LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into sentencing)

Members:

MR S DOSZPOT (Chair)
DR C BOURKE (Deputy Chair)
MRS G JONES
MS M PORTER

TRANSCRIPT OF EVIDENCE

CANBERRA

TUESDAY, 14 OCTOBER 2014

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

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 2.03 pm.

HINCHEY, MR JOHN, Victims of Crime Commissioner, Victim Support ACT

THE CHAIR: Welcome to the fourth public hearing of the Standing Committee on Justice and Community Safety for its inquiry into sentencing. Today the committee will hear from the Victims of Crime Commissioner and Prisoners Aid. I welcome you, Mr Hinchey. It is good to have you back. Are you familiar with the privilege statement that is in front of you?

Mr Hinchey: I have read the privilege statement.

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

Mr Hinchey: I would like to make an opening statement. It is in relation to restorative justice. The reason I want to speak about that in particular at the start is that I think we are missing an opportunity in this jurisdiction to provide diversionary options to adult offenders, particularly young adults. Young men and women who turn 18 are considered to be adults in our legal system, but we know that they have some years of growing and maturing before they become fully adult. These young people are missing an opportunity to be diverted from our criminal justice system. In conjunction with that, their victims are missing an opportunity to meet with them to have some direct participation in the justice process.

Our restorative justice unit has been operating since 2005. There is a lot of information available about its effectiveness. The annual reports from then until now tell us that over 90 per cent of young offenders comply with the agreement that they form with their victim at restorative justice conferences. I would think that would be a higher rate of compliance than court-ordered sentences, community-based sentences. The rates of satisfaction are always in the 90 per cent mark. Restorative justice is proven to reduce fear and anxiety in victims after meeting with their offenders.

I do not understand why we have not rolled out phase 2. It was supposed to be rolled out in 2006. The only reason I can think of is that there are some concerns around the resources that would be required. I think we are caught in between not knowing and having to make a decision to act. I think it would not take a lot of additional resources to equip that unit to begin hearing matters for adult offenders and their victims. That is all I would like to say.

THE CHAIR: If there are any other comments that you wish to make, we are also happy to take those on board.

Mr Hinchey: I talked about lengthy trial delays, timeliness, in my submission.

THE CHAIR: I might start with a question on that, if you do not mind. You talk about the traumatic events that victims go through, the effects of litigation and the fact that the justice process can also re-traumatise victims, and that the longer these processes take, the more difficult they are for victims to manage. Would you like to elaborate on that as to what the current cycle is and how you think that should or could be improved?

Mr Hinchey: Since the appointment of Chief Justice Helen Murrell, I have noticed a distinct improvement in the time lines around bringing cases forward, holding people to their dates of trial and not shifting them at the last minute, and prioritising sexual assault matters. That is welcome. The Chief Justice is very active in administering the business of the court. That was needed, and we are seeing the positive influence of the Chief Justice.

With delays at court, victims can get their heads around dates. They understand that the courts are busy and they can accept that trials will take some months, years, to bring on. It is the late change of arrangements—the late vacation of trial dates, the unnecessary attendance at court without prior arrangements being made—that distresses victims, and I am seeing a decrease in that. Prosecutors and defence are becoming aware that a trial date, when set, is going to occur unless there is a very good reason, whereas in past years you would see very late applications to vacate trial dates.

In my submission I asked for some legislative mechanisms to enforce the courts to hear matters of sexual assault within a certain time frame. I think that the practice we are seeing, the administration, would not now require that to occur. In honouring the independence of the court, we either allow the court to administer itself or we introduce law and place time restrictions or time limits on the processing of sexual assault matters. I would not say that now; I do not hold that position as strongly as I did, because of the way the courts are being administered. With the Chief Justice taking such an active role in that, she is doing her best to address the delays, and we are seeing a reduction in time.

DR BOURKE: Returning to your opening statement about restorative justice, do you see anything particularly unique about our system of restorative justice here in the ACT, apart from the fact that it is only for young people?

Mr Hinchey: I know our system is unique in Australia, if not the world, in that it has victims at its heart. The objects of the Crimes (Restorative Justice) Act address the needs of victims of crime. It points out that restorative justice is a process for victims and, more or less as a by-product of giving victims' interests pre-eminence, offenders' interests have to be given the same amount of weight in order to attract them to the scheme.

The scheme is unique in that it has the potential for all offence types to be referred to restorative justice at any stage of the criminal justice system. So it is unique in that it is not just a diversionary scheme; it is designed to be a diversionary scheme and an adjunct to our criminal justice system. Only the most serious of offences can be referred later in the prosecution. I think that is a mechanism that the courts could use to inform themselves around the details of the offence, the extent of someone's true remorse and how victims feel about what has happened to them. So there are a number of unique elements to our restorative justice scheme which we are not capitalising on, which is frustrating.

MS PORTER: Thank you for what you said about restorative justice. You will know of my long interest in this subject. You talked a lot about the benefits to the victim;

we now know it is really beneficial. Are there beneficial effects in relation to the offender, particularly around reoffending?

Mr Hinchey: There have been studies around this. The most recent report was from the Cambridge institute, which talked about evidence that more serious types of offending are reduced as a consequence of restorative justice—not so much petty crime such as theft but more serious types such as assaults, where serious harm is done. So there is literature already to say that when a person who commits a serious offence comes into face-to-face contact with their victim, there is a change in them about how they perceive themselves and their responsibility, and a deeper awareness of the harm that is done and a deeper motivation to address their offending behaviour.

I do not think restorative justice, though, as a stand-alone intervention is enough. It needs to be married in to consequential case management. I think that a restorative justice process can inform the development of a case management plan that provides more ongoing support and intervention and also opens up avenues for access to offender programs.

I know that the relationships that are damaged by crime are important to be mended from an offender's point of view. They want to have the respect of people and regain their trust and confidence. That is a motivating factor for people who have been charged with offences. Restorative justice can help build back that trust and confidence that people have with their loved ones after committing crime. I think there are a lot of benefits for offenders. I keep calling people "offenders"; I get into this "offender" and "victim" terminology. I know that, having worked in restorative justice for five years, young people feel a lot better about themselves when they take the step—the courageous step at times—to sit in front of their victim, their victim's supporters and their own loved ones and take responsibility. That is a tough thing for anyone to do. But they come out feeling a lot better about themselves.

MS PORTER: The second phase is about adults and more serious offences. Are you suggesting that you believe the time that the minister is wanting to spend on the further research is not warranted, or are you suggesting that this be somehow speeded up?

Mr Hinchey: I do not think there is a need for any more research—

MS PORTER: So you would have it commence now?

Mr Hinchey: into the effectiveness of restorative justice in the ACT.

MRS JONES: We have had presented to us concerns about certain types of offences where victims are quite vulnerable.

Mr Hinchey: Are you talking about sexual assault and domestic violence offences?

MRS JONES: Yes. I understand this is not a very common system, but is there research about what offences it would work well for? I am imagining that, for offences between people who reside under the same roof, it is going to be very difficult to run the conference. When all is said and done those people can still be

residing under the same roof and there is not that distance. Obviously there is a push now from the government to roll it out further, and obviously there would be some merit in that, but there must be some limits to it as well, presumably. My concern—and I wonder if you would comment on it—is with it being pushed towards people who really should not have to make that decision or who feel under some pressure to agree to a conference when in the long term it could be detrimental to their situation.

Mr Hinchey: My position is that victims of crime should be allowed to choose whether they want to participate in restorative justice or not. I was on the subcommittee that formed the model of what we have as a restorative justice scheme, and that subcommittee formed that same view. That subcommittee was made up of a number of people who work with victims of crime. We have different people working in the system now, and I know that many of those oppose the use of restorative justice for sexual assault and domestic violence matters. My position is that if a victim wants to take that important step to regain some power and control in their lives by having some dialogue with their offender, who are we to choose otherwise for them? I think we need to ensure that the practices that we put in place protect them.

MRS JONES: What are the practices that could be put in place? Somebody might consider that it could be beneficial for them to go through an RJ process; however, at the end of the day, if the perpetrator essentially has access to them, I guess time will tell. I wonder whether it is a fair and reasonable question to put to them, really. They might want the issue resolved but it does not actually change the fact that over the long term they will have access to their victim, essentially.

Mr Hinchey: That is right. The fact is that you cannot manage the risk after a conference all the time, because what you are saying is right. Victims and offenders are going to rejoin the community, whether they live together or not. And there are risks involved in this type of arrangement. But we do not need to take that step now. This scheme was originally designed for young offenders, in phase 1, and then all offence types in phase 2.

MRS JONES: Are young offenders presently, if they are involved in sexual assault, offered it?

Mr Hinchey: Sexual assault and DV are excluded. So phase 1 was for young people for less serious types of offences, which is determined by the number of years for which someone could be potentially sentenced to imprisonment. Phase 2 was to be for adults and all offence types. I do not think the jurisdiction is ready for a full roll-out for all offence types, frankly speaking. I think that the adult criminal justice system needs to be exposed to the benefits of restorative justice. To allow that to occur, I would recommend that we hold back on the sexual assault and DV offences, because they are the most problematic for people, and to allow other offence types, including the most serious of assaults, to roll forward into the adult system. It is only by experiencing restorative justice that people get to understand it.

MRS JONES: Some of us have been lucky enough to sit in on conferences, and it has been a very moving experience.

Mr Hinchey: The note I have here says "post sentencing". Our restorative justice

scheme—when I say all stages of the criminal justice system—also allows offenders to be referred to restorative justice while they are serving a sentence. I think our scheme is the broadest scheme that I have encountered. I do not have an exhaustive knowledge of restorative justice but I see that we are missing an opportunity. We are looking around for strategies to avoid people going to prison, and we have got one looking at us right in the face, and we do not seem to be able to grasp the nettle and say, "This has got real potential."

DR BOURKE: Yesterday an option of parole as a sentence was raised. Would you like to comment on that as an option—someone gets parole rather than a custodial sentence?

Mr Hinchey: My understanding of parole—and correct me if I am wrong; I was not at that hearing—is that it is always connected to a period of imprisonment. But I might be wrong.

DR BOURKE: The suggestion was that it be the sentence and there could also be a range of conditions applied to it which might include particular activities or programs, work orders or whatever, that it was thought appropriate for that person to do.

Mr Hinchey: I have never heard the term "parole" used in that context. I think there are existing combination sentences available that would allow the courts to impose a range of sentences. I think it is a misnomer, just off the top of my head, to begin using the term "parole" when the person whom it is being used in conjunction with has not served a period of imprisonment. "Parole" implies that someone goes to prison for a term and then, if they comply, if they are well behaved, if they participate in relevant rehabilitation programs, they would have a strong case to go before the Sentence Administration Board to be released on parole.

DR BOURKE: If they breach their parole, what happens to them now?

Mr Hinchey: They would go back before the Sentence Administration Board and the board determines whether their parole continues or they are returned to prison.

DR BOURKE: If they had an intensive community corrections order, which obviously would achieve a similar thing to what I suggested before, what happens when they breach that?

Mr Hinchey: I have not seen the proposal around what would happen with a breach of an intensive community service order. I know that there is some discussion around introducing intensive community correctional orders, and I believe those discussions are being had in conjunction with removing periodic detention as a sentencing option. I would think that an intensive community correctional order would go back before a court, but I do not know enough about how that new scheme is supposed to operate to speak on it.

MS PORTER: I want to ask you to talk a bit more about your comments about the presumption against bail as it relates to domestic violence, and also victim impact statements.

Mr Hinchey: The ACT has a presumption against bail—what is termed a presumption against bail—for domestic violence offences. It means a police officer can respond to a domestic violence offence without turning their mind to whether a summons would suffice. The reason that provision was introduced was that the ACT in years gone by had a very poor response to domestic violence and people were not being taken into custody and families were being put at risk because of that. So in order to emphasise the risk and empower police to act decisively at the time of attending a domestic violence offence, they were given a special power to arrest a person who they believed on reasonable suspicion had committed a domestic violence offence or would commit one after they left.

That presumption against bail works so that once people are taken into custody for domestic violence there is a very high threshold that police must be satisfied to meet in relation to the safety of victims before that person is released. On most occasions that results in the person remaining in custody until they go before a court. I must say that the bail option for young people, the after-hours bail service, is operating very effectively in that regard as well, because young people are being diverted from custody and being sent to a bail hostel rather than going into Bimberi.

From my point of view that provision is being judiciously applied by ACT Policing. Some will give you some examples of people that may not have gone into custody, but these are subjective judgements that we must rely on our police to make, and I believe that in the vast majority of cases they are only taking people into custody who they believe should be there for their own safety and for the safety of others.

I know that in recent years some discussions have been brought forward by the comment in the Australian and New South Wales law reform commissions' report that there should be no presumptions against bail, and the ACT was mentioned in that report for the fact that we do have a presumption against bail for domestic violence offences. Every now and again that policy issue is raised, and it is one that I have put in there because I would stress that we retain that provision. We have all seen in recent times the risks that we are exposing women and children to, with domestic violence, and we need to be alert and vigilant in protecting them. The safety of women and children should be our paramount concern.

MS PORTER: With respect to your thoughts around victim impact statements, are they in relation to particular kinds of victim impact statements or generally?

Mr Hinchey: Generally. I put that in there because what causes victims some harm is late changes to their victim impact statements. Victim impact statements are prepared prior to a sentencing hearing and there are no time lines around when that should be agreed. What happens now in practice is that the Crown and the defence will reach agreement on the content of a victim impact statement; when that is done, it is ready to go and it is put before the court, the victim impact statements are read out and delivered to the court adequately and satisfactorily.

When those practices are not always followed—that does not happen often, but when it does—it can be traumatic. If a victim impact statement comes to the attention of the defence on the day of sentencing or a day or two days before and changes are being made or recommended to be made to the victim impact statement, that causes the

victim some stress and confusion. So I was seeking a practice direction around the timing of that. Victoria has one. I wrote to the Supreme Court some time ago, before this Chief Justice came to this jurisdiction, but I do not think it was supported. It is something that I would like to see, so that everyone knows where they stand with the timing of delivery of victim impact statements.

THE CHAIR: I noticed the comment you made in your recommendations on victim impact statements. What I drew out of that—and I want to clarify this with you—is this: do you feel that there is too much interference with a victim impact statement? Does it become an edited impact statement of the victim that finally gets admitted?

Mr Hinchey: That is a good question. I think it comes down to the individuals involved. I see some victim impact statements that go through that have all the information that a victim would want to say. I see others that are cut down to become quite sterile representations of what a victim would want to say. I also note that there is some uncertainty about whether a child of a victim of domestic violence can give a victim impact statement. In fact I was dealing with a case recently where a young man wanted to give a victim impact statement in relation to his mother being a victim of domestic violence and he was not able to talk about the harm done to him in his victim impact statement. We all know the long-term harm that is done to children who are subject to or witness domestic violence. So I was a bit surprised to see that he was being restricted in what he could say. He could talk about the harm that he observed his mother to have suffered.

THE CHAIR: What was the approximate age of the child? Is that taken into account?

Mr Hinchey: It was a child, under the age—

THE CHAIR: So under 16?

Mr Hinchey: Yes. I think we relied on a previous case, from memory, where a child had been able to give a victim impact statement on their own behalf. I have gone off the subject of your question a little, but it shows the area of uncertainty. I think it comes down to the individual; that is what I am saying. It is not very clearly defined and it is a matter of having experienced counsel.

THE CHAIR: A number of us have had discussions with people within the legal framework. I was surprised at some of the attitudes which reflected negatively on victim impact statements. How many times does a victim have to be victimised, if they cannot give an account of their own experience without having the defence tamper with it, for want of a better word? I am looking for a bit of an explanation from you if that assumption that I am voicing is accurate.

Mr Hinchey: No, that is a fair assumption.

THE CHAIR: That is what I gathered from the people we spoke to.

Mr Hinchey: It is not straightforward. Sometimes it is in the defence's interests to whittle it down as much as possible; at other times you wonder what the purpose of a victim impact statement is, really—how effective it is, how it is taken into account in

sentencing. That is not always clear. Some judges are very good; they will mention the fact that they have heard the victim impact statement, that they acknowledge the harm that has been done to a victim. That is important to victims—the effort they have gone to, to put in writing the harm that they suffered has been acknowledged and heard. But if it is not referred to in sentencing, victims are left wondering, "What was the point of all that?"

I have seen comments in the media about judges making some comments about the relevance of victim impact statements and whether we allow victims to do it for their own good, and that is about it. It is a fraught area, I think. It is indicative of the place of victims in our criminal justice system, that they get a direct say right at the end of the proceedings, at sentencing, and even then they are subject to some vetting as to what they can and cannot say. These are the people that are most directly affected.

THE CHAIR: Does that happen more often?

Mr Hinchey: It would be unwise, if you were a Crown prosecutor, to go into court with a victim impact statement without having shown it to the opposite side of the bar, because you do not want a victim impact statement being challenged in court, or you would want to avoid putting a victim on the stand to be cross-examined on the contents of their victim impact statement.

MRS JONES: Could you talk to us about the use of prohibition orders and your interest in that area, as it applies to victims and also possibly the benefits for perpetrators of ongoing—

Mr Hinchey: I know that prohibition orders have not been used very frequently in this jurisdiction. The Canberra mums group was the group that raised this issue with the government, and I wrote to ACT Policing about whether ACT Policing were using prohibition orders. I believe that until the Canberra mums group raised their concerns they were not being used. So I have asked Policing to look at how they are administering that. I have been advised that Policing are taking a lot more proactive position with prohibition orders.

The policy around prohibition orders is to allow ACT Policing another method of controlling and managing the risk of sex offenders in our community. I do not know how effective that is. I do not think that is just a matter that relates to prohibition orders, as to not knowing. I think the community in general is not informed about how effective any of the interventions that we apply to offenders in our community are.

MRS JONES: Are prohibition orders imposed by the police or can they be imposed by the courts as part of a sentence?

Mr Hinchey: The police make an application to the courts post sentence for prohibition orders. The courts have sentencing options. A prohibition order is not a sentencing option as such. It is a matter for police.

MRS JONES: But they are court approved. Do you know typically how long they last? Is it just during the period of sentence or parole?

Mr Hinchey: I will find out. I do not know exactly, off hand.

MRS JONES: We may be able to get ACT Policing to come and talk to us.

Mr Hinchey: I could not imagine a prohibition order running past the expiry of a court sentence. I would think they would run in conjunction with that. Can I check that, please?

MRS JONES: Yes.

Mr Hinchey: I have not had that much to do with it.

MRS JONES: Take it on notice. I will raise, for the purpose of the committee, that it would be good to discuss at a later date getting more information from other sources as well.

THE CHAIR: Sure.

Mr Hinchey: The thing that I would ask ACT Policing, and I have raised it, is: is it the process itself that is preventing police from making application for prohibition orders?

MRS JONES: Is it cumbersome?

Mr Hinchey: If the process is so work intensive and the proof of the need for it is so high that it is preventing the policy from being applied, we need to tackle that, because the intent is that the community was given the indication that this was a tool to be used to assist managing the risk of people in the community. We need to use it for that purpose.

MRS JONES: In the case of the Belconnen library incident, with the child involved in the sex offence, how could you imagine that a prohibition order might have made some sort of difference?

Mr Hinchey: Someone who acts so impulsively would be very difficult to control with a prohibition order. I understand from reports that that person was on his way to report to police when he went into the library. I understand from reports that he was intoxicated at the time. He could go into a shopping centre, a grocery store or anywhere. It is going to be very difficult. Prohibition orders are not the answer to manage that risk. Why he was in the community, how effective has been the treatment of him over the years—they are the questions. What program has he participated in?

MRS JONES: I ask for your feedback. Some of the information we have been presented with is that it is just impossible to know if someone is going to reoffend or not, in many cases.

Mr Hinchey: There are indicators.

MRS JONES: You have a psychologist who is making an arbitrary assessment, and they are doing the best job they can, but ultimately people do make choices as well,

often, and you cannot completely predict—

Mr Hinchey: Of course. But we need to ensure that what we say we are doing in managing offenders in prison and in the community is actually occurring. With a person like that, who pleaded guilty, I think, and took responsibility for his offences, I hope that he gets access to programs in the AMC which will help him turn his life around, because for someone who does not have control over his impulses it would be a sad position for him to be in, and we need to help him turn his life around as much as possible.

Was the risk measured appropriately? Was he given access to programs in previous custodial terms? How effective are the programs that have been provided to offenders in our community and in our prison? Where can we go to read about that? It is hard to get that information. How can the community be satisfied that what our system says it is doing is being done if they cannot read about it?

THE CHAIR: One of your key recommendations related to the lack of legislative restrictions on offence type and the use of suspended sentences in the ACT. You commented that it is of concern to victims of serious crime. Could you elaborate on that?

Mr Hinchey: People can accept the fact that a court will give someone a chance. If someone deserves a period of imprisonment and they are given a suspended sentence; that is the opportunity that people are given to turn their lives around. But when that same person comes back before the court and they are given another chance, that is when people lose trust, confidence and patience. And that is what I see too often. I think suspended sentences are a cop-out. If they were applied when someone breached their order, that had a suspended sentence associated with it, they should be made to face the consequences of what the suspended sentence was meant for, at all times allowing the court some discretion around that application. But it seems to me that I very often see a reapplication of a suspended sentence or a resentencing.

THE CHAIR: Do you have any figures on how we rate in comparison to other jurisdictions?

Mr Hinchey: I do not, but I know that the Law Reform Advisory Council prepared a paper on the use of suspended sentences in the ACT and raised some very interesting questions. I believe that there are some outstanding questions in that report that the government said it would respond to. So I would go to the Law Reform Advisory Council report.

THE CHAIR: We have also heard some comments that the ACT has the lowest levels of sentencing—

Mr Hinchey: It has, yes.

THE CHAIR: and we have the highest rate of recidivism.

Mr Hinchey: Yes.

THE CHAIR: I do not know whether there is any expert opinion on that or whether you have an opinion on that statement.

Mr Hinchey: We have the lowest rate of imprisonment in the country, and that has been the case for years. Why is that the case? I do not know. But I know that periodic detention is included in those figures. So if we abolish periodic detention, we are probably going to have an even lower rate of imprisonment compared to other jurisdictions. Why do we have the highest rate of recidivism in the country? It can only be for one of two reasons: our programs are not working or, because of our very low rate of imprisonment, we are imprisoning those most institutionalised, those most unlikely to be able to turn their life around. So we are probably dealing with a harder group of people than in other jurisdictions. Our population numbers are very low, so that can distort our statistics as well. I think that needs to be taken into account. It would have to fall into those three areas—low numbers, low rate of imprisonment and difficult people, people who have lifelong traumas, many of whom are victims of crime themselves.

THE CHAIR: Thank you very much. As I said at the outset, it has been some time since you put your submission in. We will make this offer to other people who have put submissions in. If there are other factors that occur to you that you feel this committee should benefit from, we would certainly like to hear from you.

Mr Hinchey: Thank you for the opportunity to attend, and to provide any other report.

THE CHAIR: Thank you, commissioner, once again for your time. We have come to the end of our time now. We will be in touch regarding any questions on notice, and we will forward you a copy of the proof transcript for your consideration.

SMITH, DR HUGH, Secretary, Prisoners Aid
TURNER, DR BRIAN, President, Prisoners Aid

THE CHAIR: Good afternoon, Dr Smith and Dr Turner. Thank you for joining us this afternoon. I am not sure whether you are familiar with our proceedings. There is a privilege statement on the table in front of you. Have you had a chance to look at that? If not, could you have a quick look. It is there for your protection. Would either of you like to make an opening statement?

Dr Smith: Yes, Mr Chairman. I wrote the submission, so it falls to me to say a few words about it. We are a small grassroots organisation working at the practical level. We assist prisoners when they first get out. That is why we were created back in 1963, to do exactly that. We support prisoners while they are in jail. We help the families of those in jail, noting that family support and maintaining family connections after release are very important in reducing recidivism. That is the one point that criminologists agree on. To be in contact with families, we maintain a roster of volunteers in the visitor entry area at the Alexander Maconochie Centre.

The other principal thing that we do is to run an office in the Magistrates Court, which is there to assist all people in need in the criminal justice system—not just those charged with offences but witnesses, victims of crime, families of these people and so on. We work very much with the system, for all its faults, weaknesses and deficiencies. From time to time we do think about the bigger picture, and that is why we do have some views on sentencing.

Firstly, we would say that courts should have the maximum range of sentencing options that are possible and that can be afforded. We are aware that any kind of sentence is expensive in terms of resources. Under that heading we would support any move to give weight to prospects of rehabilitation in sentencing. Magistrates and judges do this. I think it is formally provided for in the case of juveniles, but not formally provided for in other cases.

We support the use of non-custodial sentences as far as possible, including things like restorative justice and intensive corrections orders, which is what you were talking about earlier in the context of parole as a type of sentence in itself. In passing, I would want to use a different term and not "parole", to avoid confusion.

We oppose mandatory sentencing which removes the court's discretion from what could be viable alternatives to imprisonment. We believe that any reduction in sentencing options, such as the removal of periodic detention, should be fully justified. We are not sure that was done in the case of the recent removal of periodic detention here, given that I note some 79 cases of periodic detention were awarded in calendar 2013. Of course, the question there is: what happens in those 79 cases? Does that mean you have that many more serving full-time sentences or are they serving other non-custodial sentences? And are resources provided appropriately? It is certainly reported in New South Wales that the abolition of periodic detention there led to an increase in full-time imprisonment.

The second general principle is through-care, which is an official government program that is very much to be welcomed. It seeks to assess the needs of prisoners

before they are released, provide for them as far as possible on release and follow them through for the next six to 12 months. We support that and we engage and participate in that program on a small scale. We believe that the through-care program should be extended to male remandees as soon as possible. They are not covered by that program.

I might mention a typo in the second paragraph on page 4 of our submission. Remandees in the ACT spend 5.2 months on average on remand, not 52 months, compared to an average sentence of 5.7 months for sentenced prisoners.

I have some comments on recidivism rates, which I think need to be taken extremely cautiously. The previous witness raised an important point which we also mention—that given the sentencing practice in the ACT, those who are sent to prison tend to be the more hard-core, habitual, institutionalised prisoners, who are more difficult to reform. In some ways a high rate of recidivism, or at least the high rate of inmates who are serving second and subsequent sentences, actually shows that we are trying to do what we can to avoid giving people that first jail sentence, which might set them on a career path of criminality.

I saw some figures recently produced by Dr Taylor of the ANU that, for AMC prisoners with a record of prior imprisonment, 73 per cent of those in AMC had prior imprisonment, against a national average of about 58 per cent. Those figures were as of mid-2013. As I say, it is not to us a great discrepancy, and in fact it shows that we do have some hardened habitual criminals. Also we are reluctant to set people on that path in the first instance.

The recidivism figures need to be taken with a pinch of salt and measured very carefully. We do believe that support for released prisoners is extremely important, on the grounds of equity. Even if we find rising rates of recidivism, the important thing is that those in prison should be given every chance to turn their lives around. The problem is essentially that a term of imprisonment often lasts much longer, or the adverse effects of a term of imprisonment often last much longer, than the term inside. It creates difficulties subsequently post release with employment and with getting accommodation. Often family relations are disrupted; families may even break up. Prisoners' self-esteem may be damaged. They may come to see themselves as criminals. All of this encourages a return to crime.

Equally, any sentence should not, as far as possible, punish the families of prisoners. It should be limited to the offender, himself or herself, and support should be given to families, partly on grounds of justice and fairness to the families, who have committed no crime, and also on grounds that they support the prisoner, take the prisoner back at the end of the sentence and give them the prospect of a normal, reasonable life. That is of benefit to the prisoner and to the community at large.

I will stop at that point, having explained roughly what we do and where we stand.

THE CHAIR: I will make the same offer to you that we have made to previous witnesses. Time has gone by since you submitted your last submission. If there are other factors that you feel you would like to bring before the committee, please feel free to do so. We would appreciate any further feedback.

Dr Smith: No, there are no particular—

THE CHAIR: I do not expect you to do so now, but in the fullness of time, before we close. Mrs Jones.

MRS JONES: Thank you. I want to ask a question about intensive correction orders in the community. One of the suggestions that have been put to the committee is that, upon the expiry of periodic detention in a short time, intensive correction orders could be used more. It was even raised that parole could be used as a sentence, but it seems that there is a mixed view of whether that really is a possibility, as parole has the ability to have more conditions attached to it. You mentioned you think there may be an increase in full-time imprisonment as a result of the change. Can you shed any light on your views of how intensive correction orders can be used and how they may benefit perpetrators over the longer term, if that is the case?

Dr Smith: In two ways. One is keeping them out of full-time imprisonment. The other is an opportunity to work with them, get them to complete programs, to get counselling, to deal with alcohol problems, drugs or family relationships. There are a whole lot of things that can be done. Given the willingness of the offender to cooperate, which is very important, given also the resources that would be needed to institute an intensive program, it is very intensive in terms of staff in particular, to provide the constant monitoring, supporting and counselling of offenders.

MRS JONES: Does it work at the moment?

Dr Smith: I am not sure. I gather they are operating in New South Wales, but we do not have them here, to my knowledge. Certainly the potential is there to work, but you would need to commit resources to such a program, not least staff training.

MS PORTER: Our previous witness talked about the need to introduce the second phase of restorative justice urgently, which would include adult offenders and all types of crime. But he did not recommend at this time considering domestic violence or sexual assault offences. He said we should wait on those, but that we should introduce other offences and adult offenders. Would you like to make a comment on that?

Dr Smith: I cannot add anything substantive. It is not an area that I am familiar with, except to say that we would support any kind of diversionary procedure that keeps people out of prison and serves the victim of crime well and ultimately the community. I would leave the practical implementation to those dealing with the system—what sort of cases you would have, the age groups, the types of crime and so on. I cannot comment on that.

Dr Turner: Restorative justice has been around for quite a long time. It is used in many parts of the world successfully, from all the evidence, and there is the fact that it is working apparently quite well with offenders in the ACT. All of this indicates that it should at least be trialled with older offenders and for certain types of offences.

MS PORTER: If, from what you say, you would like to see anything that keeps

people out of custodial sentences, why do you recommend against home detention? Am I reading your submission correctly?

Dr Smith: Yes. We have great doubts about it. That is not to say it could not work in some circumstances. One aspect is that people's homes vary enormously. It is one thing to be confined in a mansion; it is another to be confined in a bedsitter. I believe the technology these days can allow people to move in certain areas. The second factor, and perhaps the more critical one, is that, as some people put it, it makes mum the jailer. It makes the family member—the wife, mother, sister or brother—a jailer, in effect, and puts an onus on them to keep the person in the home when they should be there. That seems to be an unfair burden to be placed on the family of an offender.

Dr Turner: I have worked in the organisation for 25 years, I guess. We have started employing a person who used to work in New South Wales Corrective Services as a case manager, and has used this detention process and been involved in it there. She believes it works very well. That is the opinion of someone we value. I still think there are problems with the impact on the family, but, in terms of the offender, there is the opportunity to be at home, even though they are restricted in their movements. Apparently the technology allows them, as she said, to go to church on Sunday if they want to, and certainly to work. So all of those things can be built into the surveillance system now, as I understand it. The technology has grown perhaps from where we thought we were some time ago. My personal view is that it is certainly worth looking at.

Dr Smith: I think a better term than "home detention" needs to be found in that home detention suggests there is a family there and you get that jailer effect. I guess it could be a hostel with a supervisor there. It is not 100 per cent of the time spent at home. It is really a restricted movement order. If we were to look at that in the ACT, as Brian said, it can work in some circumstances. You might well look at the New South Wales experience to see the sorts of cases where it has worked and where it has not.

DR BOURKE: I note that in volume C you register your opposition to the introduction of mandatory sentencing. I presume you are only referring there to custodial sentences. For instance, the recent proposal that a mandatory alcohol rehabilitation program be undertaken for people convicted of alcohol-related violence would not be something that would offend you?

Dr Smith: No. We are thinking in terms of mandatory imprisonment only. Again, you have to ask: in principle, is it worth removing discretion from judges and magistrates? It suggests you are not trusting them to make the best decision. That may be a legitimate view to take but in any mandatory requirement of a magistrate or a judge, in some ways, it is the community saying, "We do not trust you to do the right thing." There may be circumstances where there is a mandatory sentence or requirement of some kind that simply is not appropriate.

DR BOURKE: This is in the context of the 70,000 cases of alcohol-related violence a year in Australia, of which about a third are domestic episodes, and the fact that in the ACT we already have a mandatory requirement for alcohol awareness training or rehabilitation training for people who have been convicted of high-end drink-driving offences?

Dr Smith: I think awareness training is one thing. Residential requirements for four weeks, six weeks or three months in a rehabilitation centre is another. They may be quite appropriate sentences in any given case but to make a particular residential requirement mandatory is taking the risk that it will be inappropriate in some cases. It is up to the community, I guess, and the Assembly to judge the risk.

THE CHAIR: We have been asking questions of you, Dr Smith, but obviously both of you can answer these as you see fit. My question to both of you on that is: you indicated your support of any diversionary procedure that keeps prisoners out of jail. Based on that premise, how do you feel about the needle and syringe program that is much talked about these days? Are you in support of that or not?

Dr Smith: We have discussed this several times within Prisoners Aid. We have a range of views from very much in favour to totally opposed. Our policy at the moment is not to have a policy. We work with the system. Having said that, a number of questions have been raised in our discussions in which both streams would like to know the answer. For example, is it a needle exchange program only in that you have to produce a dirty needle to get a clean one? If you do not have a dirty needle, how do you get a clean one? What will be the position of custodial staff? Will they know who is collecting a clean needle in exchange for a dirty needle and how does that square with their duty to find any contraband, drugs, whatever in the prison? On these sorts of practical implementation questions, I think it would help very much to have some clear answers. It would help both sides of the debate.

THE CHAIR: Like you, I guess the rest of the community is also fairly deeply divided on the pros and cons. One of the issues that people bring up is the fact that there may be an opportunity for people to try to get off drugs while they are in a confined space or confined area. I guess that is where certain sections are supporting it. Obviously we cannot give you any answers on that.

Dr Smith: There is, I believe, a therapeutic community within the prison, which is for people who want to make an effort to get off drugs, and it has had some success.

Dr Turner: If I can add to that, our concern is to protect the innocent. Our concern is that if there is any doubt on those issues, we are probably best not to institute the system.

DR BOURKE: As a supplementary, in Prisoners Aid have you had much experience dealing with prisoners who have acquired hepatitis C or HIV whilst they have been in prison?

Dr Smith: I have certainly come across former prisoners who have hepatitis C. I have never been able to be sure where they acquired it. Often their lifestyle before prison was such that they were at risk. They might have acquired it within prison. I simply do not have any data.

DR BOURKE: And that would be a concern?

Dr Smith: It is certainly a concern, yes. With any kind of disease or illness that is

contracted within the prison, the prison and the community have a duty to try to minimise the risk.

THE CHAIR: I have a supplementary before I go to you, if you do not mind, Ms Porter. My supplementary is regarding the question we have been talking about—drug related. I understand that your organisation is looking at assisting people ordered by the court to undertake drug rehabilitation within or outside the ACT and that you are trying to get some funding to have a vehicle or vehicles. How are you going on that basis?

Dr Smith: We recently considered the question of the vehicle and basically decided that it is a bit too expensive—too expensive to park in Civic, anyway, which is where it would be needed. But on the question of getting people to rehabilitation centres, we have been doing this for years. The magistrates will order someone to attend a rehabilitation centre, which might be anywhere in New South Wales. There is absolutely no provision to get the offender from the Magistrates Court to the centre. Somehow they are supposed to make their own way. We have for some years provided funds; we have usually bought bus tickets for them, taken them to the bus station, put them on the bus and hoped they got off at the other end and headed straight for the rehabilitation centre.

THE CHAIR: The name of this program—is it a program? It is the Court Assistance and Referral Service, CARS.

Dr Smith: Yes.

THE CHAIR: So it is a court-assisted referral service, but there is no assistance given in terms of a vehicle; is that right? You do not have a vehicle?

Dr Smith: We do not have a vehicle, no. We believe we have a need for it, but not the funds at this stage. Quite often there are people who come out of the courts who have got nothing, or no money. We can give them bus tickets, but they can be highly stressed, and the option for one of our staff members or one of our volunteers to drive someone home and have a bit of a chat to them would be very useful.

The other thing we do—there is a fair bit of traffic between our office in the Magistrates Court and AMC. We have two staff members. They go out at least once a week for various reasons. And also a car would be useful to help our volunteers to get out there. Travel for them, if they do not have a car, is often very difficult.

THE CHAIR: These are people who are outside the prison system—the ones you assist?

Dr Smith: Yes. It is anyone in need in the justice system, in the Magistrates Court. They can be offenders or those charged with offences who might not be convicted. They can be under stress; they can be in difficulty.

THE CHAIR: So there are prisoners within the confines of AMC who would also fall into this program? Or is it that once they are in there they are taken by court-appointed officials or prison guards?

Dr Smith: We identify four programs, really four areas, in which we operate. One full-time staff member and our half-time staff member really work across those four things. They go regularly to the prison and talk to prisoners. They help prisoners on their release. Quite often, released prisoners, some time after release, come into the court office because they are having problems—they have run out of money or whatever. We can help or refer them to other agencies. Our staff help with families and all the other matters that arise in the court. And it is the same with our volunteers, particularly the more experienced ones, who do things across the board.

THE CHAIR: Have you sought government funding for this program?

Dr Smith: We get funding from ACT Corrective Services and from the community support program to the tune of about $160,000 a year. That covers 1½ salaries plus all the administrative costs—insurance and so on—plus cash support for those in need. Generally we now give essentials cards rather than cash. We run a pretty tight budget.

THE CHAIR: Ms Porter.

MS PORTER: I want to go back to periodic detention, which I think we have briefly mentioned at some stage while you have been here. Yesterday, we heard from some witnesses who were actually here to discuss annual reports with us, so they were here for a different purpose. They talked about periodic detention. One of the reasons why they believed that it does not work is that they do not get enough time with the person for the rehabilitation program to really kick in. The other reason, we heard from another person, was that sometimes people who are sentenced to periodic detention are really people who are not suitable for it, and that causes issues in the community.

I would like you to comment on those two assertions, but I would also like to say that we also heard—correct me, members of the committee, if I heard wrongly—that people who were already sentenced to periodic detention will continue on in that program until it is complete unless there are only one or two left, because it might be not economically viable to keep running the centre for one or two. There are some long-term sentences still outstanding which may necessitate some redirection, but mostly the people currently in the situation will continue on for a period of time at least and there will not be any need for any other arrangements because their period will come before the centre is closed; their period will finish before the centre is closed.

Could you comment on those two points that were made by our witnesses yesterday, please.

Dr Smith: I think it is true that rehabilitating courses are very difficult in periodic detention. They are difficult enough in AMC, because you cannot get enough people to make the course viable even if you have got them full time, because people are obviously coming in and going out. It is much more difficult under periodic detention. There are reports that really nothing much happens, that it is just filling in time and the punishment is that people are made to sit around for two days and cool their heels. That is unfortunate. It is also expensive, because staff have to be paid for weekend work, and I suspect that it is not popular amongst staff and that people take it on only

because there is a bit more money in it. It is not the best thing. So we are not necessarily arguing with the ultimate decision to get rid of periodic detention. It is more that when the government announced it, it was not really clear why it was doing that and what would happen to the 79-odd cases a year of people sentenced to periodic detention. That is perhaps where the intensive corrections orders might come in as a substitute for that.

Sorry; what was the other question?

MS PORTER: The other aspect—and if you want to make comment, Dr Turner, please do—was about people being sentenced to periodic detention when the offences that they had committed are not really suitable for that because of the nature of the offence that they had been sentenced for.

Dr Smith: It is really a matter for magistrates and judges, to be taken up with them.

MS PORTER: But that is just a reason, it has been suggested to us, why it should cease.

Dr Smith: It would be interesting to see any recidivism figures for those who have been through periodic detention. I cannot recall seeing any.

MS PORTER: I cannot either.

Dr Smith: But you would have to be very careful about how you used those figures. It would not be fair to compare them with those sentenced to full time in prison.

Dr Turner: We hear a lot of anecdotes. Generally they are negative. We hear a lot of stories about people sitting around playing cards for two days. So it is very hard for us to generalise on a lot of these issues. We can tell stories and point out problems, but to say that it is because they were the wrong types of people doing it or for whatever other reason it has occurred, that the right people did not turn up to run the course—I cannot tell you why.

MS PORTER: I think it is more the point that they are only in detention on the weekends and they are doing other things during the week.

Dr Turner: That is part of it.

THE CHAIR: That brings us to the end of our session. There is a final opportunity for you to say something briefly if you want to. The inquiry we are conducting is into sentencing. If there is anything else that occurs to you that represents your point of view and will better inform our committee, we would love to hear that either now in terms of a final comment or by putting in further thoughts that may come to mind.

Dr Smith: Thank you, Mr Chairman. There is nothing I would want to add at the moment. We will be reporting to our members, and they may come up with comments and questions. We will certainly get back to you if anything significant comes up.

THE CHAIR: Thank you both for coming in this afternoon. The committee secretary

will be in touch with you regarding questions on notice that may arise and will also forward you a copy of the transcript of this hearing for your consideration. Thank you for appearing before the committee today.

The committee adjourned at 3.30 pm.