LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into sentencing)

Members:

MR S DOSZPOT (Chair)
MR M GENTLEMAN (Deputy Chair)
MRS G JONES
MS Y BERRY

TRANSCRIPT OF EVIDENCE

CANBERRA

FRIDAY, 2 MAY 2014

Secretary to the committee:
Dr B Lloyd (Ph: 620 50137)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

Privilege statement

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Amended 20 May 2013

The committee met at 2.01 pm.

CORBELL, MR SIMON, Attorney-General and Minister for Police and Emergency Services
ALDERSON, DR KARL, Deputy Director-General, Justice, Justice and Community Safety Directorate
PLAYFORD, MS ALISON, Acting Director-General, Justice and Community Safety Directorate

THE CHAIR: Welcome to the first public hearing for the Standing Committee on Justice and Community Safety's inquiry into sentencing. Today we will hear from the Attorney-General and Minister for Police and Emergency Services, ACT Policing, the Minister for Corrections and the chair of the Sentence Administration Board. The committee is looking forward to hearing from all of you who play such an important part in the sentencing environment. Today's proceedings are being recorded and will be published as an edited transcript for your information as well. I presume all of you are very familiar with the privilege statement. If not, if you could just take a moment to read it.

Mr Corbell: Yes, Mr Chairman.

THE CHAIR: Otherwise I will take it as granted that you are familiar with it. Minister, would you like to make an opening statement?

Mr Corbell: Thank you, Mr Chairman, and thank you to members of the committee for the opportunity to appear before you today. This is an important inquiry. Sentencing is a significant issue of public interest and one in which the government, members of the legal profession and the community as a whole maintain a constant interest. I am pleased to appear before you today because the work of your inquiry is timely and will coincide with decisions that the government has undertaken and made to pursue further work in the sentencing space, in addition to measures that have already been implemented.

I am pleased to advise the Assembly today that the government has decided to pursue targeted sentencing reform work as part of a justice reform strategy, the details of which I am announcing today. The decision to repeal periodic detention in the ACT and the planned expansion of the Alexander Maconochie Centre have provided the government with the opportunity to examine the operations of the territory's sentencing regime and related matters with a view to considering substantive long-term improvements. As part of the repeal of periodic detention the government will embark on a justice reform strategy that will investigate new sentencing approaches, expansion of restorative justice measures and related reforms.

The issues around sentencing and social and economic drivers of criminal behaviours are extremely complex. As a result, future reforms need to have consideration of the diverse drivers and components of the justice system in the ACT and other jurisdictions, including sentencing principles and practices, crime prevention strategies, community safety expectations, justice reinvestment measures and a focus on reducing recidivism.

The justice reform strategy I am announcing today will include an evidence-based program for the reform of sentencing laws and practices. My directorate has been tasked with preparing terms of reference for this strategy that will be informed by a panel headed by the director-general, head of office level from key justice sector agencies and other relevant agencies and will be chaired by my director-general, Ms Playford.

The strategy will target an engagement with the chief justice, the chief magistrate, legal practitioners and the broader community. It will involve consideration of a broad range of issues relevant to the criminal justice system, including the adequacy of existing sentencing options in the context of the decision to decommission the periodic detention centre at Symonston and repeal periodic detention as a sentencing option; mechanisms for addressing reoffending and making the justice system more effective and efficient; opportunities to reinvest resources towards primary crime prevention activities; identifying key research and evaluation opportunities that arise within the scope of these terms of reference; engagement of researchers and academics to ensure proposals are informed by the available national and international evidence; and the preparation and delivery of interim recommendations on proposals for legislative and system reform by July 2016.

This committee's work can help inform this strategy through consideration of some fundamental questions, including what should the purposes of sentencing be, does deterrence work and should property crimes and crimes against the person be dealt with differently. These questions and others will be considered as part of the strategy to ensure that we have a sound underpinning for our sentencing laws. It is an exciting opportunity for our justice system and I look forward to working with my colleague the Minister for Corrections, as well as other members of this place, in developing and implementing sentencing reforms, options and broader justice reinvestment strategies that will meet the unique and appropriate needs of this jurisdiction.

Mr Chairman, I would just like to briefly note a number of other elements that will be considered as part of the strategy work as well as matters that are relevant to your inquiry today. Firstly, turning to restorative justice, currently the Crimes (Restorative Justice) Act allows for young people aged between 10 and 17 years to be referred to restorative justice for less serious offences—that is, property offences punishable by imprisonment for 14 years or less and non-property offences punishable by imprisonment for 10 years or less.

Findings from the Campbell collaboration review led by Heather Strang at the Australian National University—and I was pleased to be part of the launch earlier this year—into the efficacy of restorative justice conferences suggest that, in fact, restorative justice conferences are likely to reduce the frequency and costs of future crime. The review found that the average effect of restorative justice when compared with conventional justice procedures, usually through the court, is beneficial. The review found, on average, restorative justice conferences are even more effective with repeat adult offenders rather than juveniles and for serious violent crime rather than less serious non-crimes against the person.

The review indicates that restorative justice delivers emotional restoration to victims much more effectively than court processes. This was an outcome in approximately

90 per cent of restorative justice conferences. Therefore, as part of the justice reform strategy, I am asking my directorate to give further consideration to how we can bring more emphasis on restorative justice to violent crime and to adult offenders, either in parallel with traditional sentencing practices or as an alternative to them.

Another important area is parole. Last year the Callinan report by the retired High Court justice made 23 recommendations to strengthen adult parole laws and processes in Victoria. The analysis carried out by the ACT government in light of this review highlighted that key measures recommended by the Callinan report are already in place in the ACT parole system. For example, the Sentence Administration Board must have regard to the public interest in determining whether parole is appropriate for an offender. An offender who has allegedly breached their parole obligations can be arrested by police and where an offender is convicted of an offence punishable by imprisonment while on parole the court must cancel the offender's parole. These and other measures in place in the ACT ensure that community safety is prioritised when parole is being considered and where breaches of parole occur.

Turning to child sex offences, I am aware that there has been concern from parts of the community in recent times about the adequacy of laws dealing with child sex offences. The government is strongly committed to ensuring that our children are protected from sexual assault and violence in all of its forms. ACT legislation provides measures to monitor child sex offenders in the territory. For example, registered offenders must report to police about where they live and work, their travel plans and a range of other personal matters.

In 2012 the government introduced amendments to the law to create a new scheme for child sex offender prohibition orders. Police can apply to a magistrate for an order prohibiting an offender from engaging in specific activities or attending specific locations. The 2012 amendments also increased existing penalties for 21 offences in the Crimes (Child Sex Offenders) Act.

It is important to restate that this government does not support the introduction of mandatory minimum sentences. Mandatory minimum sentences can undermine judicial independence and removing from the judge or magistrate the capacity to properly impose a sentence that takes into account all of the relevant factors can lead to unjust, indiscriminate and potentially arbitrary outcomes for individuals. The action currently taken by the government by providing a strong framework for monitoring of child sex offenders and increasing information-sharing opportunities between the police and relevant agencies improves the ability of law enforcement to protect children in our community.

Finally, in relation to data on sentencing, in December last year I launched the ACT sentencing database with the chief justice and the chief magistrate. The ACT judiciary and legal profession now have access to a growing repository of ACT sentencing statistics and information to assist the sentencing process in the ACT. The implementation and funding of this database by the government is an important step in providing tools to the judiciary to assist with and promote consistency in sentencing.

I would like to thank the committee for the opportunity to appear before you today. I look forward to considering the issues raised in your forthcoming report, and I and my

officials are very happy to try and answer your questions.

THE CHAIR: Thank you, minister, for your introductory statement. My first question, I guess, continues on from some of your overall comments. Would you or members of your directorate care to share with us any views you may have on any current weaknesses in the ACT sentencing regime?

Mr Corbell: That is a fairly broad question, Mr Doszpot. My officials may be able to venture some general views.

Dr Alderson: I suppose an issue that is intended to be pursued is that it is important to have the best possible range of sentencing options beyond imprisonment. What we as a directorate have been tasked to assist the government to do is to look at what some other jurisdictions have done in relation to the removal of the periodic detention option. They have done a variety of interesting things in terms of intensive correction orders that give you constructive alternatives to imprisonment. I would flag that as one area certainly meriting attention.

Mr Corbell: From the government's perspective, the purpose of the justice reform strategy, the details of which I have started to outline to you today, is to recognise that, in many instances, people who are ending up in prison perhaps should not be there. But because of the nature of their offending behaviour and because of the way sentencing laws are currently constructed, they are being sent to prison.

We need to look more broadly at alternatives to people being sent to prison. We need to look at the reasons behind sentencing and the factors that influence a decision about a custodial sentence at the moment. We need to make some closer assessments about what the impacts are of people going to prison and what the consequences are when they are ultimately released from prison.

We need to make sure that public safety remains a particular consideration in determining whether or not someone should be in custody. Clearly, if someone does present a broader risk to the community, they should, in cases more likely than not, end up with a custodial sentence. However, there are, I believe, a range of alternative sentencing options that should be further explored.

As I mentioned earlier, the international research that is now coming through in relation to the effectiveness of restorative justice measures really does highlight that restorative justice as an alternative to traditional sentencing in a court delivers better restoration to victims—that is, victims feel emotionally that the wrongdoing and the harm has been acknowledged by the offender, that they have demonstrated contrition and acceptance and responsibility for their offending behaviour. It highlights that the offender is placed in a much more confronting circumstance than they may be in court, in many instances, because they cannot hide behind their lawyers and say nothing as they can in court. They have to be engaged in facing their victims and facing up to the responsibility and the consequences of their decisions. So it is far more confronting and potentially transforming for the offender.

Finally, we know that in relation to offenders the evidence demonstrates they are less likely to offend again in that circumstance and it is cheaper than the conventional

justice process. For all of those reasons, there is good evidence to highlight why these matters should be pursued further. At the moment there are some limitations in relation to restorative justice options in the territory.

We are very advanced—indeed, the most advanced in the country, compared to other jurisdictions—but we still only limit RJ to young people, not to adults, and we do not engage with the broader and more serious range of offences which the international evidence highlights is actually where better results can be achieved in terms of delivering justice. That is something that will be a key focus as the government moves forward with this reform program.

THE CHAIR: A supplementary, Mr Hanson.

MR HANSON: Minister, this is a bit of a first principles review. You are going to look at a lot of things. Why have you got rid of periodic detention as an option before doing the review? You are going to have a look at how all of this fits together—sentencing, restorative justice and so on. Why make that decision? It is not going to be enacted for a little while. It seems pre-emptive to have made that decision before having the review. What was the thinking behind that?

Mr Corbell: We know now that periodic detention is not operating and achieving the outcomes that it was originally set out to achieve. The ACT is now the only jurisdiction in the country that provides for periodic detention. All other jurisdictions have phased it out. They have phased it out because they have recognised it is both costly and ineffective. I think there is already sufficient evidence in place to allow the government to make the decision it has made in relation to periodic detention. In many respects it is now a trigger for us to look more broadly at a range of other matters. For example, other jurisdictions have started to implement intensive community-based orders; intensive community-based supervision is increasingly becoming—

MR HANSON: I will just interject there. You said that you have evidence other than that they have stopped it in other jurisdictions.

Mr Corbell: Yes.

MR HANSON: What evidence do you have? Are you able to provide that to the committee? Was there a paper done? Was there a review? What is the substantive evidence?

Mr Corbell: These are largely matters that fall within the responsibility of the Minister for Corrections, but I will ask my officials—

MR HANSON: It certainly reduces the range of sentencing options, doesn't it?

Mr Corbell: It does remove a sentencing option; that is the case. But we have looked very closely at what has occurred in other jurisdictions. We have looked very closely at our own experience. Ms Playford can provide you with a bit more information on that.

Ms Playford: One of the other key pieces of evidence that was relevant in considering these issues—you may wish to pursue this further with the Minister for Corrections—was around the high cost of periodic detention as a sentencing option, along with evidence that we had around the positive use of other types of detention in other jurisdictions and, in particular, the development of the intensive community orders.

THE CHAIR: I have a supplementary, Ms Playford, on that. What is the impact of this decision to discontinue periodic detention on people who are currently serving sentences?

Ms Playford: There will be transitional arrangements that will need to be potentially put in place for any sentences that go beyond the 2016-17 date. There are a range of options that are being considered, including alternative sites where the tail end of those sentences might be served.

THE CHAIR: Currently you are looking at discontinuing this in 2016-17?

Ms Playford: Yes, we are working towards that.

THE CHAIR: So the option is there to continue, for those currently sentenced—

Ms Playford: That is something that will be decided as alternative options are developed. Certainly, we are aware there may well be a need for transitional arrangements and they may well need to be provided for.

THE CHAIR: I have a further supplementary on that. If current sentencing activities keep going on, will people still have the potential to be given periodic detention sentences in the interim, and that could extend that time frame?

Ms Playford: There is that potential. Again, when corrections appear, the executive director of corrections can probably talk more knowledgably about that. My understanding is that the average length of periodic detentions would be generally in the 12 month type bracket.

THE CHAIR: I would presume that you are looking at alternatives to periodic detention at the moment, or is this something that you are working towards?

Ms Playford: Working towards, and certainly we will be consulting extensively around options that have developed. But we have already started to consider, in particular, looking at other jurisdictions and doing research around what the alternatives are in other jurisdictions regarding the different types of intensive community orders that exist around Australia.

THE CHAIR: We will move on to Mr Gentleman for his first substantive question.

MR GENTLEMAN: Minister, in your opening you talked about the justice reinvestment measures that you are looking at. Can you go into a little bit more detail on these measures?

Mr Corbell: Thanks very much, Mr Gentleman. There are a range of measures that the government has in place that are supported by justice reinvestment principles. I will mention a couple of programs that we have in place. For example, the property crime reduction strategy is a whole-of-government strategy. So it is not just police; it is justice, community services, youth services and so on. It is focused on breaking the cycle of reoffending when it comes to property crime. We know there is a lot of recidivist behaviour with property crime, and tackling that issue will reduce overall levels of those types of crimes in our community.

The strategy not only provides for targeted enforcement and intelligence-led policing by ACT Policing, but also it focuses on stopping the cycle of offending—for example, by providing assistance to young people in relation to education, training and opportunities for employment, and also regarding their social circumstances, such as reliability of housing. By providing more reliable housing options for people, safer and securer housing options for people, they are less likely to find themselves in a circumstance where they are stealing property to get money to survive on the street or whatever their more unreliable housing circumstances are.

Of course, unreliable or transient housing circumstances also contribute to people's ability to stay at school or to stay in training, because they just do not have that routine that you need to manage the discipline of training and education. So the strategy focuses very strongly on the delivery of those services to young people as well as focusing on the enforcement end, which is also important.

Another similar example is the high density housing safety and security project. This project has been running for a number of years. It is funded through the crime prevention budget to the tune of $120,000 a year. It is, again, cross-collaborative and it is focused on security, community development, crime prevention and reduction and access to services for people who live in high density public housing complexes. We have had really good feedback from residents in these complexes. We know that a number of our older, high density public housing complexes face particular challenges when it comes to criminal activity. We know that some of the tenants of those properties have previously been engaged in crime and face the potential of getting into reoffending behaviours. The focus, again, is on building community engagement and building support with community service providers as a way of keeping people on track and giving them hope and opportunity beyond that associated with crime.

We are also focused very strongly on RJ in the Indigenous guidance partner program. The government is providing over $600,000 worth of funding for this over four years to facilitate young Indigenous men and women, boys and girls, being engaged in restorative justice. Whilst restorative justice was working very strongly, it did not include a high percentage of Indigenous young people. We know that Indigenous young people and Indigenous people more generally are over-represented in those who end up in the criminal justice system. So an opportunity to divert them out of traditional sentencing practices, away from the courts, into RJ is another example of a justice reinvestment program that the government has undertaken.

MR GENTLEMAN: Does the restorative justice program particularly for Indigenous people work in tandem with circle sentencing or alongside it?

Mr Corbell: Yes, it can work in parallel with circle sentencing—although circle sentencing, in many respects, replicates some of the attributes of RJ in that there is greater potential for the victim to be involved and for the offender to come face to face with those they have caused harm to.

MR GENTLEMAN: In regard to the high density housing security program that you talked about, have you looked at other jurisdictions to see whether that has been successful there?

Mr Corbell: I have not seen many other examples of this type of approach in other jurisdictions. I would say the ACT approach is unique in that respect. There may have been similar programs in place in other jurisdictions but I am not aware of them. Certainly, I highlighted this program, for example, a number of years ago at a meeting of attorneys-general from around the country, and there was a lot of interest in the program but there was no indication, at that point at least, that there were similar programs running in other places.

MS BERRY: I have a supplementary. In your opening statement, minister, you talked about the restorative justice program and that it seemed to be more successful with repeat adult and serious crime rather than with younger people, which is what you are trying to target. What do you think the reason for that is? Is it as basic as a lack of maturity of young people or is it a lack of services?

Mr Corbell: I cannot recall the specific reasons that were cited in the research. Officials might be able to help me with that. What the research found was that it was not that it was ineffective for young people or for property crime but that it was most effective for adult offenders, and for adult offenders who had committed crimes of violence.

I guess it is a matter of emphasis. It is not that it is effective with one and not with another. The research concluded that it was more effective with one than another, but it was still effective with both. Perhaps the reason for that, and I think the research bears this out, is that the nature of a violent crime, a crime against a person, is that there has been harm done directly to the victim's person in some way. The process of restorative justice involves a direct engagement between the victim and the offender, albeit in a very supervised environment, where the victim is able to communicate directly to the offender the nature of the harm caused and what that meant, and the offender has to face that, has to face the person they have done wrong against, and then engage with them about why they did that and explore the issues around acceptance, responsibility, contrition and so on.

It is a very powerful process and, perhaps because of the nature of the offending behaviour, it is more powerful when you think about the harm done compared to, say, having your car stolen. I think those are the factors that play around why RJ is so powerful and why, therefore, victims report much higher levels of satisfaction and that justice has been done because harm has been acknowledged and restitution, even if it is not monetary restitution, nevertheless emotionally has been achieved through that process. Therefore there is closure—to use that cliched term, but it is accurate in this case—for the victim that that matter has been addressed.

What the evidence shows from the Campbell collaboration is that victims feel less likely—in fact they report the lowest levels of feeling that they need to pursue it further; they are less likely to have the feeling that they want to pursue justice in other ways or take it into their own hands. They feel that it has been acknowledged and resolved through that process. They report very high levels of satisfaction.

Dr Alderson: I can confirm what the minister said. The Campbell collaboration, which the minister was involved in launching earlier this year, is the collation of the research demonstrating the effectiveness of different forms of restorative justice. That states with confidence the conclusion that overall there is a greater level of success and effectiveness with adults. But that scientific research does not demonstrate the differences between adults and juveniles that are the cause of that difference. So the research does not give us a definitive answer to that question.

MS BERRY: Does the victim have to volunteer to be part of that? They do not always volunteer to be part of it; that is the case, isn't it?

Mr Corbell: You cannot compel people into RJ; you can strongly encourage them. RJ does not work through compulsion. The way you can develop it is that you can set some incentives for people to become engaged, particularly the offender—that is, "You can go through RJ or we'll see you back here in the Supreme Court for sentencing in six weeks." So there are ways of doing that. The other issue with RJ which the Campbell collaboration confirms is that it can also be particularly effective sitting alongside conventional sentencing. So you can still be sentenced by a court but then also participate in RJ.

What I want the justice reform strategy to look at is not just RJ as a stand-alone but in what circumstances an expanded RJ program should sit alongside the conventional sentencing process in court. For some crimes it would be appropriate still to face that as well as participate in RJ.

MS BERRY: Do you see RJ happening at the end of the whole process or are you trying to get it to happen more at the front of the process after something has happened, after there has been a property crime or some other serious crime, so that it is not going through the whole process? You get to the door of the court and then people might say, "Oh, yeah, hang on a minute, I think I might have a look at that RJ stuff you were talking about."

Mr Corbell: There are different points for referral. You can choose. There is really a menu of where you can choose to refer or divert people to RJ. Under our current scheme, for example, police can divert to RJ directly as an alternative to charging someone with an offence. So that can happen now under the existing scheme. The DPP can choose RJ as an alternative to proceeding with a prosecution in court. The court itself can trigger an RJ as an alternative to proceeding with the matter in the court. So there are multiple exits to RJ, multiple points to divert to RJ. And I would expect that we should be able to continue to select from that menu of options, depending on the circumstances and depending on the nature of the offending behaviour, should we choose to expand RJ to a broader range of offenders and offences.

MR HANSON: Minister, as part of the review—or perhaps you have got this information now—I am interested in a comparative analysis of the ACT with other jurisdictions. What do we do in comparison to, say, New South Wales or Victoria, particularly New South Wales, I suppose, because we are bit of an island within it? From a legislative point of view, what is the difference in maximum sentencing and so on for various offences, for various crimes? I am trying to map then where the ACT sits. Are we at the top end for various crimes or are we at the bottom end, are we in the middle? I am trying to get a sense of that.

The other thing is—and I do not know whether this information is recorded or how you would do it—the sentences that are actually provided. Obviously every case is different, but there would be an aggregate for particular offences. In the ACT, the average sentence is six months whereas across the rest of Australia it is nine months or so. Is that sort of information recorded? Is that part of what you do?

The other aspects of that, I suppose, would be things like restorative justice that you are talking about and the application of bail and remand. In any legislative change that is going to be made or change in approach, we should be trying to get an understanding of what other jurisdictions are doing, where it fits across Australia. I think it is important as well that, where changes are made, people are comfortable that this is not out on a limb. It might not be entirely consistent with what is happening in the rest of Australia and other jurisdictions but it is not radically different. Have you done that work?

Mr Corbell: Yes.

MR HANSON: Or would you do that work?

Mr Corbell: We certainly are able now to identify our penalty regime and compare it with other jurisdictions' penalty regimes. Obviously penalty regimes vary from offence to offence. So you have to compare like offence with like offence. And that in and of itself can sometimes be tricky because, from jurisdiction to jurisdiction, the nature of the offence is often characterised slightly differently and therefore captures a slightly different scope in terms of behaviours that are offending behaviours.

MR HANSON: Has that been done?

Mr Corbell: Not across the statute book but we do it obviously, for example, whenever we reform our law. Whenever the government comes to the Assembly and says, "We want to change a sentencing range for a particular offence," it is done cognisant of a comparison with sentencing options available in other jurisdictions for like offences.

Coming back to the broader comparisons, I will ask Dr Alderson in a moment to talk to you about how the ABS measures this, because we rely on ABS data on this. In relation, though, to sentencing trends, again the ABS reports on that by jurisdiction but obviously the implementation of the sentencing database, which is a relatively new capability, is giving us the potential to capture and review on a much more detailed range of data than was previously easily available.

So before the sentencing database was implemented, we would rely on ABS stats alone or a paper-based review of cases on a case-by-case basis. That obviously is not particularly practicable or efficient or effective. And even then, the paper-based records are not consistent in the way information is retained and recorded so that you can make like-with-like comparisons. The strength of the sentencing database is that data is entered consistently. There are consistent fields, and that allows for more effective comparison of like against like for particular offences.

That will be the same in relation to bail and in relation to people who, say, breach parole. So there is now capacity to capture those factors in the sentencing database. Over time, as our sentencing database matures and a greater corpus of data is put into it, we are in a stronger position.

In relation to the ABS stats, Karl, do you want to talk a bit about that?

Dr Alderson: Yes. I can really only add a couple of points to what you have said. On the question of the statutory maximum penalties, it is, I suppose, a core part of our work in support of the government to be looking at the maximum sentences we have. Really where it appears an ACT maximum penalty is anomalous compared to other jurisdictions, we would provide the government with a briefing on it and there is generally a process where part of our legislative program each year would tend to see the government doing some alignment of penalties where things may have changed. And when we do that work, I think we find typically the ACT is in the range of what other states and territories have. We do not have a pattern—

MR HANSON: So where do you source that from, ABS or—

Dr Alderson: No. That work on the maximum penalties comes from looking at the statute book for the states and territories on a given—

MR HANSON: Do you do that randomly?

Mr Corbell: No, it is in relation to what particular offence we are looking at. And the other point I make is: it would be a very time-consuming task to go through the entire statute book, look at all the offences and then do a complete comparison on some sort of regular basis against all other jurisdictions. What we do is respond to where anomalies are identified, and that is either done by the directorate itself—for example, we are aware of developments through law reform programs in other jurisdictions, reports from law reform commissions and so on—or from information shared through the ministerial council of attorneys-general, which has an interesting name now, or where issues are identified by the police or by the DPP or where observations are made by the court itself. So there are a whole range of activities that are occurring that allow us to keep a reasonably good track of all of that.

Then overarching all of that, for example, is the fact that there is a model criminal code that has been agreed to by all jurisdictions, although not all jurisdictions have implemented all of it. We have implemented large parts of it but not all of it. So we can also draw on our knowledge and understanding of what has been agreed on what the model provisions should look like and the model penalty provisions should look like for a whole range of offences, including offences against the person.

I do not think it is a case of characterising it as: if you are not doing a regular review of each offence and each penalty provision you are not doing your job, because it is actually a much more dynamic space where there are a lot more different points of information coming in and out against which you make those comparisons and those decisions.

Dr Alderson: On the question of sentences imposed in practice by the courts—and you mentioned, Mr Hanson, New South Wales can sometimes be better for us—a particular strength of the sentencing database is that work has been sourced for us by the New South Wales Judicial Commission. So we are using essentially the same kind of sentencing database as New South Wales. Actually, in a way now, going forward, as more information comes into our database, the more detailed comparison will be easiest between ourselves and New South Wales because we are using the same kind of system.

The other thing to say is that the Australian Bureau of Statistics publishes an annual statistical survey where, for each state and territory and for each category of offence—and they have got about 15 categories of offence: sexual assault and related offences, assault and related offences, property, administration of justice, so on and so forth—they publish statistics on the proportion of those convicted who are sentenced to imprisonment and, of those sentenced to imprisonment, the average sentence imposed.

What can happen sometimes with the ACT, because we are one of the smaller jurisdictions, in some of those categories there is a relatively small number of cases. So our statistics can jump above the averages and below the averages year to year, because they are affected by individual cases. Nonetheless, that statistical series exists and is public. Perhaps in our further information to the committee, we could include some information about that.

MR HANSON: And in terms of the database, what of the database will be made public? This is now, I guess, more refined information and more current information. Is that going to be publicly available or available to Assembly members? It is certainly useful to inform us or remind people what you are doing about this particular offence that seems to be well below or above similar jurisdictions or other jurisdictions.

Mr Corbell: The practice is to allow certain parts of the database to be more broadly available. Some of it is specifically tailored for the use of the judiciary, and that is for them. But more broadly, the data is provided for people who subscribe to the database. Currently there are 141 subscribers, that is, people in the broader legal profession. Principally people in the prosecution and in defence law will subscribe because they need to keep up to date with sentencing practice and what people are getting for different types of offences.

Broad access is available at no cost to justice system entities, private legal practitioners and interested members of the public but it is not something that you can access remotely at this point. You can access it by visiting the Supreme Court library and reviewing the database there if you are an interested member of the public or,

indeed, an interested member of the Assembly. We are not extending it beyond that point at this point. Obviously there is potential functionality down the track as we look at it.

Clearly, also, it is worth highlighting that where the government is putting a proposal to the Assembly that perhaps is informed by data available in the sentencing database, the government will identify that that has been an input and will provide the relevant data as part of its proposals to the Assembly.

MR HANSON: I will just wrap up by asking: does a subscription cost? What is the price of that and who makes the decision as to who gets that access?

Dr Alderson: At this time no charges are being imposed. There is the possibility in future the decision might be made to charge for certain categories of user. But at the moment requests for information from the database or to be able to make arrangements to come in and access it are being dealt with case by case. I think we have been able to satisfy the various requests that have come in so far.

Mr Corbell: Can I indicate that the government is certainly very willing to facilitate access for the committee or for interested members of the Assembly.

MR HANSON: I would be interested.

THE CHAIR: My question is somewhat related. In your submission, at the bottom of the paragraph on page 3, you have a section "Targeted and robust consideration of sentencing issues", which states:

> The ACT Government values careful consideration and analysis of sentencing issues. The Government already takes steps as part of its ongoing work to address sentencing issues as and when they arise.

Can you give any examples of how would you do that at the moment?

Mr Corbell: I think the best example is that relatively often as attorney I receive representations from other justice stakeholders drawing my attention to particular anomalies or matters that they believe should be rectified in relation to sentencing provisions, particularly from the DPP.

From time to time I will receive representations from the DPP. He will write to me either as a result of a particular matter and the court's decision on it or perhaps a broader observation about his understanding of the law here in the territory compared to the law in other places which he believes is worthy of further consideration. The DPP would certainly write to me on a number of occasions throughout any given year highlighting particular issues. Almost always, the government has brought proposals to the floor of the Assembly as a result of those representations.

From time to time other justice stakeholders will do the same thing, but it is most commonly from the DPP and occasionally from the police—although the policing interest tends to deal more with matters that they are directly engaged in on a high volume basis, such as driving offences, drink driving and so on. The DPP tends to

canvass a more broad range of issues, as do from time to time legal aid, who are obviously very familiar with circumstances day to day. We rely, I think appropriately, on the feedback and the input of those justice agencies that are working at the coalface every day—DPP, legal aid and, to a lesser degree, the police.

THE CHAIR: Would this include, say, the opportunity for the DPP or anyone else to bring to your attention the advocacy or otherwise of a sentence that may have been imposed? Would that come under that category?

Mr Corbell: From time to time the DPP will draw to my attention their concerns about the adequacy of a sentence that has been imposed for the purposes not of reviewing that sentence—because I have no powers to seek review of a sentence—but, instead, to draw my attention to the desirability of amending the law for future recurrences. That was certainly the case in relation to the reforms that came forward in the Assembly I think about 12 or 18 months ago around dangerous driving. It is actually the proposal that is before the Assembly at the moment, if I recall correctly.

The government is proposing a whole range of aggravating factors in relation to dangerous driving behaviours. That is driven very much by the experience of a number of high profile cases where people have been charged with dangerous driving offences where they have committed those crimes before but they previously were not aggravating factors in relation to penalties should they be caught again. I am advised that I am introducing this bill next week.

MR HANSON: It is a heads up.

Mr Corbell: I am giving you a heads up.

MR HANSON: We will be right on it.

Mr Corbell: This is the problem with the justice portfolio; there are a lot of bills in this portfolio.

THE CHAIR: What is the bill you are introducing?

Mr Corbell: You will find out next week.

MR HANSON: Just re-read the *Hansard*.

Mr Corbell: It is in relation to introducing a range of aggravating factors for dangerous driving offences, which would, therefore, impose higher penalties if the person has those elements of aggravation associated with their behaviour for that offence.

MR HANSON: They are aggravated offences then. I thought you were against aggravated offences. When we did the police assaults legislation, you railed against aggravated offences.

Mr Corbell: Well, the government has always said there should be limitations in relation to the application of aggravating offences.

MR HANSON: I can check the record. I do not think that is what you said at all.

Mr Corbell: The government has introduced aggravating offences previously, particularly in relation to circumstances where an infant is killed in utero deliberately.

MR HANSON: I think that is the only one, isn't it?

Mr Corbell: There is that provision, and there are a limited number of other aggravating offences. This will be part of that limited number.

THE CHAIR: Coming back to my question: you touched on the fact that—if I understand correctly—currently you cannot appeal the advocacy of a sentence; is that correct?

Mr Corbell: No, I cannot.

THE CHAIR: Should you be able to?

Mr Corbell: Not in my view.

THE CHAIR: Do other jurisdictions have that ability through other means to do that?

Mr Corbell: Some jurisdictions do. The reason I believe it should not be open to the Attorney-General to do that—

THE CHAIR: Or the DPP?

Mr Corbell: The DPP can. What you are asking is whether I in my own right should be able to launch some sort of appeal, which is a power available either in the own right of the attorney-general in some jurisdictions, I believe, or their capacity to direct their DPP to do so.

THE CHAIR: Yes.

Mr Corbell: I have neither power. I think there are very good reasons for that. It is very easy for these matters to become highly politicised and political pressure brought to bear on elected public officials to act in a certain way. Often that political pressure is the result of quite uninformed or sensationalist reporting about particular offences that is not necessarily grounded in a thorough understanding of the particular circumstances in that case.

I think we have to do everything possible to maintain the justice system as one that operates in a dispassionate manner. I do not think that is helped if there is the capacity for an elected official to decide that because a matter is politically contentious or sensationalised they feel they have to intervene. There is plenty of scope, if the DPP considers a sentence to be manifestly inadequate, for them to seek a review of that through appeal.

THE CHAIR: That is purely in their domain? They do not have to come to you for

permission?

Mr Corbell: The DPP is not subject to my direction in any way. It is a matter for the DPP to determine.

THE CHAIR: Has there been any appeal by the DPP for any sentencing in the ACT?

Mr Corbell: Yes, there have been quite a number.

THE CHAIR: Thank you.

Mr Corbell: Just this year, as an example, we had the very high profile case—the conviction of the man who sexually assaulted a young child at the Belconnen library. The sentence imposed is currently the subject of an appeal by the DPP.

THE CHAIR: Thank you. Mr Gentleman. We also have to give some time to ACT Policing, so I think this will be the last question.

MR GENTLEMAN: Thank you, chair. Minister, the committee was able to attend earlier this year, in February, a sentencing theory to practice conference at the ANU, which was very good. It was very well attended by emeritus professors from all over Australia, justice commissioners and justices as well. The ACT got a gold star for not introducing mandatory sentencing, which was really good. Also, there was a very positive comment in regard to our sentencing legislation, particularly section 7, the purposes of sentencing. Subsection (2) states:

> To remove any doubt, nothing about the order in which the purposes appear in subsection (1) implies that any purpose must be given greater weight than any other purpose.

I think this committee learned quite a bit at the conference. One of the things that was raised was part (1)(f) of section 7 "to denounce the conduct of the offender". At the conference we heard, from memory, that there was only one occurrence where a judge had actually denounced an offender. I wonder whether, if that is the case, it is worth while having that in the legislation. Are you aware of any time that that has operated in the ACT?

Mr Corbell: I think it is often the case that judges will not specifically refer to all of the purposes of sentencing in handing down a sentence in any particular matter. They may seek to emphasise particular matters. For example, around this issue of denunciation, I am aware that Justice Refshauge, in relation to a very high profile matter he heard about a number of ADFA cadets who had been charged with and convicted of some telecommunication offences—inappropriate filming of private sexual acts—recognised that denunciation occurs in a range of ways. In particular, he concluded that the character and the identity of the persons convicted of those offences had been widely canvassed and there had been denunciation through the broader media on the widespread reporting about that case. This is the Skype matter, which everyone knows about and, I am sure, has a particular view about the behaviour of the individuals convicted of that offence. He said in those circumstances, in considering what sentence to impose, "I recognise that there has already been

significant denunciation as a result of the publicity attracting to this case."

Judges sometimes will choose to emphasise particular elements of sentencing, particularly issues around protection of the community, general or specific deterrence, but that does not mean they have to refer to all of them in each instance in terms of their sentencing comments and remarks. Obviously they have to have regard to all these provisions when they determine what is the most appropriate sentence.

MR GENTLEMAN: Thank you.

THE CHAIR: Minister, we have to move on to Policing. Do you wish to be present for that?

Mr Corbell: No, I am not proposing to stay.

THE CHAIR: Thank you very much for your contributions this afternoon. A full transcript of what took place will be available. There will be quite a number of questions going to the minister and to the directorate from us. We have an opportunity to follow through.

Ms Playford: We will be back with the Minister for Corrections as well.

Mr Corbell: Mr Chairman, I did not realise the Deputy Chief Police Officer was here, so I might stay on to assist the committee.

CORBELL, MR SIMON, Attorney-General, Minister for Police and Emergency Services
PRYCE, COMMANDER DAVID, Deputy Chief Police Officer (Crime), ACT Policing
PLAYFORD, MS ALISON, Acting Director-General, Justice and Community Safety Directorate
MARTIN, MR VICTOR, Director, Criminal Law Group, Legislation, Policy and Programs, Justice and Community Safety Directorate

THE CHAIR: Deputy Chief Police Officer David Pryce, welcome to the first public hearing of the Standing Committee on Justice and Community Safety inquiry into sentencing. You have been to these before, I presume. Have you read the privilege statement that is available?

Cmdr Pryce: Yes, I have.

THE CHAIR: You are quite comfortable with that?

Cmdr Pryce: Yes.

THE CHAIR: Thank you. As I understand it, there has been no formal submission from ACT Policing. Would you like to make an opening statement about your issues regarding sentencing?

Cmdr Pryce: No, I have no opening statement to make, Mr Doszpot.

THE CHAIR: Okay. As an opening question to you, how is ACT Policing affected by issues that arise from sentencing?

Cmdr Pryce: Thanks for the question. It is my view that there are two areas that are of concern for police. One is around deterrence and crime prevention—the ability to prevent further crime. The other one is around recidivism—those people who have gone through the sentencing process but still commit crime.

THE CHAIR: Are there any points of view that are appropriate for the police to present to our inquiry on that?

Cmdr Pryce: By way of an example, especially around property crime, which is a continuing issue for the community and one which we devote significant resources to, we see all too often, unfortunately, that people that have been apprehended for those crime types go before the courts, are sentenced and, whatever the sentencing outcome is, unfortunately we quite often see recidivism soon after they are released back into the community, whether they are under some form of community sentencing control or whether they have actually completed their sentence.

THE CHAIR: If parole is given, do you feel that the parole conditions are adequate from your point of view? Would police like to see any additional safeguards for the community during that parole period?

Cmdr Pryce: I do not have any comment on whether any more controls are required to be put on them. From our perspective, unfortunately people do continue to commit crime upon the sentencing. It is a matter of having an analysis of whether or not, for each case, the sentencing was a sufficient deterrent and whether those controls were sufficient in their entirety to protect the community.

MR GENTLEMAN: Commander Pryce, we have received a submission from Prisoners Aid in the ACT on this inquiry. Within the submission they said that they support the use of non-custodial sentences such as community service orders to the maximum extent possible. They would also like to see the extension of approaches such as circle sentencing, which we talked about earlier, and intensive corrections orders and restorative justice to a wider range of clients. They have said, however, that they do not see any value in returning to home detention. They said it has previously proven to be unequal in its impact and an undue burden on families. Do you have any comment on that home detention program?

Cmdr Pryce: At the end of the day, it is a policy decision for government as to the sentencing options. If home detention is an option, that does put obligations on police to enforce it. I am aware, from policing experience, that, for example, if we, as we do with bail, do home checks and other things, that does impact on the families. There would be some validity in saying it does have a broader impact than just on the sentenced person.

MS BERRY: I want to ask about how police work with the restorative justice program. How have the police worked within that and how are they finding implementing that at the first stage of a person committing a crime on property?

Cmdr Pryce: ACT Policing is very supportive of the restorative justice process. We are still in phase 1. There is certainly further potential. From our point of view, we try and divert as often as possible and utilise those processes. We work very closely with the Justice and Community Safety Directorate as well as the restorative justice unit in particular. We have a very good operating arrangement and see very good success in the results from those cases that go through restorative justice.

I heard the minister say before—and I have conferenced in my previous experience as a police officer—that it is a very confronting experience and it is certainly not an easy way out. From my point of view as a police officer, we do not want to put people in jail, because that exposes them to other risks and can also lead to further recidivism just because of that exposure. We only want to put the people in jail that are the people that really need to go to jail for community safety and perhaps their own rehabilitation.

We definitely support restorative justice. We see very good outcomes, and I am certainly working with the Justice and Community Safety Directorate as to future potential to get more out of that program.

MS BERRY: Do police get particular training so that they can make a decision about whether or not restorative justice is for the person that they are dealing with at that time or is there a particular team within the police who manage that?

Cmdr Pryce: I have a crime reduction portfolio, if you will. Part of their remit is around education, diversion and just influencing the environment. They work very closely with the restorative justice unit. We jointly conduct information and training sessions across all the police stations. We do that ourselves but we do it in conjunction with the restorative justice unit. Obviously, with respect to those officers that have participated in the process and seen the outcomes, we get very good feedback, too, which reinforces the value of that work.

MS BERRY: For less serious crime, for young people, for example, who might be doing vandalism or something like that, and that you manage to catch up with through your investigations, through the restorative justice program can people come up with ideas about how they can make amends? Is there an actual list of ideas, whether it is just an apology, whether they need to do some community work or whether they need to spend some time painting a fence? Can you come up during that process with an idea that might be outside the norm or is there a set—

Cmdr Pryce: We do not actually run the restorative justice process.

Ms Playford: I am happy to make a comment on that. There is no firm set of ideas. Obviously, from experience, those who have been involved in running the program for some time are aware of some of the things that tend to work. We have certainly had a whole range of different outcomes. I am aware, for example, of a particular case where there was some vandalism at some of the local picnic areas along the Cotter. One of the outcomes of the restorative justice process was that they actually worked with the TAMS parks people. Those parks people were actually part of the restorative justice process. One of the outcomes was that for a certain number of weekends they went out and helped to rebuild some of the facilities in those picnic areas. That was certainly seen as a very positive outcome for all who were involved in that particular case. There is a whole range of cases, but that is just one I am aware of where those sorts of outcomes have come out of a restorative justice process.

Mr Corbell: It is victim and offender driven. The victim and the offender will together agree on what is a reasonable act or series of things to be done for restitution. That same case that Ms Playford is referring to also involved, for example, the offenders making a donation to a number of community-based groups who are involved in nature conservation in that area. This was identified through the RJ process. So it is very much fit for purpose and is based on guidance from the RJ unit. Ultimately it is an agreement between the victims and the offenders.

MS BERRY: Hypothetically, if a person assaults another person, and once it has been investigated by the police and the offender has been found, can the person who has been assaulted say, "I would like to participate in restorative justice"? Is it as simple as that or is there more of a process?

Cmdr Pryce: Yes, the victim obviously has to indicate their desire, but the second part involves the offender. We pass what we know to the restorative justice unit and then there is further assessment. It is a by-agreement outcome, if you will. So without both parties being willing to participate and then agreeing to an outcome, it cannot go forward.

THE CHAIR: I have a supplementary on that. Are you saying that the perpetrator can veto the victim being present?

Cmdr Pryce: No. It is really—

Mr Corbell: It is about whether to engage in the RJ process or not.

Cmdr Pryce: And it requires an acknowledgement of the offending.

THE CHAIR: But if the victim wants to be present, they can be present?

Ms Playford: The way the process works is that the victim would generally be present and part of that process. It relies on the victim agreeing to be part of that process. One of the things around that volunteering is the supports put around the victim in terms of coming to that decision about how they will participate and how that would operate in terms of how the conference is run. A lot of pre-work goes on with both the victim and the offender before they are put in the same room to have a conference. There is a lot of work. There can be a lot of individual conferencing.

THE CHAIR: That is fine; I misunderstood you.

Mr Corbell: If the committee is interested, I am very happy to facilitate the team from the RJ unit to present to you. Viewing a conference is very difficult because of the issues but you could perhaps meet with the team and understand the process that they go through.

THE CHAIR: That could be useful, thank you. We are running short of time. A supplementary from Mr Gentleman.

MR GENTLEMAN: Commander Pryce, I notice you are wearing your white ribbon badge today. Well done.

Cmdr Pryce: Proudly, Mr Gentleman.

MR GENTLEMAN: My question is in regard to domestic violence and RJ. Have there been any opportunities to try restorative justice in cases of domestic violence?

Mr Corbell: At the moment those types of crimes generally are not part of the RJ process. Domestic violence and sexual crimes, particularly sexual crimes which overwhelmingly are against women but not exclusively, are not part of the RJ process. The reason for that is that they bring to bear a whole range of issues. I am reminded that RJ in the ACT is limited only to juvenile offenders and not to adults.

With sexual assault and domestic violence there are issues around power and abuse of power in a relationship. Often the concern has been, legitimately, particularly from those groups that support victims, that placing victims back into the presence of the offender only reignites that very unbalanced and abusive power relationship between the two.

That said, again, the research actually highlights that crimes of violence, including

domestic violence, sexual assault and related matters, are highly conducive to RJ, but with effective and appropriate safeguards. Over the past 18 months to two years, my directorate has been in consultation with key interest groups such as the Domestic Violence Crisis Service, the Canberra Rape Crisis Centre and others, to develop protocols and guidelines that would guide how and when certain types of sexual assault or domestic violence matters could end up in RJ, should RJ be extended to adults. The only reason RJ has not been extended to adults at this time has been due to constraints about resources. But because of the policy work that we have undertaken, I think we are well placed to provide RJ in those circumstances on a trialled and incremental basis, should we make that funding decision.

MR HANSON: I am interested in the role that the police play when it comes to recommendations for bail and for sentencing. I assume that you have an interaction there with the DPP. They make those recommendations in the court, but I assume that the police are part of that. Is that an informal discussion and arrangement or is it a formal process?

Cmdr Pryce: It depends on bail. In the first instance the police are part of the bail consideration process, and if it is in the watch house, they directly do that themselves. If the matter is subsequently before the courts, it is represented by DPP and we certainly work very closely, often as the informant, by providing advice. Whether it is directly just a police investigation matter or whether on behalf of a victim about bail, views on bail and certain considerations, we do that. But ultimately, the DPP makes those representations and the final decision.

Your second part was around sentencing. We provide advice to DPP around the criminality associated. At the end of the day, the sentencing decision is really a matter for DPP and not one for ACT Policing.

MR HANSON: On bail, then, the AFPA has previously said that there is a revolving door.

Cmdr Pryce: Say that again.

MR HANSON: They have described bail as a revolving door. They have expressed some concerns about, I guess, the number of people who are granted bail comparative to police recommendations or DPP recommendations. Would you have a view on that? Are you prepared to comment on whether your sense is that the courts often listen to what the police and the DPP are recommending or whether, in many cases, those recommendations are ignored?

Cmdr Pryce: I do not have a view. We certainly put forward our case to the DPP, and that is obviously put forward to the courts. There are a range of considerations. The only thing I would say is that, yes, we do see, unfortunately on occasion, people committing crime whilst out on bail or some other form of sentencing control.

Mr Corbell: If I could just add to that answer, one of the issues that we were previously facing in relation to bail in the ACT was the fact that the way our bail provisions were constructed in the Magistrates Court was such that the capacity for magistrates to refuse bail in the first instance was initially quite limited. There was

really only one opportunity for that decision to be made in the Magistrates Court, and if the decision was unsatisfactory, you had to head straight across to the Supreme Court. It had become common practice that in the instances where magistrates refused bail, within hours the person involved and their legal representatives were off to the Supreme Court for review of that decision.

With the amendments the government made to the Bail Act in 2011, we made provision for there to be two applications for bail in the Magistrates Court. So the dynamic had evolved, when the magistrate, for example, refused bail, that the defence said, "That was an unreasonable decision because we didn't have sufficient time. They've just come out of the watch house. We didn't have sufficient time to have all the circumstances put before Your Honour. We're off to the Supreme Court for review." Now those matters can be dealt with on review in the Magistrates Court. So there are two opportunities for a decision on bail to be put before that magistrate.

That has greatly reduced the number of matters that end up in the Supreme Court but, at the same time, it has allowed defence counsel as well as the prosecution the time they need to get all the relevant factors before them to put to the magistrate to decide whether or not bail should be provided. That has seen a massive reduction in the controversy surrounding bail, grants of bail and also the associated issues with delay in the Supreme Court. I have to say it was an issue a couple of years ago, but it has just completely disappeared off the radar following—

MR HANSON: If that is the case, then, since 2011 has anyone been recording on how many occasions people were granted bail despite a recommendation that they should not be by the DPP or the police and then reoffended while they were on bail? How many times did we get it right and how many times did we get it wrong? Is someone mapping that? We are getting told there is a revolving door of bail, recommendations are made not to grant bail but the courts do anyway and then people are reoffending. What I am trying to find is the evidence. Is that true or is that not true?

Mr Corbell: I do not think any justice system would be able to give you that data.

MR HANSON: Why not?

Mr Corbell: Because—

MR HANSON: Surely, if people have been granted bail against recommendation and then they are reoffending, would that not be an issue?

Mr Corbell: The question is: what representations were made prior to the decision on bail being made? I do not think there is any system anywhere that records what the submissions were as part of the bail decision. But Mr Martin may be able to assist you with some of your questions.

Mr Martin: It is a very difficult piece of information to capture in the justice system. The sentencing database has included some capacity to record instances where in the Supreme Court an offender was subject to a conditional release at the time that they have committed the offence. That conditional release will include parole and bail. So

we are seeing very early stages of data being captured in the sentencing database now, but I do stress that we have only seen a very few instances in the Supreme Court. I should also say that this data set does not extend to the Magistrates Court.

MR HANSON: Will it at some stage?

Mr Martin: The challenge is that sentencing remarks made by judges and magistrates are quite different. They serve different purposes, given the Supreme Court is a superior court of record. So the capacity for the database to draw on comments made by magistrates from the bench is more limited than from the Supreme Court.

THE CHAIR: Thank you. Time has unfortunately run out, a little too quickly. There may be some questions coming to you on notice. If you could take them and look at them we would appreciate that. Minister, thank you to you and your officers, including ACT Policing, for appearing before the committee today. A proof transcript will be circulated to you in the next couple of days. We would appreciate you responding to any questions you get within five days of receiving the questions.

I now adjourn the hearing for a brief break of five minutes, and we will reconvene at 3.35 when the committee will hear from the Minister for Corrections. Thank you.

Short suspension.

RATTENBURY, MR SHANE, Minister for Corrections
MITCHERSON, MRS BERNADETTE, Executive Director, ACT Corrective Services, Justice and Community Safety Directorate
HIBBERD, MS JANET-LEE, General Manager, Community Corrections, ACT Corrective Services, Justice and Community Safety Directorate

THE CHAIR: Good afternoon, minister. Welcome and thank you for appearing before the committee this afternoon. I welcome you and members of your corrections area. Minister, you are obviously very much aware of the privilege statement. I am just asking the same question of everybody else. If you are, we will continue. Would you like to make an opening statement, minister?

Mr Rattenbury: I will make a couple of brief remarks. I would like to thank the committee for providing me with an opportunity to present today. I have with me a number of officials from corrections. We have got quite a lot of expertise at the table. So I am more than happy to go into whatever level of detail you would like. I do not intend to speak for long, but I want to make a couple of general but I think quite relevant points on the work the committee is doing.

Personally, I am quite committed to looking at ways to improve sentencing options in the ACT in order to improve rehabilitation of offenders. It is at the corrections end that we are very much focused and also appropriately diverting offenders from custody. And by doing so we are ensuring we have a safe community here in Canberra. So these things are very closely tied together.

I think it is important for the committee to know that when it comes to those offenders being sent to prison in the ACT, we are talking about a group of people who present with very complex issues. ACT incarceration rates remain low, which means that those that the courts send to prison are usually at a medium to high risk of reoffending. They tend to have had some considerable track record before they are sent to jail in the ACT. They have an offending history of multiple episodes and they have significant problems with alcohol and drug abuse typically. They are people who require considerable and sustained assistance to address their offending behaviour. This assistance can be provided in prison but we also need structures in place so that suitable assistance is available for offenders being supervised in the community.

As a consequence, alongside my recent announcement regarding an increase in accommodation at the Alexander Maconochie Centre, and as you will have heard from the attorney, he and I are going to be working together to develop a package of justice sector reforms so that we can reduce the need to build bigger jails again in the future. And the government has already begun work on that process.

As the Minister for Corrections, I led two high-level roundtable discussions to identify short and longer term options to address the issue of an upward trend in detainee numbers. The first roundtable was last October, and the second was in February this year. These roundtables were attended by government justice sector agencies such as the AFP, the Director of Public Prosecutions and Legal Aid, academics, criminologists and community sector agencies operating in the justice field.

They were not specifically focused on sentencing options at the roundtables but rather

a broad-ranging look at the drivers of offending and the criminal justice system response. I think participants brought a great deal of enthusiasm to the discussion and played a really important role in identifying a range of issues for further consideration. These ideas will help inform the work that has commenced in the Justice and Community Safety Directorate to develop a package of reform measures that the attorney and I intend to bring forward.

This work will also identify suitable replacement sentencing options for periodic detention. It is the belief of Corrective Services that we could better manage offender behaviour through a range of alternative sentencing options, such as intensive community supervision orders. I imagine that might be an area of particular interest, and I will leave it at that. I am happy to take questions both on that and other topics.

THE CHAIR: Minister, just as a preamble before I ask my question—thank you very much for your introduction—I note that you have not put in a submission as such and you are appearing here. So we will be discussing, I presume, a lot of areas that are of concern to you as well. But if you find that there are issues that you would like to put before us that we do not ask you about, we are very happy to still receive submissions from you.

Mr Rattenbury: Thank you.

THE CHAIR: That option is always there. You have mentioned periodic detention, and that was one of the questions we asked the Attorney-General. And the comment was that we should ask you a couple of those questions.

Mr Rattenbury: I have the lead responsibility for that for the government.

THE CHAIR: One of the questions that were asked was: what were the reasons for the decision taken to do away with periodic detention? There were a number of questions in relation to that, but perhaps if you could start on that.

Mr Rattenbury: Sure. Firstly, the ACT is the last Australian jurisdiction to utilise periodic detention. Other jurisdictions have moved away from it. The primary reason for that and the reason which corrections advised me that we should move in this direction is several fold. Periodic detention is a relatively high-cost option and, we believe, a low return on investment with regard to therapeutic and rehabilitative programs. In essence, when you are trying to target the criminogenic needs of offenders, essentially they are behavioural issues that have caused them to be involved in offending.

We believe that some sort of intensive community corrections order, more focused programs, is a better outcome than simply having somebody in for 48 hours over the weekend. It may be that somebody would get much better outcomes from being in a constant supervision program in the community or attending a different program that we are not able to offer through a weekend detention. So in the broad, that is essentially the broad policy reason.

THE CHAIR: And in determining the time frame for leaving the system behind—and I believe it is 2016-17—is there an impact or a potential impact on other

sentencing that will occur in the interim that could stretch that period out?

Mr Rattenbury: No, I do not think so. Part of the reason it is such a long lead-in time is twofold. One is to give us the time to put the alternative measures in place. Having made a decision, we have sort of announced it so that we can now start consulting with key stakeholders, be that the Bar Association and the Law Society, other NGOs as well as obviously within government. There is a range of work to be done. There will need to be a level of both program development, making sure we have got the right programs in place, and also, undoubtedly, some legislative changes to put this in place. So that is the key reason for having the significant lead-in time.

The intent would be to ensure that we have it set up in such a way that the courts have alternative options available before the PDC closes. There will obviously be a tail of offenders. Our experience is that most people get periodic detention in the order of 12 months as a maximum. And so we believe this time frame allows us to make that transition smoothly. But clearly, we will need to monitor that as we go along.

THE CHAIR: Mr Gentleman.

MR GENTLEMAN: Minister, if I could just bring you to the AMC itself, there is the sentence administration section that operates at AMC. Can you tell us how that section operates and the work that it does?

Mr Rattenbury: Do you mean the Sentence Administration Board specifically?

MR GENTLEMAN: No, the section at AMC.

Mr Rattenbury: Okay.

Mrs Mitcherson: The sentence administration area comes under Janet-Lee. There are two parts. There is a part of that work group that supports the board, and the other part that does all the work around when we receive warrants and orders from the court to make sure those warrants and orders are complied with and to work out dates of release. Warrants are very complicated and are not always straightforward to read.

Sometimes we can get an order in which people might have numerous sentences. They might have numerous charges. They might have the most serious offence which is often reported, but then there could be a string of sometimes a dozen offences under that with different time frames. They might have a period to serve from a previous period. They might have other charges that they are still on bail for.

So it is very complicated working out the sentence administration. It is really important for us to make sure that we know when people should be released and when parole periods are finished. If they go to PDC, which is done on dates, and they miss a couple of PDCs, it is quite a complicated process for those staff to work out what the next dates are for release. So it is administrative work around the warrants and releases and orders for community corrections clients, someone who gets a community services order, and clients in custody.

MR GENTLEMAN: And I understand it also has to maintain the victims register and

liaise with victims?

Mrs Mitcherson: We have a victim liaison officer. That position is actually based at Eclipse House. I might get Janet-Lee to—

Ms Hibberd: The position is based at Eclipse House and works with the administrative side of what we call sentence administration. Is there anything in particular you wanted to know?

MR GENTLEMAN: Liaison with victims, I guess, is what I am getting at or trying to get at. What sorts of learnings do you get out of that liaison?

Ms Hibberd: I think it is more about the support for the victims who are on the register. So they need to be registrable victims. And the victim liaison officer has that register, keeps a file and works with them and advises them when there is parole coming before the board. If they may be released, then they are advised of that. It is part of the process too, when we are looking at the pre-release, of looking at the pre-release report. So we would contact the PPO, the probation and parole officers. They would contact the victim liaison officer to know whereabouts the victim or victims reside. So that is taken into consideration when we are looking at that assessment.

THE CHAIR: Ms Berry.

MS BERRY: Minister, I would like to ask a question about women and female offenders. ACTCOSS put in a submission about female offenders and how they have more complex needs than perhaps their male counterparts due to them being the primary carer. I will just read this bit—unless you have read it. Have you read this?

Mr Rattenbury: I cannot recall it.

MS BERRY: So that I am not repeating myself to you, I will read this bit where in their submission they say:

> Conversations with women who have served time in gaol reveal that the single most important thing for many women who are incarcerated is who is looking after their children 'on the outside'.

It goes on to say:

> A wide body of literature has been devoted to showing the negative impact of separating mothers and their children can have, particularly in the early years of a child's life. Research also indicates young people who have a parent incarcerated are up to six times more likely to be involved in the criminal justice system when compared to other young people.

I was wondering, minister, whether, in the work that you have been doing on your roundtables and with Justice and Community Safety, this has been something that you have talked about and how that could be put into the work that you are doing around restorative justice or keeping them out of jail.

Mr Rattenbury: It certainly has come up at the roundtables. The Community

Services Directorate and the Office for Children, Youth and Family Support were present at both of them. I think it would be fair to say that one of the significant topics of discussion was how early and where can we intervene. And it was very much in the frame of the evidence you have just read from ACTCOSS. I think there is a clear recognition of it.

There are certainly some programs in place, and I will get Mrs Mitcherson to add to this in a second, but it is certainly very much that the thinking that is happening over in CSD is well on the way and that the directorate is seeking to approach the human services provision in the ACT as a whole, looking at that whole life pattern, and particularly with things like through-care, which we are now running. Those sorts of factors are taken into account as well.

MS BERRY: Just before you go to that, periodic detention would have had an effect on female offenders as well if they had been put away on weekends, taking them away from their responsibilities. I am not asking about individual examples, but it sounds like what you are saying is that if women in particular can stay in and get the support of their communities and do not have to go into, for example, periodic detention, it might assist in stopping them reoffending and ending up in the Maconochie centre.

Mr Rattenbury: Yes, I see your point. Of course, the original thinking when periodic detention was put in place was that people would still be able to spend most of the time with their families. They were able to go into weekend detention as opposed to full-time detention. That was certainly the rationale behind it. Clearly, there are potential further advantages in not having the detention and participating in different things.

Mrs Mitcherson: I will make a couple of comments. Certainly, women do get sentenced to PD. The numbers are very small. If they have children it means they need child minding. I guess I can speak with some authority because my first position in corrections was as director of the women's services unit in New South Wales in 1994. My first work for a number of years was working with women in custody. I developed a number of programs and worked with a lot of stakeholders around that stuff. I wrote the original mothers and children's program that has been operating for over 20 years in New South Wales. So I can speak with some authority.

While generally in the country the number of females in custody is going up, that is not necessarily the case in the ACT, which is a good thing. Again, we are maintaining a low level of incarceration. It is certainly best for children to be with their mothers. However, the basis of any program about children is the best interests of the child. We have small numbers of women in custody and often, apart from a couple that are sentenced to over five years, the average sentence is 100 days or less. So it is very difficult, even in terms of programming, to look at anything that is going to be viable. What I would say is that the women we are seeing in custody are very complex. They often have considerable alcohol and drug needs, which often impacts on their ability to parent appropriately. We have a number of processes in place to assist with that process.

In terms of through-care, because the number of women in custody is low, we do not

exclude remand women from through-care. I can say that, since we have been taking clients, since 1 June, we have had 100 per cent uptake of women in custody joining our through-care program. I have not got the latest figures. I think there are about 18 or so on the books at the moment, which is encouraging for us given that we are corrections and they still want to be involved with us even if they have not got an order. There are certainly some offences that require a custodial sentence. Unfortunately, a small number of women commit those sorts of offences as well—less so in the ACT.

It is a complex issue. Certainly, women in custody have greater complexity. They have often been victims of sexual violence, physical violence and emotional abuse. I have also worked for three years in a juvenile justice centre looking after young girls. While their numbers in custody are low as well, I can tell you that they come into custody with significant issues in relation to how they have been parented and how they have been treated in the community. The numbers are small, but their needs are very complex.

MS BERRY: Thank you.

THE CHAIR: Mr Wall.

MR WALL: Thank you, chair. With a bit of leniency, I will just go back to PDC and ask a couple of quick supplementaries as to what work or preparation is being done and what impact the closure of PDC will have on detainee numbers within the AMC. Is there expected to be an increase in full-time custodial sentences handed down as a result of the closure?

Mr Rattenbury: I think, to be honest, that is unclear.

MR WALL: Okay.

Mr Rattenbury: I think we will very much go to the alternative programs that are put in place and how comfortable the judiciary are that those are viable alternatives. One of the things that will happen is that the judiciary will be involved and consulted over the alternatives that are being put in place. Of course, we need the judiciary to have confidence in the sentencing options available to them. If they have that, they will not send people to the AMC, of course—or are less likely to.

MR WALL: The alternative option, which is predominantly community corrections orders, as has been touted—when will they be up and running in a larger capacity?

Mr Rattenbury: We do not have a definitive time frame yet. As I touched on earlier, there is a bit of work to do both in finalising the options and in probably putting some legislative programs in place. I do not have a definitive timetable, but 12 months or so.

MR WALL: Do you envisage that community corrections orders and periodic detention will be sentencing options for the judiciary at the same time before the closure of PDC, or will it be a phasing out of one?

Mr Rattenbury: The advice I have just been given is that in New South Wales they

had a statute set up so that the day one lot came in, periodic detention was taken away. Again, we still need to work through the detail at this point. Clearly, we will be looking for a changeover point so that we start to end the number of people that are tailing through the PDC system.

MR WALL: I was just wondering how you were looking at building up confidence within the judiciary. Is there going to be, I guess, an overlap period where they could try a community corrections order and, if that did not work out as a suitable option and the individual appeared before the courts again, periodic detention may be the next step, or is it going to be a case where you can hand out a periodic detention sentence up until this date and from then on it is community orders only?

Mrs Mitcherson: I will make a couple of comments. I think it is really important to remember that periodic detention is actually a custodial sentence; two days of custodial sentence. The whole idea of an intensive community order is to give the judiciary a replacement sentence for someone who they would otherwise give a custodial sentence. In my experience, the structure around the intensive community order has been quite onerous. It is probably more onerous than PDC, because with PDC there is no onus for drug and alcohol testing, compulsory programs or engagement in case management.

We would be expecting—without pre-empting what might be final—quite a strong structure, which would include curfews, regular drug and alcohol testing and compulsory program attendance. It really is an opportunity for the offender to stay out of full-time custody, but there are clear obligations on them for taking responsibility to change the way that they work it, along with supporting them with through-care and other things to make sure that we are looking after the social aspects as well keeping them out of custody and also stopping them offending. Ultimately, the aim is not just out of custody but to reduce victims over time in the community. As was mentioned earlier regarding children going into custody, there is no question that if you have a parent in custody you are actually one in four times more likely to be in custody. We really want to break that cycle for the offender but also for the family as well.

MR WALL: So it is envisaged that through-care will be available to someone on a community correction order?

Mrs Mitcherson: An intensive community order is an alternative to a custodial sentence. While we have not worked through the details, it would be my expectation that someone that might have gone into custody might have some issues around housing or drug rehabilitation that would warrant some input from through-care.

Mr Rattenbury: Just on that, Mr Wall, what I can say as a general statement is that, from my point of view, it is absolutely essential that there is integrity in the model. That is what gives the judiciary confidence. The sorts of measures Mrs Mitcherson is talking about, I think, do that. It certainly should not be seen as a soft option in any sense.

MR WALL: I was just wondering, on a statistical basis, how many periodic detention sentences are generally handed down in a calendar year. If you want to take that on

notice, that is okay.

Mrs Mitcherson: I will take that on notice. We generally have, I think, about 54. But that does not mean that you get 54 every weekend. It goes up and down a little bit.

MR WALL: Just one further question—again, going back historically and probably before the time of most of us—what impact did the opening of the AMC have on the number of custodial sentences handed down by the ACT judiciary? Then I guess the forward planning question would be: what impact are you forecasting with the expansion of the AMC?

Mr Rattenbury: I think we will have to take that on notice to give you a substantive answer, Mr Wall.

MR WALL: That is fine; thank you.

THE CHAIR: Minister, as we are all aware, there are a high proportion of Indigenous prisoners and prisoners on remand at the Alexander Maconochie Centre. Obviously, both of these are problematic, to say the least. Can you tell the committee your view of this situation, including what you regard as its drivers and what can be done within your portfolio to address these two problems?

Mr Rattenbury: I guess the general remark I would make is that I think we have an intolerable situation with the over-representation of Aboriginal people in our corrections system. The numbers this week are in the low 50s for Indigenous detainees at the AMC. Out of a population of 340-ish, you can see that it is a very high proportion.

In terms of your question on the drivers, I think the drivers are the broad social drivers that impact on the Indigenous community generally: disadvantage, lack of employment, poor educational outcomes—all of the things that I guess are reflected in the general prisoner population, but because the Indigenous community has poor outcomes in all of those areas, that leads to the over-representation. There are a number of things that corrections has in place to particularly target Indigenous offenders. I will get Mrs Mitcherson to run through some of the details. I am just having a wee mental blank.

Mrs Mitcherson: We are doing a number of things both in community corrections and in custody. In custody we have a couple of identified positions, both a caseworker as well as an Indigenous liaison officer. We also have an Indigenous official visitor. We also run some particular programs. We do not exclude anyone on remand from doing programs or education. The uptake is high. That is peculiar to the ACT. Most jurisdictions restrict remandees from working or being part of education programs. The only restriction on a program would be that it might require a guilty plea in relation to a serious offence.

In terms of particular programs, we have a contract with Relationships Australia. They have Indigenous and non-Indigenous counsellors. We have both for one-on-one counselling. We also run, with Indigenous counsellors, for Aboriginal men, a yarning program. We find that men particularly, more than women, relate better to a group

situation rather than one-on-one counselling in terms of having a discussion. That has been going for a couple of years now.

We work with Winnunga and the social wellbeing program. We have staff from Winnunga coming out every week and they will work with remand and non-remand clients. We have also started a certificate II in conservation and land management which is for Aboriginal men and women. We involve TAMS in that as well. The rangers will come out and talk about work opportunities that are related to that.

We have just started an elders and community leaders visitation program, which is about community leaders and elders who have some presence in the community, men and women. They come out and meet with them to provide a mentoring role and encourage them to participate in programs and those kinds of things.

In community corrections we obviously have identified positions. I am really pleased to announce that, notwithstanding identified positions, we have Aboriginal staff in general positions. We also have two Aboriginal staff in our current custodial recruitment group that is going through. We have three Aboriginal trainees at the moment. We also have an Aboriginal liaison officer in community corrections because all of our clients work with Aboriginal staff. That worker will go out and do the home visits and do the liaison with the family.

It is very important to engage family when you are working with offenders, particularly if a family are behaving in pro-social ways and working. They can be a really important part of bringing their child or partner through an order. We do a number of things. We also work closely with circle sentencing. I know Janet-Lee is involved with that. Our Indigenous liaison officer goes to every circle sentence so we can get involved there and be part of that process.

THE CHAIR: In my original question I also referred to remand. I have a couple of supplementary questions. Minister, when he appeared before the committee in its last annual reports hearing, the former official visitor painted a picture of difficulties at the AMC to do with the interaction between the mixing of prisoners of different categories, including prisoners on remand. With respect to manpower and lockdowns, in short it appeared from his testimony that under present conditions additional lockdowns were necessary to maintain prisoner security, with considerable effects on prisoner welfare insofar as a high proportion of these prisoners are on remand and, by definition, unsentenced. This is a matter that obviously we are interested in understanding and getting answers to as well.

Mr Rattenbury: Sorry, I did not hear you, Mr Doszpot. Who gave that evidence?

THE CHAIR: It was the former official visitor.

Mr Rattenbury: Certainly, in terms of the general issue of mix of remand and sentenced prisoners, that is an issue at the AMC across the board, not just with Indigenous detainees.

THE CHAIR: Can you tell us the numbers?

Mrs Mitcherson: I would have to take the exact number on notice, but I think it is around one-third remand, two-thirds sentenced. That can change. I might add that, within the Indigenous population—I think there are about 52 men at the moment—they cannot all mix together. So even within that group, there is a cohort that cannot mix with others, generally because of the nature of their offences.

THE CHAIR: I do not expect you to have this at hand, but could you give us a breakdown of the number on remand as against—

Mrs Mitcherson: We could only do it for a day in time, because, as you would appreciate, it changes every day. But we will certainly pick a day and give you that. I think it is about one-third, two-thirds.

THE CHAIR: Also the mix between Indigenous and non-Indigenous.

Mrs Mitcherson: Yes.

THE CHAIR: On remand as well.

Mrs Mitcherson: Yes.

Mr Rattenbury: The issue we have is that, because of the population pressures we have experienced, that certainly required mixing of remand and sentenced. A key focus in the new design is to have greater levels of separation and segregation, and that will be one of the factors that address that. That said, there can be an advantage in mixing remand and sentenced, particularly for Indigenous detainees. Often there is a cultural benefit in Indigenous detainees sharing a cell. There is a sense of support, for want of a better word. So it may actually be better to mix people, even if they are remand and sentenced, for some of those cultural reasons.

Mrs Mitcherson: I have a comment on the lockdowns. All jails have them and no-one likes them. But we are very clear that we do everything we can to not stop a program for lockdowns. So people will still be escorted to a program, to education or medical. Mr Taylor and the team make a great effort to minimise the impact on visits and programs in relation to lockdowns. They are generally not full-day; they are generally for a couple of hours until we can sort staffing out.

THE CHAIR: Minister, I think you mentioned that to address these problems you are looking at the planned new accommodation being part of the plan. Will that suffice to solve the problems or are there other issues still outstanding?

Mr Rattenbury: The intent and the learnings that are contained in the new design are that there are much higher levels of separation. They are done on a hub and spoke design so that individual wings can be isolated. It might be that a certain cohort of offenders that can go together can go together in smaller groups. That will give the operational team at the AMC much greater flexibility and scope to manage the population both for the safety of the prisoners and for the safety of staff. So that is a key benefit.

That flexibility will be determined by the overall population numbers as well. If there

are lower numbers, there is obviously more space and more flexibility. We see a considerable ebb and flow in the population. Those things will all shift on a daily basis. A key part of the work done by the corrections team at the AMC is to each day manage where best to put people and who to put them with. There is a constant assessment process going on in that regard.

MR GENTLEMAN: Minister, I understand there is a prisoner employment unit that operates there. I think there is a new employment opportunities program. Could you talk to us about that program?

Mrs Mitcherson: You might be thinking about the paid work release program that we have brought in.

MR GENTLEMAN: Yes.

Mrs Mitcherson: We introduced a policy probably just over 12 months ago. It is a paid work release program which allows eligible detainees who have jumped through quite a significant number of hoops to work in the community, which means they go to work every day and they come back. There are restrictions on time—they have to go straight there and straight back. It is compulsory that a certain amount of their money is saved, so that by the time they come out of custody they will have some money saved to assist them. It is still in the early stages but we are going okay with that.

We also have a pilot program that DEEWR supported with Habitat, a jobs provider for Aboriginal clients. They work with all Aboriginal clients in custody—on remand as well—in terms of pre-exiting. Sometimes if they get backdated sentences it can be difficult, but it is about working with them, pre-existing and throughout the through-care process, in terms of supporting them in jobs in the community. It is a pilot but it is going very well. It is an important pilot because, with the existing job network processes, the different cut-off points and incentives for the NGOs that have this contract are not really conducive for our clients. So the standards have been changed slightly with DEEWR to see whether it copes better with a prisoner client. This could have policy implications for the whole of the country in terms of how job network providers are able to manage prisoners exiting generally.

MR GENTLEMAN: Is there any evidence yet about whether this affects recidivism overall, or is it too early?

Mrs Mitcherson: Many of our clients have never, ever held a job; nor have they had a significant adult in their life who has held a job. So with respect to all the opportunities we had when we were young, when we got our first job and we were excited and our parents took us and drove us, they have not had that. It is really scary for them. Sometimes you have to try a few things. They fail quite a few times because they have not had the kind of structure that we all got when we were growing up in an environment with a work ethic and people around us.

With some of our clients, if we can get them stable, on an allowance and doing some other things, that will be the most that they will ever be able to do. But we are also confident that some might remain in the workforce. There are certainly some who do

come with job skills, a small number, that we are able to place and work through with them.

MS BERRY: I want to ask a question about through-care and how the people who were part of that program and who have re-entered the community are going.

Mrs Mitcherson: It is an interesting question. I have to say that, by and large, they are going okay. I did not bring my latest figures with me. The return to custody rate is still pretty low. We have almost a 100 per cent uptake of clients exiting—100 per cent of Aboriginal clients and 100 per cent of women exiting wanting to be part of the program. Again, that is even if they are not on an order. So while you hear a lot of commentary about corrections, for me, that says a lot about our culture and the relationships that the staff have that the people exiting still want to be engaged with us.

We have a system whereby some are at the red light stage, some are at amber and we have a few in the green. Some need to be contacted every day. Some are tapering off. A couple that started early still need support and they are doing quite well. But I do not want to speak with rose-coloured glasses here because they are a very complex, difficult group. The staff are very passionate. It is a very exciting program to be part of. We think that it will pay dividends, but you need to have a lot of resilience and not take disappointments personally, because they do fall over.

MS BERRY: But, as you say, some of these people have never experienced—

Mrs Mitcherson: Never. They do not even know how to catch a bus. They have the clothes that they are wearing. If you have not worked in the business, it is very hard to convey to stakeholders and people who are interested, in terms of social skills, how low the level of functioning is.

MS BERRY: I think you said earlier that women on remand can access this.

Mrs Mitcherson: Absolutely.

MS BERRY: Men on remand cannot access it yet?

Mrs Mitcherson: Not at this stage.

MS BERRY: Is the intention to extend it to men on remand?

Mrs Mitcherson: We have not actually discussed it, because the pilot was really just about people coming out on a sentence. So it was based on the 200-odd people that are sentenced that come out each year. We did include women because the numbers are so tiny. It does not mean we do not do anything for someone on remand in custody. Sometimes they might be in there for three days or three weeks. If we know it is a bit longer term, we can engage, but it is a bit harder.

MR WALL: I have a quick supplementary on through-care. We are almost at the 12-month mark, or fast approaching. What has been the average engagement for an individual in the program so far?

Mrs Mitcherson: I do not think any have come off yet.

MR WALL: None of them are off?

Mrs Mitcherson: I can take it on notice. I was talking to Mr Norton, who is running the program. There were a couple of early ones and I asked how they were going. You tend to remember the early ones because they are the ones that you talk about a lot and a couple are actually doing quite well. We are very pleased about it but they still just need a bit of support. There could be some that have come off; I am not sure.

MR WALL: What is the intention? Is there a point by which you would like to see them standing a bit more independently and you can step back—

Mrs Mitcherson: Absolutely. There is a continuum. So you start much more intensively and work through it. In the first six weeks, we would probably have some sort of daily contact with the ones that are in that red light area. We work very closely, and that work is improving all the time, with Health and Housing, particularly in terms of the contact. The most important thing is to get the housing stable and get income support stable. If you can get a few of those right, they are more likely to engage in some other things.

MR WALL: At what point does through-care say: "You're doing well; your training wheels are off. You're on your own from here"?

Mrs Mitcherson: The program allows for 12 months, so theoretically, if someone has been there for 12 months, we should push them off. We are not at 12 months yet. But if someone is doing well, it will happen gradually. It will just be a natural thing. Some go back into custody and come out and we start again, with another 12 months. So it grows a bit exponentially as well.

MS BERRY: I have a supplementary. The plan obviously is to keep people from returning to jail. The Alexander Maconochie Centre does not have high levels of first-time offenders.

Mrs Mitcherson: No, they are often repeat—

MS BERRY: It is usually the repeat offenders. So the whole idea of this is to help people get back into the community and stop them ending up back in the centre.

Mrs Mitcherson: I think the key is about how we measure success. That is important for staff, too. If someone has only spent three weeks out of custody at a time and we have got them out for three months or six months, that is a win. Next time we might get them out for nine months. It is important that we have those sorts of milestones; otherwise the staff would be overwhelmed.

THE CHAIR: Mr Wall, do you have a substantive question?

MR WALL: Yes. Obviously, the purpose of this inquiry is to look at sentencing. There are a number of prisoners within the AMC who are mental health patients and have not been through a sentencing process. I was wondering what impact that cohort

has within the AMC on the day-to-day management in the absence of a secure mental health facility. As a supplementary to that, what involvement has corrections had with the Health Directorate in the planning and the establishment of a secure mental health facility?

Mrs Mitcherson: In terms of managing someone in custody who has a mental health issue, when people are first admitted into custody we have an induction process. If someone is seen at that point to have a mental health issue, they are automatically assessed by the forensic health team, which is part of Health. Sometimes their mental health issue may not be forensic; then it will come back to us. People get admitted and sometimes it might be hard to work out. So someone might be behaving in a psychotic way but they might be coming down from ice. If someone is really floridly unwell, it is pretty clear that it is a mental health issue. With some people it is not always so clear, and sometimes it might not become apparent. So we have a good process in terms of alerting to that.

We have set up a high-risk assessment team, which meets every day. That team is chaired by the senior manager, corrections psychologist support services. It is chaired by her and it is attended by custodial staff, which is really important, because custody staff are making observations all the time about how someone is going, and their observations are really important for clinical staff. It is attended by the senior case manager and also forensic health and primary health. So there is a daily discussion on everyone who is in the crisis support unit. There might be people who are not in the crisis support unit but who are being managed in the AMC proper and who may not be forensically unwell but still may need to be managed. So there is a process in terms of that. Some of those clients would not go to a secure mental health centre, anyway. They would be managed. Sometimes it is just a matter of stabilising medication and they are okay.

In terms of involvement with the secure mental health facility, Mr Taylor has attended a few meetings on behalf of corrections in relation to work around the design and also the operations and secure areas.

THE CHAIR: What sorts of numbers have you got in the secure mental health—

Mrs Mitcherson: In the crisis support unit?

THE CHAIR: Yes.

Mrs Mitcherson: We have 10 beds—nine cells, one double. I had a look yesterday and we had seven, but sometimes we are full. Quite often we are full. That can change every day, because we do not know who is coming into custody, or someone might become unwell whilst they are in custody.

THE CHAIR: Are these temporary guests of yours, so to speak, or how long—

Mrs Mitcherson: How long do they stay in the crisis support unit? I think the last time I looked the average stay was around 42 days. Someone could be in for the whole period if they are really unwell and not stable. Some people might just need to become stable and have short periods in and then are managed back out into the centre.

So it can vary greatly depending on the presentation of the client.

Mr Rattenbury: One of the features of the new design with the special care facility is to try to provide a step-down point between the crisis support unit and mainstream, so that people who are perhaps getting better but are not quite ready for the challenging environment of mainstream will be able to have a step-through process as well, which we believe will improve the situation for some of the clients.

THE CHAIR: Minister, given the current high levels of recidivism in the ACT corrections system, is the main problem inappropriate sentencing or inadequate rehabilitation?

Mr Rattenbury: This goes to the remarks I made right at the start. Because of our low imprisonment rates, those that go to jail are the ones who have generally been before the court a number of times. They have usually gone along, had a warning and perhaps had periodic detention or some sort of good behaviour order. So by the time they get to jail, they have a fairly extensive record. I think that is part of the reason why we have such relatively high recidivism rates.

There is undoubtedly scope for improvement in the way we seek to treat people. There are a whole lot of challenges there but it is about constant learning. Through-care, for example, is one of the innovations we have put in place to try to tackle that; the intensive correction community orders are another. Mrs Mitcherson touched on it before: for some of the detainees, they are simply not in jail long enough for corrections to substantively engage with them. Again, that is where through-care becomes a benefit. If someone is only in jail for, say, five months but we then have 12 months of contact with them, that becomes a 17-month period in which you can work with somebody rather than just five months. I think there are a range of learnings that are being implemented to improve the situation.

THE CHAIR: As a follow-on to that or a precursor, what are your views concerning the management of corrections which are most seriously impacted by sentencing policy as such?

Mr Rattenbury: I am not quite sure what you mean, Mr Doszpot.

THE CHAIR: With the sentencing policies that we have in force, what is the impact on AMC? Is there anything from your perspective that you could advise—

Mr Rattenbury: I understand now. In some ways corrections is really the tailpipe of the justice system. Corrections is the taker of what the judiciary gives out. So from a sentencing point of view, it is not so much corrections' end of the spectrum in that regard. The work that we have talked about extensively on recidivism is really where corrections is trying to make a difference in that space. We take what the courts give us, to some extent.

THE CHAIR: That is where my question emanates from. Has the opening of the AMC had an impact on the way in which courts view sentencing options? That is what I am getting at.

Mr Rattenbury: I think that is impossible for us to answer. I guess that is the call of the judiciary.

MS BERRY: I want to seek your views on something. It comes down to stopping people re-entering the centre or stopping them entering the centre in the first place. Having as many sentencing options as possible might have an effect on that.

Mr Rattenbury: I think so, in the broad sense. It goes back to the earlier conversation we were having about moving from periodic detention to intensive correction community orders. We have a broad range of people that come into the system. We want to have the most appropriate sentencing option. Some people simply have to go to jail. They are violent or they are dangerous; the community needs protection from them. When they come to corrections there is a particular approach to that sort of detainee. Others perhaps are in for more minor offences and have come as a result of their social or demographic background. They are a different category and they are the ones where the rehabilitative programs are probably so much more important regarding whether we see them back again or not. I think that goes to what you are asking.

MR WALL: I have a final brief question. Does the recidivism rate as it is normally outlined in the ROGS data incorporate only former detainees that have recommitted an offence or does it also capture someone that has been released, say, on parole, has had a breach and then re-entered?

Mrs Mitcherson: If they breach their parole without reoffending, I do not think they would be counted. But if they have breached their parole and been resentenced on a fresh offence, they would be counted.

MR WALL: What instances are there currently of individuals released on parole that then have a breach and then return to the AMC?

Mrs Mitcherson: Are you asking how many get returned for breaches or how many get returned for new offences?

MR WALL: Breaches.

Mrs Mitcherson: I would have to take the number on notice.

MR WALL: Perhaps on a monthly or quarterly basis for the last 12 months.

Mrs Mitcherson: It should be noted that sometimes it is important, with regard to a breach by someone who is not managing in the community, clearly there is a community safety aspect and you are preventing them having a further offence. You do not really want that because then it starts again, but you are also stopping someone being the victim.

THE CHAIR: Minister, thank you very much to you and your officers for appearing before us today. The proof transcript will be circulated to you in the next few days. If you have taken any questions on notice—I am not quite sure whether there are any coming at this point—could you ensure that you get them back within five days. Thank you for being here today.

DELANEY, MR GRAHAM, Chair, Sentence Administration Board
HIBBERD, MS JANET-LEE, General Manager, Community Corrections, ACT Corrective Services, Justice and Community Safety Directorate

THE CHAIR: The committee will now hear from the Chair of the Sentence Administration Board, Mr Delaney. Good afternoon, Mr Delaney. You are on your lonesome.

Mr Delaney: Yes.

THE CHAIR: We have been used to seeing a group of people. Welcome. I presume you are familiar with the privilege statement that I always ask you about?

Mr Delaney: Yes, I am.

THE CHAIR: Thank you very much for that. Would you like to make an opening statement?

Mr Delaney: I will, thanks, chair. I thought I would just run through, briefly, the functions of the board so that the committee can see where it sits in relation to the other matters you have been considering.

The present board was established back in 2006 under the Crimes (Sentence Administration) Act. Its main functions are to decide breaches of periodic detention orders and then, of course, consider the release of offenders who have applied for parole. In doing that, the board has to consider fairly extensive criteria that are set out in section 120 of the act.

It has to decide additional conditions of parole. As the committee is probably aware, there are core conditions which are statutory and made by regulation and sometimes particular circumstances will require additional conditions. The board reviews offenders' parole, decides the consequences of breaches of parole orders and, on request—of which there really have not been, in my experience—can recommend to the Attorney-General in relation to applications for release on licence those prisoners who do not fit into the normal parole system; usually life imprisonment.

The present membership comprises eight members—two judicial members and six ordinary members. They are drawn from a fairly wide section of the community, including an Indigenous representative. We have a representative from the Australian Federal Police and then, as I say, a number of members, some of whom are experienced in the corrections area.

The board currently holds weekly meetings in a hearing room in the Magistrates Court. The board is a part-time board, so it relies heavily on the support of a small professional secretariat.

Just moving to parole, when an ACT court imposes a custodial sentence of 12 months or more, it is obliged to set a non-parole period, unless there is a reason for not doing so and then it has to say why it is not doing that. As you know, the non-parole period identifies that part of the sentence that must be served by way of imprisonment.

The board takes into account the need for offenders to have appropriate post-release plans, including an adequate case management plan supported by appropriate services, accommodation and supervision. All of those factors are taken into account by the board when deciding whether or not to grant parole.

Employment is a particular aspect that I think is important in considering release to parole, because otherwise you tend to get the revolving door: people go back to their old cohort and get in trouble again.

Under the act, prisoners are required to submit a written application for parole. They are reminded to do that six months before their eligibility date, so there is plenty of time to look at post-release plans—accommodation and those sorts of things. Most do; some do not, and they create a bit of a problem in terms of dealing with their matters by the eligibility date.

The board tries to consider all the applications by the non-parole date. Sometimes the board is able to decide a matter on the papers where the offender has been a model prisoner, all the reports are good, all the post-release plans are good, and there is really no need to see him. But that is probably a minority of cases. In the balance of cases, the offender is given the opportunity to make a written submission and also to appear before the board and put his or her case. That is in the company of the parole officer, who will also inform the board of his or her views, and that is also done in a report to the board by the parole officer.

Where some sentences are backdated after appeal, that can create problems for the board because the eligibility date might come back to the date the sentence was reduced. It really cannot be done immediately because the board has to consider where the person is going, whether they have got employment and what programs they should have done or could have done.

In the end, it is a balance between considering the risk of reoffending and rehabilitation of the offender. Sometimes it is better to let someone out on parole for at least some period to see how they go rather than just do it cold at the end of a sentence, because then you have got no control at all.

The board also has to deal with breaches of parole conditions, and the parole officers have a statutory obligation to report all breaches. We get minor ones and we get major ones. The result will depend on just how we classify those.

The powers in terms of breaches of parole orders are to take no further action. You might do that in a case, for example, where urinalysis reveals a small amount of cannabis but it has been coming down and you want to give the person a chance to establish that they can get off drugs. You might give a warning about the need to comply with the parole obligations, change those obligations or, in the worst cases, cancel the order so that the offender goes back to jail.

In considering that, it is important to note that if, say, the person has been three months out on parole and parole orders are cancelled, that three months does not count. That is added. So there is a big disincentive for people to breach parole.

Sometimes parole orders are cancelled automatically because there are further offences committed, and that is mandated by the act.

There is one difficult area I think the committee should be aware of, and that is, if a person is complying with their parole order but gets charged with further offences and comes before the board, there is really not a lot the board can do because the presumption of innocence applies under the Human Rights Act. The Human Rights Act applies to the board. It does not in Victoria, for example, which is the only other jurisdiction I am aware of that has a similar type of legislation. The board cannot do anything but presume innocence in that situation.

If it is a serious offence that the person is on parole for, it may be thought there is some risk to community safety in that person just being out in the community. There is a co-extensive jurisdiction, of course, for the court to either grant or not grant bail in that situation. So one would hope that if it is serious enough, the court would refuse bail and the person would go into jail.

But I think that is an area of susceptibility. The only way in which I think the board could intervene is that there is a requirement in our parole orders that says that anyone who is charged with an offence has to report that within two days to their parole officer. Now, if they do not, that is a breach. But whether it is a breach that ought to result in cancellation will depend on other circumstances, I suppose.

The act requires that all breaches of periodic detention have to be reported to the board and the director-general then applies to the board for an inquiry as to whether the offender has failed to perform periodic detention. The board then has the power to take no further action, give a warning, suspend periodic detention for a particular period, which means the person would go into full-time custody for that period, or cancel, which means the person would have to serve in full-time detention the balance of the periodic detention order. Also, the board, on application by an offender, may review decisions by the director-general against that offender in the periodic detention centre.

There is also a section of the act that allows the board to monitor periodic detention. Where it appears that there is no capacity to complete it, it can refer that person back to the sentencing court for resentencing. It could also give up to eight approvals not to attend a particular detention period on reasonable grounds that are made out. There are automatic cancellations of periodic detention where an offence is committed within the periodic detention period.

I think they were the main aspects I was going to cover and then take any questions that you have.

THE CHAIR: Thank you very much. I will start off. Mr Delaney, you are probably aware that we have received a number of submissions from different areas.

Mr Delaney: Yes.

THE CHAIR: Some of the submissions to the inquiry have recommended that the decisions of the Sentence Administration Board be published as a matter of course.

How would this improve the operations of the board?

Mr Delaney: I do not know that it would. At the moment any decision of the board can be challenged by an offender who believes it has been wrongly made and that can be considered by the Supreme Court. It would certainly increase the work of the board to a large extent. What happens now is that we will hear a matter and at the end of the matter we will talk about what the results should be and then either myself as chair or the deputy chair, if he is running the hearing, will give an ex tempore decision. We endeavour to comply with the requirements of the Legislation Act—that is, we make findings of fact and then we apply the relevant law to those findings. But it is all done on the transcript, and we never see that again. Sometimes the offender will ask for a copy and he is given a copy. To actually publish them all—I presume on a website; I do not know—I am not sure would improve the running of the board. In a small jurisdiction, it would certainly add a cost, I would think.

I notice that there was one other aspect of that submission, and that was, parole conditions were prescriptive and set offenders up to fail. I was not quite sure what was being got at that there either because we try to tailor the parole conditions to the particular circumstances. There are core conditions we have to impose in every case, but then there will be additional conditions, depending on the nature of the offence and the circumstances in which it was committed.

To give an example of that, if it is a sexual offence, we would want to be assured that the person has done the sex offenders treatment course in the AMC. We may put conditions on that he is not to live within a certain distance of the victim. In one case we had him catching a different bus so he did not run into the victim. That is a particular case that meets a particular purpose. The core conditions, in my view, are not prescriptive in the sense that they set people up to fail. They are things like not taking drugs.

THE CHAIR: Is that a given?

Mr Delaney: That is a given. I suppose it is a given because there is so much offending that goes hand in hand with drugs.

THE CHAIR: What about alcohol?

Mr Delaney: We do put specific conditions on for alcohol, but alcohol itself—unless, I suppose, we take the general view that it is a drug—is not specifically covered in the core conditions.

THE CHAIR: My question relates more to a person who is on parole. He attends a parole meeting with his parole officer and is suspected, or it is evident, that he is under the influence of either drugs or alcohol. What happens then, at a parole meeting when he is reporting to his parole officer?

Mr Delaney: His parole officer would be obliged to tell him that he is going to be breached and he would be brought before the board.

THE CHAIR: Can that be grounds for revoking his parole?

Mr Delaney: Yes, it could be, taking other circumstances into account. What generally happens, particularly when drugs have been a problem for the individual, is that there will be regular urinalysis ordered whilst the person is on parole. If those reports come back positive for a particular drug, he will be brought before the board for it to make a decision.

THE CHAIR: Is there any security on how the testing is done?

Mr Delaney: It is carried out, in the main, by Laverty Pathology. The offender is directed to attend Laverty within a couple of hours after the meeting with the parole officer. The urinalysis is carried out and the results are provided to probation and parole.

THE CHAIR: Thank you very much. Mr Gentleman.

MR GENTLEMAN: Thanks, chair. Mr Delaney, you mentioned in your opening statement post-release plans. Can you give the committee an example of what a post-release plan would be?

Mr Delaney: Certainly. There may be a requirement to link up with through-care. There may be a requirement to attend a particular drug rehabilitation centre, either full time or on a visit basis. There will be a requirement usually to live at particular premises which have been inspected by probation and parole and found suitable. There will be conditions, as I have mentioned, about victims, if that is a relevant factor. There might be conditions to undertake and complete the cognitive self-change family violence plan, if that has been a factor in the offending, or about associating with particular people, about curfews and counselling for alcohol and drug conditions.

I notice that abstaining from alcohol is here where it is considered to be an appropriate condition. I think I have mentioned not approaching or contacting victims and, for sexual offences, not to be in the company of any child under the age of 16 years, not to attend or be involved in activities organised for the entertainment or education of children—those sorts of things—and to register on the sex offenders register.

Really, the parole conditions are tailored for the particular circumstances. I notice in that submission that it is suggested that the board is not required to consider the circumstances of the offence. Whilst that might not be a specific requirement, we could not do our job without doing that because you have to look at whether it is a sexual offence or whether it is a violent offence to determine which treatment options are the right ones.

MR GENTLEMAN: The post-release plan is set up with the offender?

Mr Delaney: Yes.

MR GENTLEMAN: And the board at the same time?

Mr Delaney: Yes, and with the intervention of probation and parole, who come along and we discuss what are the right conditions for this particular person. They will make

recommendations about that.

MR GENTLEMAN: You talked in there about suitable premises that would be inspected. What would be the description of "suitable premises"?

Mr Delaney: Perhaps I can do it by telling you what unsuitable premises might be.

MR GENTLEMAN: Yes.

Mr Delaney: That is one, for example, where if the offender has been involved in drugs and he wants to go back to a share house where it is pretty clear that there are drugs and other users, we would say, "No, you have to find something else." If it is a sexual offence, you do not want a person going back. Even though they say they want to link up again with the victim, it just may not be appropriate in all the circumstances. That would be unsuitable as well.

THE CHAIR: Link up with the victim?

Mr Delaney: Yes. You might have a victim of domestic violence.

THE CHAIR: Sure.

MR HANSON: I have a supplementary.

THE CHAIR: Certainly.

MR HANSON: You said then that the board is not required to consider the nature of the offence but you have to, to get your job done. Is it just silent on that issue?

Mr Delaney: It is. The act is silent in terms of that issue, but it is clear from the criteria in section 120 that you would have to consider the circumstances of the offence. It says, for example, "the offender's antecedents", which really means his record, and even that brings you into what has happened on this occasion as well as what has happened before. It also says "any relevant recommendation, observation and comment made by the sentencing court". So you have got to read the sentencing remarks so that you know what the offence is and what the circumstances are. But there is no requirement in terms that the board must consider the circumstances and nature of the offence, which is what was submitted by Lorana Bartels from the University of Canberra. I think she suggested that was a lacuna in the legislation.

MR HANSON: And in your view, would that help or is that unnecessary given the—

Mr Delaney: It would not hurt, I suppose, to make it clear. But certainly it is something the board does do. Yes, it does say as well "anything else prescribed by regulation". So you could put that in a regulation, if the committee thought that was a good idea. And it says "any special circumstances in relation to the application". That brings in the same sorts of things. So it is certainly an omnibus consideration that the board does, because all the factors lead you that way.

MS BERRY: You talked earlier about how people make a written application to

apply for parole. Given that some of the people that are in the centre might not have very high levels of education and their literacy skills might be quite limited, are they provided with support in making a submission?

Mr Delaney: They are. There is a case officer out there and he or she will help them. In fact, it is interesting that you raise that because we had one recently, in the last six weeks or so, where the person was illiterate, functionally illiterate, and he had to have his application prepared by someone for him.

MS BERRY: And is it likely that it is particularly complicated, or is it a fairly simple process, or are there—

Mr Delaney: We could provide you with a pro forma, if you like. It is a pro forma and you just fill in the gaps, as it were.

MS BERRY: Are they knocked back on their written application or do they get to the hearing and/or whatever it is—

Mr Delaney: No, they are not. They can be granted on their written application where the board considers that everything is in order, and they can be granted parole then. But if we are not going to grant them parole, there must be a hearing and they must be heard orally.

MS BERRY: And how long between their application being received and them being able to be heard? What is the period?

Mr Delaney: We try to have a hearing about the time of the eligibility date for parole. So they are told six months before that they should put an application in. And that then gives time for probation and parole to look at employment, look at accommodation, look at rehabilitation programs, all those sorts of things. They might have done some of those programs within the AMC, but there is also either a continuation or a fresh program they might do once on parole.

MS BERRY: During the parole hearings—sorry, I do not know much about it in the ACT—do they get representation or do they represent themselves? Is that how it works?

Mr Delaney: Some do. But most represent themselves. But they have got the probation officer there as well. And often he or she is on their side basically, unless their behaviour in the AMC has been appalling and there are other factors that do not really recommend them for parole. It is a difficult job the probation officer has got because on the one hand he or she is there to assist the offender but on the other hand they also assist the board and also have to be quite objective.

MS BERRY: How long is the period for people who are on the board? Is it the same people all the time?

Mr Delaney: No, we have just had some changes. We are now at full strength. We have eight members altogether. Apart from me, there is Michael Chilcott, who is the deputy chairperson. The members are Brendon Church, who is the Indigenous

member, Superintendent Rob Wilson from the AFP, Ivan Potas, Laura Beacroft, Kay Barralet and Derek Jury. So it is a cross-section of people.

THE CHAIR: Is there a specific term of appointment for the board?

Mr Delaney: Three years.

MR HANSON: The members divide in two, do they not, to provide—

Mr Delaney: They do. There are two divisions, yes.

MR HANSON: But there is only one police officer and there is only one of this and one of that.

Mr Delaney: Yes.

MR HANSON: So when you divide up, one of those divisions will not have the police officer and the other will not have the Indigenous member.

Mr Delaney: That is true.

MR HANSON: So how does that work?

Mr Delaney: We attempt to mix the divisions, if I can put it that way. We will change people around. I will swap with Michael Chilcott and I will chair his division for a period, and he mine, so that I sit with the AFP and he sits with the Indigenous member. The Indigenous member sits on both divisions from time to time.

MR HANSON: Assume there is someone who is Indigenous and is coming up for a parole hearing. The Indigenous member sits on that but not on others; is that right?

Mr Delaney: Yes. They attempt to do that. It is difficult with a part-time board, people with other occupations, but, yes, that is the way it is attempted.

THE CHAIR: A substantive question, Mr Hanson.

MR HANSON: I assume, then, that as someone comes up for parole, say they have got an eligibility date, their first hearing comes up. If the board makes the decision that they are not going to be granted parole, what is the period before they then become eligible again? I assume that you can determine that minimum period, but is there a maximum period that is mandated?

Mr Delaney: No. In fact, there is no period mandated at all. So what we generally say is, "You haven't got parole, for these reasons. It's up to you to fix those things up. When you and your case officer at the AMC feel you have made sufficient progress, put another application in and we'll consider it then."

MR HANSON: Let us say someone is doing a long custodial sentence and they come up for parole after 11 years or something. The maximum sentence is 16 years—I am just picking a figure—and they come up after the 11-year mark and you say no and

you do not see them again for five years. There is no sort of automatic check?

Mr Delaney: No. It is up to the person to put another application in. It usually happens the other way. They put it in the next day. And we say, "No, we want to see some progress before we see you again."

MR HANSON: So it is really up to you to determine whether you are going to actually hear someone. So the fictitious prisoner in my scenario could continually put in applications and you could just never consider them if you did not want to. There is nothing that says that after a set period of 12 months, their hearing must be considered? There is nothing like that?

Mr Delaney: No. There is a provision that at the inquiry stage the board can reject an application for parole on the basis it is vexatious. I forget what the phrase is, but basically it is premature or vexatious. But after that, there has got to be consideration. And if you are going to knock it back, there has to be a hearing. So we cannot do that on the papers. We have to get the person in. Once that happens, you usually get to the bottom of what the problem is.

MR HANSON: So if they put in the application, the pro forma, you must have a hearing?

Mr Delaney: Yes, unless you knock it back under the vexatious provision, which is very rare.

MR HANSON: Is there any appeal beyond the board?

Mr Delaney: Yes, to the Supreme Court.

MR HANSON: So once my fictitious prisoner has decided that you have rejected his six vexatious claims, that prisoner then goes to the Supreme Court and then they consider whether they will hear him or not?

Mr Delaney: Yes, whether that is a reasonable—

MR HANSON: That is a safety check. That is good.

Mr Delaney: Yes.

MR HANSON: I am just trying to get a grasp of how often people would be granted parole on their first appearance, to get a view of whether that is the norm or whether it is the norm that people get told to go away and come back another day.

Mr Delaney: No, I do not think it is the norm that people are told to go away and come back another day. I am not sure what the percentage is of first applications that fail. There would be some at the vexatious stage, but that would be quite limited. And there would be some we grant on the papers and there would be others where we say, "No, we want to have a hearing because we are concerned about prisoner misbehaviour," or, "we are concerned about the fact that the person has not done the relevant programs," or whatever the reason.

MR HANSON: I am trying to get a sense of this: when people are sentenced and the maximum is 20 years or whatever but the non-parole is 11 years, often in the community people do not know how long that prisoner is going to serve. I am just trying to get a sense of whether, when we hear on the radio that someone is getting sentenced to a non-parole of 11 years, we can pretty much rest assured that that is all they are going to serve, because that is, in 95 per cent of cases, what happens.

Where would I go to try to find that information, or can that be provided to the committee, so that we can get a sense of whether it is the norm that people only serve the non-parole period or thereabouts as opposed to anywhere close to the maximum? And it is only a small percentage, then, that serve the maximum. I am trying to get a sense of whether 80 per cent are at the non-parole or close to, within six months or something, whereas it is only five per cent that go on to whatever it might be.

Mr Delaney: I cannot give you a precise figure today. I think I would have to take that on notice.

MR HANSON: Could you take that on notice?

Mr Delaney: Yes, sure.

THE CHAIR: Mr Delaney, in the past six years there has been a trend of an approximate doubling in the number of parole breaches resulting in cancellation of parole from 14 to 24 compared to a tripling in the number of cases considered in the past two years alone—103 to 319. Does this trend indicate an increase in reluctance to cancel parole?

Mr Delaney: I do not think so. Are you reading those figures from a report of the board?

THE CHAIR: It is from a report, yes.

Mr Delaney: I hope it does not indicate a reluctance in appropriate circumstances to—

THE CHAIR: You can take this on notice. I do not expect you to be able to give instant answers on all of these matters. We are interested in having some indication of whether there is such a reluctance, for whatever reason. Mr Hanson, do you have another question?

MR HANSON: Yes. It goes to the point you made earlier in your submission about the difference between here and Victoria, although we both have a Human Rights Act. Essentially, if someone is charged with an offence, you cannot use that to then revoke parole. Is that an indication that you think that is a weakness or it needs to be further looked at?

Mr Delaney: I think it possibly needs to be further looked at. As I say, there is one condition of the parole order that requires the person to report that charge within two days. If they do not do that, that is a breach of their parole. As to whether it is a

sufficiently serious breach to require cancellation, you would have to look at all the circumstances and the nature of the offence charged, I suppose.

MR HANSON: This is the "innocent until proven guilty"—

Mr Delaney: Yes, it is a requirement of the Human Rights Act.

MR HANSON: I am assuming that when somebody is charged and they are then given bail, the fact that they are on parole is made clear to the judiciary. That is part of the hearing, I assume?

Mr Delaney: Yes, they should be made aware of that.

MR HANSON: Should be or they are by law?

Mr Delaney: It is a matter for the DPP. The DPP is provided with that information and would normally put that to the court.

MR HANSON: Essentially, the decision then for the judiciary is whether to grant them bail or not.

Mr Delaney: Yes.

MR HANSON: They have no role in revoking parole or writing to the—

Mr Delaney: Not at that point.

MR HANSON: So they cannot do it until there is a conviction?

Mr Delaney: Yes, that is right.

MR HANSON: Does a conviction automatically result in revoking bail?

Mr Delaney: Yes, it does, if the criminal act which led to the conviction occurred within the parole period. So it has to occur within the parole period, and that would—

MR HANSON: Regardless of the offence?

Mr Delaney: Yes—as long as it carries imprisonment. That is the only requirement: an offence carrying imprisonment. That can be a disqualified driver, for example.

THE CHAIR: I have a couple of final questions relating to domestic violence. Are there particular parole or sentencing issues or practices which deliver less than desired outcomes in domestic violence circumstances?

Mr Delaney: There can certainly be issues where the victim of domestic violence is contacted, because victims are contacted routinely about their views about parole. Sometimes there will be an apparent rapprochement between the victim and the offender. The victim might say to him on the one hand, "I want to get back together with you," whereas she might be telling something different to the victim liaison

officer. That does become a difficulty, and particularly where we get a statement from a victim that we then seal, as it were, under the act, so that it is not released to the offender—he knows nothing about it—and we then get a different story from him and perhaps even from her. So it is an area that is a bit fraught.

THE CHAIR: We invite you to come back with anything else that may occur to you after you leave here, but are there improvements to sentencing arrangements that will improve outcomes, especially for women and children currently subject to domestic violence? Along the lines you mentioned before, are there any recommendations that you would like to make to the committee?

Mr Delaney: I would not mind the opportunity to think about that.

THE CHAIR: Sure.

MR HANSON: Can I ask another question?

THE CHAIR: Yes, you certainly can.

MR HANSON: I understand—correct me if I am wrong—that if you are sentenced as a minor then you automatically get parole. So if you are sentenced as a minor and are then in transition to an adult custodial sentence, when your parole comes up, you get it automatically; is that right?

Mr Delaney: We certainly do not see minors or people who have committed offences when they were minors. There was a proposal at one stage.

MR HANSON: I thought there was a situation where sometimes people get sentenced. Let us say they go out to Bimberi as a 17-year-old and then, because of the length of that sentence, they transition to the AMC and then come up for a parole hearing. Who hears that parole hearing?

Mr Delaney: That is a good question.

MR HANSON: I presume it is you, because they are now an adult in an adult jail.

Mr Delaney: Yes.

MR HANSON: I have been advised—and you might need to take this on notice—

Mr Delaney: I will take that on notice and I will check that.

MR HANSON: that they get it granted automatically. Is that not the case?

Mr Delaney: We might be able to sort that out now. The answer to that is there is no parole for juveniles.

MR HANSON: This is someone who then transitions. I understand there are people who have been sentenced as a minor but because of the length of their sentence they have transitioned to the AMC. Because they have been sentenced as a minor, there is

no parole; is that what you are saying?

Ms Hibberd: My understanding is that because it was a Children's Court order, there is no parole attached regardless of them going into the AMC.

MR HANSON: Thanks.

THE CHAIR: Mr Delaney, thank you very much for joining us here this afternoon. We appreciate your input. The offer stands: if there is anything else that comes to mind that you think would be helpful for the committee to consider, we would appreciate any further feedback. You will get a proof transcript circulated in the next few days. Thank you once again for joining us.

At this point I would like to extend the thanks of the committee to all of the witnesses who have appeared before it today. The next public hearing for the inquiry will be on Monday, 19 May 2014. I now close the public hearing.

The committee adjourned at 5.11 pm.