path, and we talk about diversion, but to where? Police are saying: to where? I would like to understand the scope of programs that people can be diverted to, so that it is on one page and you can ask, "Actually, where are the gaps for young people?" or "What program could fit there or is missing there?" Do you think there needs to be some

further work done on that?

Mr Rattenbury: I am not aware of any piece of work like that which has been done. We all know from our roles as MLAs that there are lots of services out there doing interesting things. It is about how well joined-up they are; I think that is at the heart of your question, and/or any obvious gaps. Yes, I think it would be an interesting piece of work. There might need to be a whole, separate committee inquiry.

MR BRADDOCK: In the government's submission, it says for the 2021-22 financial year there were 221,070 parking and traffic infringement notices. I am concerned about the very small number of waivers that were issued—485. Whilst I understand that we have the work and social development program pathway and we also have payment instalments, there are people who lack the economic means to even pay via a payment plan, are time poor or just lack the capability to do the work and social development program. Why is that level so low?

Mr Rattenbury: I will ask Mr Rynehart to speak to the definitional issues around a withdrawal versus a waiver and perhaps some of the criteria around waiver, as a starting point to that question, and we will see where we get to.

Mr Rynehart: Yes, there is a significant difference between a withdrawal and a waiver. A waiver is a specific service available to help vulnerable people to deal with the financial aspect of an infringement notice where they would have ordinarily been liable for it. A withdrawal is where we withdraw on various grounds; a waiver is—

MR BRADDOCK: It is the waivers that I am interested in.

Mr Rynehart: Yes. The process around determining whether someone is eligible for a waiver is set through the legislation. The construct we work with in the case—and I will read some parts of it—is:

> … if the applicant does not currently have, and is unlikely to have in the future, the financial ability to pay the infringement notice; and
>
> relevant circumstances exist in relation to the applicant; and
>
> enforcement action has not resulted in, or is unlikely to result in, the payment of the infringement notice (for example, previous sanctions did not result in payment) …

The "relevant circumstances" include:

> … any of the following circumstances that relate to the person and significantly affect the person's ability to pay an infringement notice penalty:
>
> (a)mental or intellectual disability or mental disorder;
>
> (b)physical disability, disease or illness;
>
> (c)addiction to drugs, alcohol or another substance;
>
> (d)being subjected to domestic violence;

(e)homelessness, or living in crisis, transitional or supported accommodation;

(f)anything else prescribed by regulation.

That is the construct within which we work in determining whether a person is eligible for a waiver. With regard to how many were issued, that is how many people have been through the process or have been successful in working through the process for a waiver.

MR BRADDOCK: Thank you for clarifying that for me, because it is interesting how the bastion of progressiveness that is called the AFPA has suggested the Canadian model, where a fine should only be imposed where the court is satisfied that the offender is able to pay the fine, putting the onus of proof back onto the government. I find it interesting, in terms of how our current legislation was crafted. I am sorry; that was a comment.

Mr Rattenbury: Yes, that is why I paused.

THE ACTING CHAIR: We heard from multiple people that that waiver process—Andrew touched on this before—is very onerous. Even hearing you read that, I am trying to keep up and work through a checklist. What about someone who is experiencing significant hardship? We heard an example of a woman who was in a domestic violence situation, and they were obviously not aware that fines could be waived for that. The fines were under her ex-partner's name, for a household car, and she preferred to pay the fines and deal with that than deal with the ex. We heard that, in other circumstances, in New South Wales, it just requires a phone call and the fine can be waived very quickly. When we are talking about the most vulnerable people, can we improve our service here?

Mr Rattenbury: I am sure there are some opportunities. The careful balance for government involves not making it so easy that everyone thinks they can just ring up and get away with it because, frankly, they just do not want to pay the fine, versus making sure that people do not get trapped in the kinds of examples you were describing, and there would be a myriad of other examples. The legislation touches on some of them.

The issue is probably one of knowledge and accessibility. Certainly, some folks who would be engaged with, say, some of the community legal centres or Street Law would have that opportunity; perhaps they engage with Care Financial. Those services would give them that advice.

The challenging ones, in a way, are people who are just battling by themselves. There is probably scope for the government to think about—certainly, as part of the website review—making that information both more visible and perhaps a little bit more plain English, as a starting point. If other witnesses have made suggestions, we would be very open to thinking about some of those practical measures to help people overcome that knowledge gap.

MR CAIN: I refer to the final paragraphs of your submission, headed "Pending

legislative reforms". Could you give some more detail on the implications of what the passing of the Magistrates Court (Infringement Notices) Amendment Act 2020 will be? For simple drug offence notices and criminal infringement notices, what will be the new nexus with the justice system?

Mr Rattenbury: Let me take those in turn, Mr Cain. The Magistrates Court (Infringement Notices) Amendment Act is designed to bring more flexibility to infringement notices issued by the court. It is a relatively small number. I think it is around 1,300 a year, on average. These are matters where the court has actually imposed the fine. That legislation seeks to put in place the same mechanisms that apply for parking and speeding infringements, to give those options around waiver, payment plans and the approved work or social development in lieu of payment.

That is the purpose of that act. The government is in the process of establishing the information technology systems behind that to enable the successful administrative application of that act. As you know, it takes effect next year. Does that answer that question?

MR CAIN: I must admit, as I read that, I was assuming that it also applied to simple drug offence notices and criminal infringement notices, but that does not seem to be the case.

Mr Rattenbury: No. Equally, some of those court-imposed sentences will apply to corporations or businesses. Obviously, corporations cannot go into something like a work and development program, so there are some details there. In terms of drug dependence, is there another question? I was not quite clear.

MR CAIN: No, that was just an example that I thought might be impacted by the commencement of that act.

Mr Rattenbury: No, I think our intent in the submission was simply to demonstrate that there are two different things coming through, one being the court notice legislation and the other being the drugs of dependence. They are two examples of approaches that the government is taking in this space that will change the options or make more options available to people who have been subject to penalties.

Ms Hakelis: In relation to the Magistrates Court (Infringement Notices) Amendment Act, which comes into force in February next year, it is not actually court fines; it is infringements that are subject to that act. One example might be failure to register your dog. That is an example of something that comes under that act. Importantly, it is good to know that regulations and guidelines will be made for new hardship options under that act. They will be quite similar to the ones that Access Canberra have, so that we are able to access all of the things that the attorney was referring to and we will have guidelines for waivers and extensions similar to what Access Canberra does under that act.

MR CAIN: Are you confirming that the commencement of that will not affect the administration of CINs and simple drug offence notices?

Ms Hakelis: The drugs of dependence scheme is quite different from that particular act. The drugs of dependence scheme is being expanded, and that will start in October. This is actually a matter for Health, but the options will be a $100 fine or a diversion program, if the quantity of the particular drug is small enough and referrable.

THE ACTING CHAIR: Lots of the submissions talk about the issue of people having multiple layers of fines and eventually ending up in prison. There seems to be lots of data in other jurisdictions on this—for how many people infringements have played a role in their incarceration—but no-one has delivered any data in the ACT context. Of the 300-and-something prisoners in AMC currently, how many of them are there because of an escalation of fines?

Ms Hakelis: No, not in relation to fines, specifically. The likelihood of that—I am not sure whether Josh has anything to add to this—is quite low. People would only be referred to go and pay their fine in relation to the underlying offence. Once they have potentially gone to court and gone through the prosecution process, it is a matter for the court. If the person does not pay their fine, there are other escalating options. The likelihood of someone actually ending up in AMC for not paying what might have been a very small penalty to start with is, I would say, very low.

THE ACTING CHAIR: Over time, when that process is repeated, it continues to escalate. We heard about people not paying registration, for example. The second that you do not pay that, you are a looking at a couple of thousand dollars fine, and you are driving without a licence. You can quite quickly escalate into more serious crimes.

Mr Rattenbury: Interestingly, from a road safety point of view—and I am sure ACT Policing could talk to you more about this—there is also a correlation between those who are driving unregistered vehicles, unlicensed vehicles, and dangerous driving offences. We are in that difficult space regarding how much you enforce. You do not want to punish vulnerable people, but you also need to maintain community safety. These are, I think, tricky spaces.

THE ACTING CHAIR: I agree. The two things were loss of licence and driving an unregistered vehicle. Both, as you say, are consistent with people who are reckless on the roads, as well as the most vulnerable people. That can all become very conflated quite quickly. In particular, as the fine in the beginning triggers the suspension of a licence, do we think there could be potentially more intervention in or more sight given to that process that could separate out those who are driving recklessly and dangerously, versus those who are really not able to pay fines and penalties?

Mr Rattenbury: It is an interesting question. It comes back to a comment I made earlier. I am most interested in trying to think about whether there is work we can do in the innovative spaces around how we tackle some of those behavioural questions. It goes back to diversions, and what the options are to influence the way people conduct themselves.

I think I am on the right track here. For example, if you pick up a speeding fine, or a couple of speeding fines, and you do not pay them, you lose your license. The actual issue is that someone keeps speeding. They then get into an unfortunate cycle which escalates the whole thing. At the end of the day, if they keep speeding, how do we

actually tackle that speeding behaviour at the beginning? It is an interesting question from the point of view of a diversionary approach.

THE ACTING CHAIR: The one that does not potentially have an infringement aspect is paying your registration.

Mr Rattenbury: Yes.

THE ACTING CHAIR: Someone can literally not afford to pay; if they do not pay, it is a big problem. I understand why you have the escalation in the fine there, because of the seriousness, and it is a very big problem. Maybe it is about having a reduced cost of registration for people who are less able to afford it.

Mr Rattenbury: Certainly, from a registration point of view—Josh can probably help me with the details here—the government has a number of programs, including, with paying the registration, not having to pay the whole thing in one go. You can pay, I think, quarterly instalments—

Mr Rynehart: Quarterly, six months or 12 months.

Mr Rattenbury: Often people do access that, when they are struggling to pay the whole amount.

THE ACTING CHAIR: ACTCOSS called that a poverty penalty. You end up paying more—

Mr Rattenbury: Yes.

THE ACTING CHAIR: because you are—

Mr Rattenbury: The transaction costs have been reduced in recent years through some recent budget processes, if I recall correctly. Yes, there is an extra cost to it; there is no doubt about it. Again, that might be an area where there is scope to think about whether it can become more of a fortnightly deductible payment in the way that energy companies deal with energy bills. There are probably opportunities to think about that. Yes, registration does become a challenge. There are reforms coming through in that space, with moving to an emissions-based system. Certainly, registration is on the government's radar.

MR BRADDOCK: You were talking about where the dangerous behaviour was repeated speeding behaviour, and how we respond to that. I am thinking of a one-off instance where someone has sped and, through their inability to pay a fine, even through a deferred payment program or by attending a program, they might end up in a licence suspension situation. Is that the best approach to ensure compliance?

Mr Rattenbury: In some ways, this whole inquiry is about what options are available to us. We are more than willing to consider interesting overseas examples where they have come up with answers to those questions. As I touched on earlier, it reaches the point, from an enforcement point of view, of asking: what is the point at which somebody is held to account? The government has no desire for people to go down

the path that you have just described. We also need to make sure that people take responsibility for speeding and those other things that we, as a community, seek to put rules around. That is the great dilemma at the heart of this inquiry.

MR BRADDOCK: We will see what we come up with.

Mr Rattenbury: I did not mean to flip that back on the committee. But it is the essence of this inquiry and it is a really interesting discussion to have.

MR BRADDOCK: The Justice Reform Initiative identified, amongst their recommendations, one priority for them being to establish a specialised list in the Magistrates Court to hear cases involving vulnerable people. Do you have any thoughts in terms of such an idea?

Mr Rattenbury: Not specifically. This matter, until this process, has not been raised with the government previously.

MR BRADDOCK: The Justice Reform Initiative also talked about reinstating funding for the Aboriginal Legal Service driver licensing program. I am keen to get an update in terms of what the decision is there and whether it might be possible to get ongoing support for that program.

Mr Rattenbury: I am trying to think about the details of that. I know about it because it sits under the road safety portfolio, which sits with Minister Steel. I used to have that portfolio, so my information is possibly a little out of date.

MR BRADDOCK: Do you wish to take it on notice?

Mr Rattenbury: Yes, let us take that on notice, rather than try to drag something out of my memory banks or give you outdated information. I think we have taken a couple of questions on notice that we will provide back to the committee.

Mr Rynehart: I took on notice the list of providers. There are two notifiable instruments under the Road Transport (General) Act, which lay out the approved providers for the work and development program.

Mr Rattenbury: We will still provide that list, under the instruments, to the committee. It is publicly available.

MR BRADDOCK: The government submission says that in the 2021-22 financial year there were 12,400 plans for payment plans and 89 plans to work off those notices. I would like to know what the successful completion rate for those are. Out of everyone who starts a payment plan, how many are actually successfully concluded?

Mr Rynehart: I will need to take that on notice.

MR BRADDOCK: The same for the work and social development plan as well.

Mr Rynehart: Absolutely.

THE ACTING CHAIR: On behalf of committee, thank you all very much for appearing today. If you take any questions on notice, please provide them to the committee secretary within five business days. Thank you for your time. I will now adjourn the hearing.

The committee adjourned at 4.56 pm.