



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

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

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 11.35 am.

PUTT, DR JUDY, Official Visitor

WHETNALL, MS TRACEY, Indigenous Official Visitor

THE CHAIR: Good morning and welcome to the fourth public hearing of the Standing Committee on Justice and Community Safety for our inquiry into sentencing.

Today the committee will hear from Dr Judy Putt, Official Visitor, for the purposes of the Corrections Management Act, and Ms Tracey Whetnall, Indigenous Official Visitor, for the purposes of the Corrections Management Act. Before we start, I would just like to note that today's hearing is being recorded and will be transcribed and published as a record of today's proceedings.

I am just wondering whether you are aware of the privilege statement that is before you. You have read that? If not, could you have a look at that?

Ms Whetnall: Yes.

THE CHAIR: If you are comfortable with that, I would like to welcome you to our meeting here this morning. Would either of you like to make an opening statement?

Ms Whetnall: I do not know. It is a bit hard to do that, I must say, not knowing what you want to ask us.

THE CHAIR: We are happy to go on to questions.

Ms Whetnall: Yes.

THE CHAIR: As a simple courtesy, we normally ask whether you want to give an opening statement. But you do not have to.

Dr Putt: I think I would like to leave that till the end.

Ms Whetnall: Yes.

THE CHAIR: Certainly.

Dr Putt: And see what questions you have first.

Ms Whetnall: Yes. That might be better.

THE CHAIR: That is fine. I will start with a question which I will put to both of you. Are you able to make some general comments and observations about the situation of the offenders who are at the AMC that will help the committee to understand the implications of sentencing in practice?

Ms Whetnall: So the implications on them, you are asking?

THE CHAIR: Yes.

Ms Whetnall: What do they say about that sort of thing? You do see out there a lot of times where there are very minor offences—of course, it is very rare that it is the first one; maybe it is the second or third—and most of them always believe they are hard done by and there could have been other options as well. You often do hear that. You think about the overcrowding at the prison and you think that it partly might be true.

I definitely believe in some cases it can start from the policing point of view when they get certain Aboriginal inmates. Aboriginal people tend to respond to police—or react, rather than respond—and sometimes some police react to Aboriginal people instead of responding. I think something small can then get out of control, and that is why half of them return constantly as well.

They always think that as soon as you are in there and you have served time, you are sort of marked by the police, and the police know who you are, so you cannot even sneeze without getting picked up. They say things like that. I still believe there is a bit of that hidden. No matter how much work you do, it is never going to go away, but that hidden racism in there still carries on, I think. But not with all, I believe. I do not know. It just seems to be minor offences and being locked up constantly, whereas I think it can be dealt with in many ways.

There are quite a lot of detainees out there with mental health issues. They do not need to be at the AMC; they should be locked up in the psych ward. But quite often we have not got that psych ward—which will change soon, I am hearing. But, yes, some of them should just not be in the AMC. But their crime has them in there, and I get that.

THE CHAIR: Maybe I should have asked this at the beginning. We do have terms of reference. Are you familiar with our terms of reference—what we are looking into? Would it help if I read a couple of paragraphs out for you?

Ms Whetnall: Yes, that would be good.

THE CHAIR: To refresh your memory on it?

Ms Whetnall: Yes.

THE CHAIR: Because generally when we have witnesses, the witnesses come further to a submission that they have put in. You are in a slightly different category, so I will just read a couple of paragraphs from it. Under our terms, the committee will inquire into sentencing practice in the ACT, its effects and implications, including the law, legal doctrine and rationale of contemporary sentencing practice, comparisons with other jurisdictions, rates of successful appeals regarding sentences, and timeliness in handing down decisions.

The committee will also consider ways in which contemporary sentencing practice in the ACT affects other parts of the justice system, including the courts, Corrective Services and the Alexander Maconochie Centre, ACT Policing, the legal profession, victims of crime, offenders, and community support organisations. In particular the

committee will consider the practice and effectiveness of current arrangements in the ACT for parole, periodic detention, bail, restorative justice and circle sentencing, and will consider alternative approaches for sentencing practice in the ACT and other relevant matters.

So that is just a bit of background on the committee's work, Dr Putt.

Dr Putt: My background is as a criminologist, so some of those questions I would like to answer as a criminologist, if I had done the kind of research that may be able to answer some of those questions, but I am not here as a criminologist and—

MRS JONES: Sorry, Judy, you're a little hard to hear I am sorry. The mics are not great in this room.

THE CHAIR: And, sorry, one other housekeeping matter: when you first start talking could you please just give your name and position for Hansard?

Dr Putt: My name is Dr Judy Putt and I am the Official Visitor for corrections. I was just explaining that my background is in criminology; I am a research criminologist. Your terms of reference, I think, would be really important to look at from a research point of view, but I am not here as a researcher. So I am only going to contribute in terms of my observations and the sorts of things I have been told as an official visitor.

My understanding of the issues is somewhat circumscribed as an official visitor because we are there to ask about matters and issues and complaints in relation to corrections. So it is not as if we are inviting detainees to comment on sentencing practices. Broadly speaking, it is not often that detainees raise any direct issues, I find, around the sentence that they are serving; nor do we invite them necessarily to do that. If they do—for example, if there are complaints about what they see as the unfair nature of a particular sentence—then the advice would be given to seek legal assistance or aid around that concern.

So in terms of the implications of sentencing on the detainees, it is more from the point of view that I have been going out to the AMC since March of this year. As Tracey has already flagged, the most obvious impact is the overcrowding in the Alexander Maconochie Centre, which is just horrendous. The living conditions are very, very difficult and very stressful. Virtually everyone is two to a cell, and that applies to some of the women as well as the men.

Another thing that really stands out is the proportion who are remandees, which is quite high. The complications and the difficulties that are created through having detainees are the different kinds of classification in keeping them apart. As you are no doubt aware, remandees are meant to be kept separate from sentenced detainees but, due to the nature of the overcrowding, that does not happen, necessarily. And there are other quite complicated divisions within very broad classifications like protection and segregation that affect who can mix with whom. That really circumscribes the sorts of things that people can participate in, how much freedom they have and how much access they have to amenities while they are at the Alexander Maconochie Centre.

There is another implication of the sentencing practice. There seems to be—you would probably know this better than I—an increasing number of long-term detainees in the Alexander Maconochie Centre, people who are there for a very long time. Some are there for life, and that poses considerable difficulties from a management perspective and for those detainees themselves. Where they are housed and how they maintain a sense of resilience, I suppose, can be particularly challenging when you know you are there for a very long time.

Some, or at least one that we know of, kept himself going through court challenges through his engagement in legal processes. He was recently released, as you know, but that was the way he managed to survive, I suppose, in difficult circumstances.

Another issue that has come to my attention is the anxiety surrounding whether people will get released through the sentencing advisory board process. Quite a lot of the sentenced detainees in AMC know they have to go before the board, and that uncertainty, as we know with any kind of parole, can cause considerable worry.

The opportunities for early release prey on detainees' minds and it is not always clear in what circumstances that can occur for detainees. I know one particular woman at the moment who would like to get weekend leave because her partner is dying, or is very unwell at least. Because of immigration complications it is not clear whether that will be possible.

Another factor that I have got listed here is mental health concerns and the ability of some of the detainees to understand properly what is going on and to cope within the AMC environment, and that is complicated by substance misuse. That was my list, just in a general sense.

THE CHAIR: You both mentioned mental health has being at the top of your list. What percentage, roughly, of the people you are dealing with have the mental issues that you refer to?

Ms Whetnall: I would say 80 per cent.

Dr Putt: I would be a bit more conservative around that. I think it is hard when a lot of people, when they first come in at least, have a lot of mental health problems because of substance misuse. With psychiatric diagnosis, having an illness is quite a different thing from thinking that someone is having a mental health issue. So I would say, yes, probably 60 to 80 per cent when they first come in, but, depending on how they deal with not necessarily having the same level of access to drugs that they had on the outside and the kinds of health services they may receive once they are in the AMC, that would reduce substantially.

But there also people, I suspect, who have more of what I could consider an intellectual impairment. I have not seen a survey that assesses the proportion but there are certainly some people, either because of low educational outcomes at school and substance misuse and/or having some kind of impairment anyway, who do not seem to be travelling terribly well.

MRS JONES: I have a supplementary. Maybe Mary has one too.

MS PORTER: I do.

THE CHAIR: Ms Porter.

MS PORTER: Mrs Jones asked first.

MRS JONES: That is fine. I will cover it.

MS PORTER: My supplementary is back with Ms Whetnall. In relation to attitudes of the police, do you believe that there could be some benefit from some additional training about relationships—for instance, how to deal with the reaction of a person when you are apprehending them or speaking to them about a supposed offence? If someone commits or appears to commit an offence and the police then challenge that—and you are describing some kind of reaction that may go on between the person who is then challenged and subsequently the police’s reaction to that—do you think additional training for the police would be helpful?

Ms Whetnall: Definitely. I will give you a bit of context as to where I am coming from. I did 15 years Aboriginal cultural awareness training with the AFP here in Canberra and I got to know a lot about how police think and how they work with Aboriginal people. I was on justice committees and I have been the Aboriginal official visitor for nearly four years at the AMC. I think there is a really deeper relationship than I ever expected coming in. I hear a lot of stuff that most people do not hear. Yes, a bit of that always comes with it. I get it and I understand why it happens; you are never going to completely get rid of it. But in this day and age they go online as far as I am told, Ms Porter, and do it online. They do not get that face-to-face stuff anymore. You are never going to get rid of it but—

MS PORTER: Sorry to interrupt you, but are you suggesting that the training is online rather than face to face?

Ms Whetnall: Yes. Over these last couple of years that they have changed it, it has really had an effect.

MS PORTER: Thank you. That is good.

THE CHAIR: Mrs Jones, a supplementary.

MRS JONES: I want to ask a couple of things about the overcrowding. Has that now extended into the women’s area, did you say? I think that is a change.

Ms Whetnall: Close to. Not yet; close to. I was there on Friday. I am a Galambany circle sentencing panel member, so I can talk about that as well. I do not think that is happening as yet, but it is close to it. In the isolation area of the women’s area, they have never had many, but that seems to be full now. I have seen them moving women around, like on Friday afternoon when I was there. So, yes; it is coming close to it.

MRS JONES: I am not sure if the increasing jail size is going to include the women’s area, but we will be able to find out, I am sure. Also, Dr Putt, in relation to the tension

that you talked about, and the overcrowding issue as well, we have heard before, in similar committees, of circumstances where one of the problems with the overcrowding is that the tension rises, and the fear is that eventually something might happen as a result of people feeling stressed, particularly if they came into a facility that was not as full and then they have had to live with a change. How would you say that, on the ground, the tension is feeling at the moment? Obviously there are some tensions that are always part of prison life, but would you say things are increasing? There are obviously buildings coming, but can you give us some info on how it feels on the ground?

Dr Putt: In some respects my sense is that it was worse in winter. Have you been to the Alexander Maconochie Centre?

MRS JONES: Yes.

Dr Putt: It is worse, obviously, in the sentence units where—

MRS JONES: The cottages?

Dr Putt: Not the cottages, because they manage to go outside.

MRS JONES: The central area, yes.

Dr Putt: It is where you are either in a cell or essentially in a yard surrounded by bars. You have got the two remand units that are like that and the two sentence units. Then you have got the management unit, which is even more confined in terms of space. You can have, say, 30 people living in a confined area with very little access to opportunities to go out on the oval—unless you are participating in programs or education to be outside of that space—being with the same people day in and day out and also sharing a cell. That means that you have very little privacy. I am sure the challenges of a small jurisdiction where a lot of people know each other have been drawn to your attention before. So a lot of the tension might be more to do with who happens to be housed in one area together.

MRS JONES: Yes.

Dr Putt: Of course, that will be amplified if you are stuck together, stuck in the same place with the same people. I know that correctional services operational people endeavour to risk assess and try and keep people apart who have a history of not getting on, but that is not going to stop flare-ups, which is why you will end up with the management unit often full and a very high proportion of detainees on protection or some form of protection.

MRS JONES: From each other?

Dr Putt: Yes.

MRS JONES: Finally on that, this is obviously a newish facility and the whole intention was to build something that avoided some of the pitfalls of prisons in the past. From what you were discussing, with people feeling kept in the dark and so on, perhaps there is still a long way to go in having systems that essentially empower people to be fully understanding of their circumstances, what their chances are and so on, within the prison system.

Apart from better exercise yards, more exercise yards or something like that, particularly for those who are in the management area, is there anything else that you could imagine would improve the flow of information? I wonder if it is necessary that because someone is incarcerated they should not have full information about what their chances are of getting early parole or what have you. Do you understand what some of the blocks are or is that too far outside of—

Dr Putt: In terms of more information, literacy levels are not high. To enable people possibly to feel more engaged in their circumstances or to be thinking about what they could do could be encouraged through, for example, participation in various kinds of programs, but there is limited access to those. In theory, correctional staff are encouraged to play a case officer role with a number of appointees; they have a caseload. But in practice, I do not think they have the time or the environment is not suited for them to do that.

MRS JONES: So with a lockdown, it is to an extent a staffing issue?

Dr Putt: My priority, I suspect, if I was running the AMC, which obviously I am not, would be to seek more resources but to create an environment where more staff can be working at any one time. At the moment, as I understand it, you are not allowed to put on any extra staff, knowing that some will report in sick, so there is always a shortage of staff, which has an incredible flow-on effect in terms of getting people to medical visits outside the centre and getting them to courts. There is one person at the moment who has a critical job at the AMC as an activities officer; that person organises access to the gym and the like.

MRS JONES: And if they are sick—

Dr Putt: It is not so much if they are sick; if anybody else is sick and they are short staffed, to try and reduce the number of lockdowns, the operational priority is to take that person off as an activity officer and have them doing whatever job the sick person would have been doing. There always seems to be a shortfall of staff.

THE CHAIR: We do have time constraints, so we might have to move on.

MRS JONES: That is all right. That can be my substantive question.

Dr Putt: That is not a sentencing issue as such.

MRS JONES: No, but it can form part of our suggestions to government—that sentencing works better when the prisons are better staffed.

THE CHAIR: We will move on to Dr Bourke for his substantive question.

DR BOURKE: I want to talk about your role as official visitors, within the context of sentenced prisoners and sentencing. Is the primary role mediating or acting as an advocate for prisoners?

Ms Whetnall: Mediation; sometimes as an advocate.

Dr Putt: It is not particularly well defined in the legislation. We obviously do not have any power to insist upon, for example, an investigation of any matter that may be brought to our attention. We are conscious of the fact that matters that may be discussed with us or complaints that are made are only one side of the story. We certainly try and make it clear, with the commissioner or whoever raises that concern or makes that complaint, that as long as they are happy for us to mention them by name, we will take that up, usually with senior staff, the appropriate senior manager, within the AMC. We then hear their response and either relay that back or there may be additional work that may be required to find out what might be going on.

It is more of a communication role sometimes, I think. It is certainly not an advocacy role, I do not think. With the exception of taking a very broad definition of an advocate, we are there to make sure that things are travelling along okay. It is like the canary in the mine: if we are not seeing or hearing anything terribly awful then that is a good sign. So we are an advocate in terms of the collective wellbeing of the people in the AMC.

DR BOURKE: What about your role with the minister?

Dr Putt: I am mindful that Tracey has more experience than me.

Ms Whetnall: More of an adviser. He likes to touch base a couple of times a year, just to see how things are going, and to see whether I want to talk about any issues in particular, which I usually do. I raise a lot of issues with him. Usually about twice a year, he asks me to come in. So that has been pretty useful.

THE CHAIR: Could I ask a supplementary on that? Do you have the opportunity to make recommendations to the minister or to the administrators that you are dealing with on how to better define your roles in order to do a better job? Is there an opportunity for you to give that sort of feedback?

Ms Whetnall: I would say only through the Public Trustee, who looks after us. We have a whole lot of ACT official visitors, and we do a lot of that sort of stuff in meetings with them as well.

DR BOURKE: So would the description of an official visitor as the eyes and the ears of the minister in a closed, locked-down environment be a reasonable description of your understanding of your role, as well as the mediation complaints?

Dr Putt: I do not want to make too big a claim. There are only two of us, and I go out only once a week. Certainly, I would see our reporting every three months as an opportunity to give an independent view of how things are going, but I would not

want to give the impression that it is comprehensive. It is very much influenced by what you hear and see as you are visiting the centre. I would not pretend to be across every policy or operational dimension of what happens at the AMC. As I see it, it would be an additional independent view of what is happening that the minister can consider as he sees fit.

DR BOURKE: With respect to the informality of your role, with a fairly broad scope to look at and do things, do you think that is actually a strength of the position or would you rather see something much more constrained and rolled up?

Ms Whetnall: I would say it is a strength because I have liked that flexibility since I have been here. I sometimes think I take things up that maybe I should not, and it gives me a chance to hand it into the ballpark of someone else who is supposed to look after it. That gets things happening as well, so I think that is good. I believe that I have a really good relationship with the detainees that I visit. The field staff, the case workers and liaison officers have changed a couple of times, whereas I have not. I have been the consistent one for four years, so I think that helps as well.

Dr Putt: I do think the flexibility and some of the looseness surrounding how you actually do the job can be a great asset. However, personally, I sometimes find it a little frustrating. I would like to have a more strategic role. That is something I would like to see, and that reflects my background. I am mindful that I am not going to be in the job necessarily forever; others like Tracey do the job, and others will follow me. But I think there may be opportunities for me to do more of the kind of work I would like to see in the future.

MRS JONES: What do you mean by “more strategic”?

Dr Putt: At the moment we primarily rely on what individual matters are raised with us, what we may or may not see and what we may or may not discuss with correctional staff. For example, there was a recent Auditor-General’s inquiry into the rehabilitation of detainees out at the AMC. As an official visitor, I would not mind taking a theme in relation to rehabilitation and maybe once or twice a year holding workshops or some discussion forums within the AMC with some detainees. There is very little opportunity to talk about some of the big picture issues with detainees.

MRS JONES: To get their feedback in a more formal structure?

Dr Putt: To get their feedback. Tracey and I have the advantage of at least being familiar with the environment. We are often familiar with—certainly, Tracey more than me—many of the detainees. They may open up to us in a way that would not happen when an outsider comes in and starts asking questions.

DR BOURKE: What sorts of barriers are in place at the moment that would prevent you from doing that?

Dr Putt: In my case? Time.

DR BOURKE: Your time?

Dr Putt: My time. I feel that would need to be something to be discussed and worked out very carefully with key people within the system. I am certainly not in a position to do that.

Ms Whetnall: I would say rules. With the Aboriginal detainees, for example, one of the most therapeutic things they do in there is art. There are huge issues at the moment with canvasses. I know there are budget constraints. I said that I could get plenty of donations and get them in. But if we do that then other detainees are going to have their noses out of joint and it looks like favouritism.

Going on from what Judy was saying, I get that flexibility. The guys sometimes ask me to take up some issues for them—around the art program; around Aboriginality, which is the biggest thing I hear about in there—a bit further than anybody else would. I have, and I continue to do that. My role is a little bit different because I have a smaller number, which means it is a bit more intimate in different ways. Judy has so many more detainees to see.

Dr Putt: Yes, 350.

THE CHAIR: We might move on to Ms Porter for the next substantive question.

MS PORTER: You mentioned before, Ms Whetnall, that you have a role also in circle sentencing. I understand that they are two different roles, but in your work at the AMC do you notice any difference between people who have gone through that process, and arrived at the AMC through that process, and the people that have gone through the normal courts and arrived there? Is there any noticeable difference, do you think? Do you get any feedback at all from prisoners?

Ms Whetnall: I do, with some. I do not always get to see them. I am very close to some of them and I excuse myself from their panels. There is a bit of a conflict there. Sometimes they tell me too much detail and I think I should play it safe and take myself off that circle.

I have certainly seen lots of excellent results during the 10 years that I have sat on the Galambany circle sentencing; I have seen some excellent results. I wrote it down after you were talking before; I find a lot of our detainees are still finding out about the circle sentencing from other detainees. Then they find out that I sit on the circle and they ask me quite a lot of questions. At the moment there seems to be a breakdown with the solicitors. One man in there at the moment has been on remand for six months; he wants to plead guilty and he wants to go in front of the circle but he has no-one to do that for him. A lot of our solicitors refuse to come out to the AMC and see the detainees because they do not want to be iris-scanned. Now they have a thing set up so that they can do it on TV—Skype or whatever you call it—and they do that now, which is a better option. Hopefully, that will improve and we will get more.

I think more of our men could go through, in particular, and the women could go through the circle, but it just takes so much time. Sometimes they get out quicker in

the mainstream because the circle only happens once a month. There could only be four or five circles for that one month. You might have to wait six months to get on it.

MS PORTER: Why is there a long gap between the circles? Is it because there are not enough people like you who can sit on the circle sentencing, to actually undertake it, or is it because they do not organise it enough times?

Ms Whetnall: No, it is organised but there is only ever the one judge that will do it, and she can only dedicate one day a month. Sometimes she dedicates two days a month.

MS PORTER: So it is a shortage of—

Ms Whetnall: Of judges that will do it.

MS PORTER: judges rather than anything else?

Ms Whetnall: Yes. There is only the one.

THE CHAIR: Mrs Jones, a substantive question?

MRS JONES: No, I am fine.

THE CHAIR: I will defer your question to Dr Bourke.

DR BOURKE: One of the recent things that the minister has been talking about is the short-term success that is coming out of the throughcare program. I think a recidivism rate of something like 12.5 per cent was quoted, which compares with the annual report, which says that the rate of return to custody is around 41.9 per cent. So that seems to be, in the short term, a very successful program. Do you have any thoughts that you could share with us about the throughcare program?

Ms Whetnall: I have only had one recent incident. I am still trying to actually understand what throughcare can and cannot do. What I learnt about it mainly comes from the detainees and I have since found out their expectations of what the program does are up here. They expect a lot and it is not necessarily what they are going to get. A recent one is from talking to a detainee right up to the day he got released and there was nothing in place. I have since learnt from other people that his expectations of whatever he was going to get were too high. Yes, I have only had that one experience, to be honest, and I still do not know a lot about it and what they can and cannot do.

Dr Putt: A couple of detainees have said very positive things about their experience with throughcare prior to release, the interest that has been taken and the arrangements that seem to potentially be put in place. But that is before they are released. I do not know what happens when they get out. As we know with recidivism measures, watch and see for another year or two and see how we travel. But it does sound very promising at the moment, and certainly once upon a time, in the 1960s, there was a lot more emphasis placed on throughcare. So it is great to see that it is back on the agenda.

One issue that was raised with me was whether someone had to apply or fill out a form for the sentencing advisory board six months prior to their consideration before the board, and throughcare does not usually get involved until three months before that date. As throughcare, as I understand it, can play quite a crucial role in terms of assistance with accommodation, which is something the board looks at very carefully, it was felt by this particular detainee that things were back to front and that throughcare should have been talking to them earlier before the board form had to be completed.

THE CHAIR: I have got the next question for both of you to comment on, if you would. The committee has heard evidence that a significant part of offending takes place in connection with the use of alcohol and other drugs. Can you comment on how this is managed at the AMC and how things are going in programs provided to deal with alcohol and drug use?

Ms Whetnall: Only through the TC program. I have seen some excellent results through that, but not everybody wants to do that or not everyone can get onto that program. It is very strict, from what I have experienced. They are very strict to get into there. Probably a little more on the ground would be good, but there are a lot of programs that they attend—anger management and things like that—that they do not always tell you about. But in relation to drugs and alcohol, if it does not happen in the TC area, you do not really ever hear what happens.

MRS JONES: What is “TC”, sorry?

Ms Whetnall: Therapeutic community. Is that what they call it? Yes, it is TRC out the front. They are very isolated from everyone else. They do not get to mix with any other detainees. There are only them. It is very intense.

MRS JONES: Are they staying, residing, in an area together?

Ms Whetnall: Yes.

Dr Putt: It is near the sentence cottages. It is that sort of fenced-off area.

MRS JONES: To really work through drug issues?

Ms Whetnall: Yes. Again, I have seen some great results out of that. I am watching someone out the front now going through it and just having private conversations with him and I have got really high expectations for him.

MRS JONES: I guess that is a voluntary program.

Ms Whetnall: I am not sure, because some have to actually put in and hope they get on it. If they muck up, they will get kicked off and they might get reconsidered to come back on again. I have seen that as well. But not enough get on it.

Dr Putt: I have certainly had a few complaints about not being able to get on the program, to be able to get into the therapeutic community. I did ask some months ago for some statistics on program participation and completion rates. I have not seen

those yet. My sense is that those programs can be available for alcohol and other drug dependency issues. I do not know how many detainees actually participate in those programs or successfully complete them.

MRS JONES: So it would be good to know how many do them, how many start and how many finish and whether that is a full program or not?

Dr Putt: Several detainees have expressed quite cynical views of their willingness to participate in such programs because it is something apparently the board is very keen to see and takes a lot of notice of.

THE CHAIR: Is there any prioritisation between short-term and long-term detainees who have access to this program?

Dr Putt: That is better asked of the people that are on the programs. I have not seen any particular pattern or been made aware of how they decide who goes on programs. An outstanding issue, as no doubt you are aware, is methamphetamine. There are a very high number of people in AMC who are receiving opiate substitutes—methadone essentially. But with methamphetamine—this is not peculiar to the AMC—there is increasing evidence of use but also of the harmful effects, and I do not think anyone has really worked out a good way to run a program for someone who is a chronic methamphetamine user.

MRS JONES: So the methadone program that is offered within the facility, there are issues with the effect of that substitute substance on the person?

Dr Putt: No. I am just saying if you have got a heroin dependency, for example, there is an obvious substitute that is tried and tested and that is offered within the AMC—methadone. But if your drug of choice is methamphetamine—and we know there is often multiple drug use—we know that methamphetamine seems to make people very unpredictable and very difficult and violent, potentially, but also that there is no obvious pharmacotherapy that you can prescribe for somebody who is a chronic methamphetamine user or self-assesses as dependent on it.

Ms Whetnall: I was just going to add that I have had some experience. I know a lot about methadone from family and stuff but I have seen it where people have come in and they have just been offered it, whether they were on it when they came in before, for back pain. And one detainee said, “No. I’m an alcoholic. I’m not a junkie. I don’t want methadone.” I have seen a long-term user, a female, in there get herself off it completely, walk out of there, come back three months later, unfortunately, and be offered it four times in three weeks. “You want it? You want it? You want it? You want it?”

MRS JONES: And she had actually got to the point where she was free?

Ms Whetnall: Off it, yes.

MRS JONES: Something we have discussed in some committees before is that there is not necessarily a pathway off methadone for those who are on it and that those who do have the courage and the strength to get to that position are not necessarily

supported, as you say. That is something we could possibly recommend some change around anyway.

Dr Putt: I just want to make one extra comment around that. Quite a few detainees have raised with me complaints about what they are prescribed for chronic pain because in the AMC they do not like to prescribe OxyContin, which is seen as something which is a tradeable commodity within the AMC. There are quite a number of detainees, as I understand it, who are being prescribed methadone as a form of pain relief not necessarily because of a heroin dependency. I just thought I would add that. But that is an example of a complaint that we are not tasked to address. We pass that to the clinic, a complaint of that nature, because that falls within the health services remit rather than corrections.

THE CHAIR: Dr Bourke, your substantive.

DR BOURKE: Do you think most prisoners are aware of your role?

Ms Whetnall: No.

Dr Putt: I know the information booklet that detainees get has us mentioned right at the back, a couple of lines. I am not sure many people get through the information booklet. Not necessarily, given the literacy levels, would their reading a booklet be the best way for them to know about our role.

DR BOURKE: So improving the booklet would not make any difference, you think?

MRS JONES: Or putting it into a video presentation, potentially?

Dr Putt: I believe there is going to be an internal TV channel, within the AMC, which is going to have information about the AMC, and that might be an opportunity for us to show our faces and also talk about what we do. There is a notice that has gone up, I noticed, around the AMC about a month ago, in most of the accommodation areas, that just tries to explain the difference between an official visitor and making a complaint to the Human Rights Commission, the Ombudsman or the Public Advocate. That is a very simple poster. But, no, to answer your question, my sense would be that a lot of detainees would not really understand what the role is.

Ms Whetnall: I would agree. They do not. We have to continually explain that to them. "I'm not that. I'm not here to do your faxing for you. I'm the official visitor. I'm not here to ring your mother for you or your girlfriend." They do get a bit confused. Sometimes we have got to be the tough ones and say, "No, no, that's your case manager. You've got to speak to your case manager about that," otherwise we would get overwhelmed.

MRS JONES: Would there be a better way of calling it?

DR BOURKE: Do you actually have a schedule of regular visits to the women as well? And do you make unscheduled visits there?

Dr Putt: Sorry, what was the second part of the question?

DR BOURKE: Do you make unscheduled visits to the women's precinct?

Ms Whetnall: I do not necessarily have a particular day I go each week, because I run my own business. That day changes all the time, and I might say to them, "I'll be back next Wednesday," or, "I'll be back Tuesday afternoon." Every visit I try to drop in to see the women, yes.

MRS JONES: I have got a supplementary if Dr Bourke has finished.

Dr Putt: I go once a week to AMC. I do not get around to everywhere, necessarily, in the week, so I will try to make sure I get to the women every two weeks at least, as the minimum, in the women's area. And I do tend to usually go on a particular day, but I do mix it up a bit. Yes, there are unscheduled visits.

THE CHAIR: Mrs Jones, you have a sup.

MRS JONES: Have you had any thoughts on a way of describing the role to make it simpler for people to understand what it is, a better terminology? Official visitor is not something that is well known outside the prison and the Assembly. I just wondered if you have any thoughts on that.

Ms Whetnall: I do not know. For me, it works at the moment, but it could get confused because we have Aboriginal elders that come in and visit now. Whether that will get confused down the track, I do not know. But for me it works at the moment. It works for me.

THE CHAIR: Thank you both very much for coming in. We appreciate your input. If there are any other issues that you feel that you would have liked to have put to the committee and we have not had time to consider then we will be happy to accept any other, if you like, post submission from you if you so feel inclined.

Ms Whetnall: Okay.

Dr Putt: Yes. There was one thing that I was expecting to be asked about and have not been. It was about the periodic detention. I go out to the periodic detention centre once a week, and there have been no questions about that.

THE CHAIR: We will put something on notice to you on that.

Dr Putt: Okay.

THE CHAIR: You are also free to give us any further input that you think the committee ought to be considering. Thank you both for coming in. There will be a transcript sent out to you of what took place here today.

Ms Whetnall: Yes.

THE CHAIR: And if you have any issues—

Dr Putt: Can we change anything we do not like, if we think it is wrong?

THE CHAIR: You can correct any issues that you feel are wrong. Thank you.

Ms Whetnall: Okay.

THE CHAIR: Thank you both for joining us.

Dr Putt: No worries. Thank you.

CASEY, MR MATT, Professional Standards Officer, Catholic Archdiocese of Canberra and Goulburn

O'CONNELL, MR TERRY OAM, Director, Real Justice Australia

THE CHAIR: In the interests of time, you have 45 minutes. Are you comfortable if we extend the period to make it 45 minutes?

Mr Casey: That would be fine, yes. Can you just explain the protocols.

THE CHAIR: I will. Welcome to the fourth public hearing of the Standing Committee on Justice and Community Safety on the inquiry into sentencing. There is a privilege statement in front of you. If you have not appeared before a committee before, I suggest you read that. If you have, if you are familiar with the privilege statement and comfortable, we will go on from there.

Mr Casey: Thank you.

THE CHAIR: Would either or both of you like to make an opening statement?

Mr Casey: Yes. I will start if I can. I just want to mention that besides being the professional standards officer for the archdiocese, I am a consultant with Real Justice, so Terry and I have a close relationship.

I have to admit to being intrigued as to why you people are interested in restorative justice. I really get interested when people persist. For example, a recent study conducted by the New South Wales bureau of crime statistics reported that there was no significant difference between conference and court participants on a whole range of measures. Why is it that some initiatives in restorative justice start well but over time lose traction? And why are we told that restorative practice should not be applied to domestic violence or sexual abuse, when the experience is actually quite the opposite?

I suggest that the answer lies in the fact that restorative practice is both described and perceived as a process used when things go wrong. One only has to look at the definition provided in section 10 of the Crimes (Restorative Justice) Act 2004:

... *restorative justice* means the process of restorative justice provided under this Act, including a restorative justice conference under this Act.

Try and work that out and make some sense.

In the literature there is quite a range of descriptions, but in the main they also refer to a process. None of this even comes close to getting to grips with the essential ingredients of harm in relationships. Some try, but many, if not most, are implicit about the theoretical underpinnings.

Today I would argue that for restorative practice to evolve and move beyond a niche within a generally retributive or oppositional system, it needs to be described in explicit terms. At present it is short on theoretical sophistication and rigorous

empirical research, and limited in application, in acceptance and in resilience. Importantly, it lacks a clear definition, an explicit understanding of why it works, and a discourse linking theory to practice.

The problem, I suggest, is that we keep restorative justice in a box to use when the going gets tough. Could you imagine the coach of a basketball team introducing an entirely new defence to his players in a one-minute time-out with seconds left in the game when the other team had the ball? Of course not. The coach would stick to something that the players know well. While ever restorative justice is not mainstream and is restricted to relatively minor incidents, we, like the errant coach, are trying to do something that is completely at odds with our normal operating system.

Restorative has to be more than what we do at work. It has to be the way we do business across the community. It has to be whole of government. It really helps to have a theory so that we know what we are doing, we know why we are doing it, and we are aware of the evidence that it works.

I have handed you a copy of a chapter I co-authored on the psychology and emotion of restorative practice. The collaboration was prompted by Andrew Becroft, the principal youth judge of New Zealand, who argued that there needed to be a cogent and general theory to guide the research to validate the field of restorative practice. We argue that it is inhibited by definitions concentrated on process. More importantly, the lack of an unambiguous connection between theory and practice often results in restorative programs drifting away from explicit focus on harm and the importance of relationships in the community as the foremost predictors of wholesome behaviour. Restorative practice actually builds on why most people do the right thing most of the time. Guess what? The answer is about those closest to us. Thank you.

THE CHAIR: I just have a comment, Mr Casey. You have focused on restorative justice, but you are aware of our complete terms of inquiry, are you not?

Mr Casey: I am. I just wanted to make it clear where I am coming from when I talk about it.

THE CHAIR: That is fine. Mr O'Connell?

Mr O'Connell: Thanks very much. In many respects, it is a bit of déjà vu for me. It was the ACT that actually took up the initiative of introducing diversionary conferencing when, within my own police service, I could not get any traction. At the time, Terry Connolly was the justice registrar. It became the site of what was at that point the most significant bit of research into RISE, as it was called, the reintegrative shaming experiment.

I come to this from 30 years as a cop. In the late 1980s, I was looking for much better ways of engaging young people and their families. I appear before you today on a long journey of taking what was a discrete programmatic approach to dealing with offenders, victims and their families to a general explicit practice framework that has universal application not only in everyday life but particularly in terms of practice at an institution or bureaucratic level.

In my submission, I make two basic propositions, two proposals, that come out of a long journey of practice. In the proposals, one is called a restorative reporting centre, which is an integrated approach to dealing with young people. I am part of an international non-profit organisation that began in 1994 as a result of a visit to the US when I was on a Churchill Fellowship. A guy by the name of Ted Wachtel, who was the co-author of *Toughlove*, became interested and started an international organisation.

There were two proposals that I want to draw to your attention. The first is what is called the restorative reporting centres, which are about dealing with kids who ordinarily would go into detention, young people, but build a very comprehensive process around them, immersing them in what is called a restorative medium that involves families and significant others. The second proposal is what I call restorative probation.

I was particularly interested in listening to the official visitors talking about a range of programs. I do not know if time permits me to share some insights around that. Frankly, I think we are missing the point. Let me quickly give you an insight in terms of my practice. One of the issues that I have struggled with is getting practitioners to think about what they are doing that is working and is not working. When restorative processes come along, they become animated about it. I ask them: what is it you want to glean from restorative—what practice, what is it doing? In truth, they have never had that conversation.

Let me just drill this down in a very simple way. In my submission, I say a little about our practice. The problem with practice is that unless it is explicit, easily understood, able to be explained and able to be shared, it becomes problematic. The starting basis for me is to have a set of what I call working assumptions. There are basically four working assumptions. The first one is that relationships are what help us as social beings to define our identity and meaning. The second is—there is so much empirical research that shows this—that ultimately what makes the difference in terms of any intervention, regardless of the practice and the theory, is the strength of that relationship, at a professional level or otherwise. The third one is that the focus needs to be on creating the conditions in which individuals can learn how to establish and build relationships. And the fourth one is where I work very closely with Matt. He talks about having a solid theory. We have relied on the work of Silvan Tomkins, who describes the conditions for individual and collective wellbeing. It just happens to underpin everything that we do.

In relation to this issue about being explicit, what would good practice look like? Let me quickly capture the essence of what I think good practice is: being explicit; having a clear rationale about its philosophy, the assumptions and the theoretical underpinning; being able to predict and ascribe the likely outcomes—I heard the official visitors say they have had great success; I would love a conversation about what success looks like—being capable of delivering on those outcomes; and being easily explained and shared with those being assisted. And there has to be clarity of the role of practice in terms of what they have to contribute.

Silvan Tomkins simply says this. You will see in my submission that I have cited Professor Don Nathanson, who we have worked very closely with, who is a student of

Tomkins. He said that fundamentally relationships are best built when we observe three conditions. We share reduced negative emotion, best achieved by listening and acknowledging; we share and promote positive relationships through affirmation; and we have to create the conditions in which people can express those emotions, in other words, through story telling. Anything that creates those three conditions is essential for building and sustaining relationships.

It just so happens that in 1991 I developed a set of questions. In fact, I developed a script. You will notice in your package a set of questions that says, “When things go wrong, when someone has been hurt”. Basically, those questions provide a template which, if overlaid on Nathanson’s blueprint for building community, ticks all the boxes.

Why does this become important? I work across every sphere of the criminal justice system. There is a fundamental failure to engage. At the end of the day, if we do not understand the manifestation of behaviour that comes out of disconnection and alienation, and the central affect or emotion that underpins that—the affect of shame, which triggers why people use alcohol, why they engage in a whole lot of addictive behaviours—we are absolutely missing the point.

In summary, let me say that I have worked very closely with and mentored a probation officer in New South Wales who has taken practice to a whole new level—it is exemplary—from where he was 10 years ago to where he is today. Is there traction in New South Wales community corrections? Absolutely not. Why? Because it is typical of what happens in an addictive organisation: shoot the messenger. I have learnt an incredible lot from this guy, as he has from me.

I just happen to work across lots of different areas presently with lots of Indigenous communities. You know what? For example, in hearing about circles—true; notionally they all sound great. But the evidence is pretty problematic. The question that Matt Casey raises is: why is it, for example, that youth conferencing in New South Wales has not been shown to make a difference in terms of reoffending when it ticks all the boxes in terms of possibilities? It is to do with practice.

I guess what I am putting to you guys is that this is a radical, very explicit approach which says that unless we can get practitioners to be very clear about their practice, to be able to actually explain why it is they do what they do, to understand why doing it works, then, with the best intent in the world, engaging offenders and their families in this case is going to be a problematic exercise.

Let me finish with a quote from my colleague. I said: “You’re involved in lots of these programs. What ultimately is going to make the difference?” He said, “I frankly run on hope.” I said, “What do you mean?” He said, “I hope it works.”

THE CHAIR: Thank you to both of you for your opening statements. Just for the record, we should underline the fact that the terms of reference our committee works under touch upon a whole host of areas. I just want to make sure you are aware of that. I think you have indicated that.

Thank you for the submissions that you have put in. Generally we look at the

submissions before we listen to people.

Mr Casey: I appreciate that.

THE CHAIR: So it is a little bit harder for us to ask the questions that we would like to have asked, had we had all this information before us. But I think you have given us a fairly good insight so I will pass it over to the committee for questions in a second.

The committee has received recommendations which suggest that restorative justice works particularly well for some categories of offender. Can you tell the committee about particular types of offenders and offences for which restorative justice programs are effective? Are there offenders and offences for which they are suitable? It is an open question to both of you to start with.

Mr Casey: Just on that, I think one of the problems that beset us around this is that when people think about restorative justice they get a picture of a conference, and you have got to have somebody who has done the wrong thing and they have got to be owning it and you have got to have a victim. I think the thing that gets missed is who actually makes the biggest difference in the conference. The really interesting thing is that often—in fact, a whole lot of times—it is not the victim. The ones who make the biggest difference are the people who are closest to the offender.

To give you an example, with a colleague I ran a traffic offender program in Goulburn that produced some very encouraging results. We worked restoratively. We did not run conferences, but we used the conference script. The interesting thing was to work with serious traffic offenders. People say, “Look at the RISE experiments. Look at the difficulties that were presented there.” So we did not try and do that. We simply had them introduce themselves and then we would ask randomly, “So what happened? What were you thinking about? What have you thought about since and who has been affected?” The interesting thing is, “No, I didn’t really hit anyone.”

So we would let that run for a bit. We would have that from two or three people and they would say, “Mum has had to drive me or the boss has had to pick me up and it has been difficult.” “So what did mum say when you got home?” And they would go, “I never heard the end of it.” “Really? Has that been the general experience?” Nearly all the heads would nod. Generally it is young men and sometimes older men and women, and for a lot of the women it is dad. And you go, “Really? So why do mums do all this stuff when we do stupid stuff like this?” And then they work out that it is because they are worried, and then all their heads drop and then you can come back and say, “But I thought you told me no-one was affected.”

What we discovered—really interesting too—was that, after mum, who was the next one that they really did not want to know about what they did? We had a man who was 34, married with three kids, who started to get a bit upset. I said, “Mate what is really hard?” He said, “I’ve got to go to court next week and my name is going to be in the paper and I haven’t told mum yet.” And then in front of all these other fellows he teared up and he said, “It is just going to kill nanna when she finds out.”

So we started to get focused on why we do the right thing most of the time, and it is

about our relationships and who is the last person in the world we would want to find out about it, and invariably it is the people close to us. What we discovered was that, once these people understood the impact of their behaviour on those closest to them, they really started to get it and it started to make a difference. So in my opinion it works for any crime. We have just got to get the practice right, as Terry said.

Mr O’Connell: I guess from my experience of facilitating hundreds and hundreds of conferences, the best evidence is a series of documentaries that I have been involved with, including murders and road deaths. I have been on *Australian Story* a number of times et cetera. I guess the most impactful was dealing with sexual crimes. I have been very involved with this institutional sexual abuse stuff. I recently put a submission to the royal commission. I was to appear. I was involved in advising the ashram, which is the yoga organisation. But there is not a category of crime that could not be managed. I have been on a long journey on this. The moment we started talking about family violence and sexual crime, there was all hell broke. And basically it was all driven by ideology. At the end of the day I was on the ground, working with real-life people who desperately needed someone who could engage and create a space for them to go to a different place.

That is the justice component of it. In the opening of my submission I cite the work of Re-Engage, a youth service agency in South Australia who I began working with five years ago. They had 12 employees; now they have 60. In 2012 they were recognised by BRW as one of 50 outstanding workplaces to work in. Recently they had to present at an international conference in Pennsylvania. They were plenary speakers. I have included the video of that. In fact, that organisation has integrated restorative processes in every aspect of their organisation, and that is ultimately what I have been on about. They have integrated it in a way where they are explicit in terms of how they build their collegial relationships and how they work with young people at risk. They have 450 young people at risk and their families. I am suggesting, if you guys are interested, replicating this restorative reporting process. It would be fantastic if one were to happen here and one in South Australia.

I know you talked about the terms of reference. I guess there are dimensions. I can respond by saying, “Yes, I have dealt with all categories of crime.” But to be honest, that is just a small part of its real potential. Matt talked about the fact that everyone thinks this is about a discrete process. It is not. It is about taking people on a journey where they can opt in and out, where we are just simply allowing them to understand what the hell is happening for them so that they can make sense of that. It is critical if they are to go forward. It has taken us a long time to work out how you engage people in a way that they end up having a different conversation. And do you know what is significant? It is about building relationships, building connections. Everyone in that detention centre or in your adult prison is desperately in need of connections, relationships.

We cannot even think about that and imagine that we are going to have myriad progress and are somehow going to fill the void. It simply is not. There is no limit to its universality. But the message I want to get across is that this is not about a discrete process. This is about a process of a respectful engagement that opens people up and that includes, for example, the probation officer that I have cited in there—and you will see some supportive materials there. He now looks at dealing with offenders in a

very different way. He actually will never talk to an offender unless he can identify a community of care.

I hear through throughcare that there are huge problems in terms of building connections. That stuff has to be a critical part of what happens at every point of the criminal justice system. At the end of the day the right conversation which creates connections and relationships is the guarantee that you are going to make a difference. In the absence of that, all the therapy in the world, with the best of intentions, simply ain't going to cut it.

THE CHAIR: I would like to push on with questions from the other members of the committee and perhaps things you want to say may be answered in some of the other questions.

DR BOURKE: If you have had a look at the restorative justice program that we have in the ACT, how would you describe the differences between it and what you are talking about?

Mr O'Connell: A significant difference. If I can make a claim, I was instrumental in framing that stuff. From what I have seen and my understanding of it, what is critical is that how the process is used. If we were to look at New South Wales as an example, they have trained up a whole lot of people who see this as a discrete, stand-alone process. The knock-on results are that it has not made any measurable difference in terms of those outcomes.

What I see happening down here—and I understand there are some really great people involved—is they are still operating within a limited framework. What I am suggesting—because I run training throughout Australia and the world around this stuff—is that they get to really understand that this restorative process is not defined or limited to restorative conference. That is just one of many other possibilities. It is about an engagement process that takes offenders, victims and their respective families on a journey where they may not even get to meet. What is important is to challenge this assertion that the difference is made in this restorative stuff when you bring victims and offenders together. Frankly, it is not. It is when the significant others are involved with either victims or offenders that the greatest difference is made.

There are many cases where people, for a whole lot of reasons, simply do not want to come together. They do not have a need. I have trained people throughout the world around this. For example, in South Australia it is the longest running, and they do a pretty fair job. But as for seeing it as a discrete practice with a whole lot of other possibilities, no.

Why I am saying this is that I have cited restorative probation as an example of where someone has integrated this. Re-Engage Youth Services in South Australia—these are youth workers and community workers who have integrated it in everything they do. I have worked with family workers. I have worked with social workers, and, in fact, they have fundamentally rethought their practice. That is what I am saying. The real benefit of this is when it is pervasive, where it starts to challenge the orthodox thinking and practice at a number of institutional and bureaucratic levels.

Let me give you a really good example of where this clashes. Many years ago I was invited to present at a youth conference in Orange in New South Wales. In fact, some of the earlier speakers were Barbara Holborow, the magistrate, and Father Chris Riley from Youth off the Streets. Just prior to lunch they had a woman running a hypothetical. They gave the scenario of a 15-year-old and his nine-year-old sister who were hungry and stole some food from Woolworths. Some of the background information: his mum was at home; she was comatose; she was an alcoholic. They had six agencies, and each agency gave a response. Immediately after lunch I made the comment to the group—and there were about 140 of them—that I was glad I was not the 15-year-old or the nine-year-old. And I said, “So why did I say that?” And there was deathly silence. I said, “You know what? What sort of responses do you give?” Not one of them talked about the young people; in fact, they were all institutional responses. “But the worst thing is you wrote the parent off—the one who is most significant.”

Honest to God, I said, “If that’s the best we’ve got on offer, we need to seriously step back and think about what it is about our practice that we cannot even respond to a simple scenario with two young people, and you’ve ignored the elephant in the room.” So I said to them, “I want you in your groups to sit down and think about the hypothetical and to reflect on a series of questions,” which I wrote up. I said to them, “How do you explain your practice? Why do you do what you do? Why does that work? What are the outcomes?” I asked them to start with the idea of what good outcomes would look like. And they were like that. And I said, “Guys, how the hell can you work in constructive ways if you can’t even have a conversation about what good outcomes look like?” That is part of the challenge.

Mr Casey: Could I just quickly respond there too. In the ACT I think there are something like 650 kids in out-of-home care. When I have a look at the way that we are dealing with matters, I come back to what Terry is talking about. If we think about restorative simply as something that is used in the criminal justice system, we absolutely miss the boat. When we ask the police officers about what their role is, 80 per cent of policing is actually about problem solving in communities.

Understanding that a restorative response is something you can do every time with every person you deal with actually enables police officers to do their jobs better. More importantly, if we start thinking about kids in out-of-home care, if we start thinking about the Mr Fluffy problems that are prevalent down here, if we start thinking about what a response is that brings people back into community, that rebuilds relationships, we start to think about something that really starts to make a difference across the board.

MS PORTER: I am not sure whether you had arrived when one of the official visitors mentioned that she thought one of the issues that we face, particularly with our Indigenous people, is that when they are involved—

Mr O’Connell: That is right.

MS PORTER: Were you here when she said that?

Mr O’Connell: Yes, we were.

MS PORTER: She said that when they are involved in an interaction between themselves and the police service, it could be that the policeman or policewoman perceives that there is some kind of offence going on or they may have already made up their mind that there is an offence. Therefore, the police officer made some kind of request of the other person or said that they were going to arrest them or whatever. She said that the Indigenous person sometimes has a way of reacting to that, which I interpreted as saying that was part of the cultural response. The policeman or the policewoman then has another reaction to the reaction, which is not healthy.

Mr O’Connell: Absolutely.

MS PORTER: And it tends, from what I understood she was saying, to escalate the situation.

Mr O’Connell: Absolutely.

MS PORTER: I asked her if she thought they would benefit from some additional training to assist them in their relationships when they go out on the beat and when they are having these discussions. And she said, “Absolutely.” She said one of the other issues that she saw was online training, which she felt was not effective. I wanted perhaps some comment around that, because people are going to get sentenced sometimes for an offence. They said often people are in the AMC because they have committed a minor offence but it has escalated. I assume that is what she was saying. Maybe I should not make assumptions, but it seems to me that she is saying that small things can become big things and then people can end up in AMC and they can be sentenced. So I would suggest one of the things we might want to look at is how we break that nexus and build better relationships, so that people do not end up sentenced and do not end up in the AMC.

Mr Casey: There is plenty of evidence—and it comes from Larry Sherman and Heather Strang’s research in Philadelphia years ago—that says where people are treated with dignity it has a measurable impact on their likelihood to reoffend.

Mr O’Connell: Tom Tyler, too.

Mr Casey: The really interesting part about that is that we want police officers to deal with people in a respectful manner not just because it is nice but because it actually reduces crime. One of the problems we have is that we do not actually get out and share all of that information with police officers. One of the things we found in the work we did together with the New South Wales police and the restorative justice group, in the backdrop of the royal commission, was that front-line cops are the last ones in the world that people get a lot of this important research to.

The other interesting thing about police responses—I was a police officer for a long time and, like Terry, a member of the police union executive—is that I would say that more than half of the times when somebody is charged with offensive behaviour, resisting arrest or assaulting police, the point you made was right: that it had less to do with what the person did and more to do with how the police officer responded.

One of the things that Terry has spoken about is Silvan Tomkins's work. The interesting thing is about understanding shame and people's responses to shame. What happens is the police officer speaks to the young Indigenous person, who responds in a way that is dictated to by his scripted response to shame. The police officer then engages in his or her own scripted response, and we have the situation that occurs.

At Goulburn Family Support Service and in the work Terry is doing now, we actually share the story and share the theory with all of our clients. Even people with intellectual disabilities get it and they are able to change a scripted response. Certainly, explaining this to police officers enables them to do their job a whole lot better.

Mr O'Connell: Can I tell you a very simple story about working in the St Paul police department in Minnesota and convincing a group of operational cops to take this little card with them. Their commitment was to have this card as a guide to shape every conversation. For example, when there was a break and enter, and when someone had been hurt, they would use, "What did you think when this happened? What impact has it had? Was it very hard?" They got so many positive responses, because they had created a different experience, that their supervisor said, "What in the hell's going on?" Do you know why they struggled? They could not deal with the emotion. The cops could not deal with the emotion because this opened people up to a different experience.

Here is the problem. The question you raised was about this being fundamental to policing culture. In fact, I am going to write an article about this, because I think it is really important. We imagine that somehow we address this issue of conversation that takes place. The work of Tom Tyler, which is in a book called *Why People Obey the Law*, shows what happens when a police officer approaches an issue by stepping back and understanding that there are high levels of emotion involved, and does not buy into that. When I worked as an operational cop and someone said to me, "You go and get effed," I would go, "Hang on a minute; you don't even know me. I'm actually not a bad guy when you get to know me." Their response was, "Jeez, I'm sorry about that."

Why am I saying that? I could tell you what the difficulty is, if I think of the New South Wales Police Service. John Avery, who was the commissioner, wrote a book called *Police, Force or Service?* And what has happened since? The name has been changed, and every day you see the commissioner standing with the police minister talking tough. Police officers are now kitted up with tasers and all the rest of it, and have lost the capacity to have a conversation. Why was that guy killed who was tasered so many times? It was because no-one stopped and thought about what in the hell was happening.

What you have identified is a fundamental problem that has not changed over time, but I think potentially it will get worse. A saying in policing was "the trifecta". Do you know what the trifecta is? Unseemly words, resist arrest, assault police. The great difficulty is—and there is a lot of truth in it—that what starts out as a minor matter escalates because it takes on a gravity that had nothing to do with the preceding issue. It could have been avoided, absolutely, through the right conversation.

I pay particular attention to this because I am working in the area of Indigenous communities in remote locations. The worst thing we can do is isolate the offenders from significant others in the communities. I am a critic of circle sentencing. Notionally, it is a great concept, but it is ill conceived in terms of its practices. Those in there who are significant Indigenous people do not have a meaningful relationship with the offenders.

MRS JONES: Mr Casey, are you here representing the church or are you here representing Real Justice?

Mr Casey: No, I am here in my private capacity, and in that capacity as a consultant with Real Justice. But it would not be fair either to the church, for whom I work three days a week, or to the Assembly if I did not disclose that I also have that role. I have appeared here before representing the church.

MRS JONES: That is fine. I was just a little confused. Can I ask a brief question—we do not have much time—about shame tactics within the ACT. I do not know whether you have done any work with ACT Policing, but it certainly has been my experience on the ground as a citizen, even before coming to this place, that shame tactics are used on a fairly regular basis in interactions with people. What would be your practical suggestions for changes in how police address first point of contact on the ground in a way that might actually impact on sentencing outcomes?

Mr O’Connell: When you talk about shame tactics, I think it is really important that we understand what you mean by that.

MRS JONES: Tone of voice: “Do you think you’re special? Do you think you’re different? You should know better.” That type of thing, as a first statement towards a person who the police are approaching.

Mr O’Connell: I will tell you about the fundamental problem that is pervasive in terms of how cops treat one another. Do you know what the royal commissioner, Justice Wood, found? When I asked senior police—and I headed a small group; we did some extraordinary work in policing but they closed us down—“What do you think the royal commission was about?” they said, “A few errant cops.” That was not so, according to Justice Wood. In the opening paragraph of his final report he said the fundamental problem with the New South Wales Police Service was that it was inward looking, suspicious of new ideas, and that that goes into command and control. So it is pervasive.

To be honest, the only way in which you can even begin to address that is to name the elephant in the room. At the end of the day, if you think of what Tyler says—and it is consistent with the concerns you have raised—he says, “Do you know what? If we just treat people in a respectful, decent way, they can live with any outcome if they are treated fairly and respectfully.”

With respect to this idea of moralising, this is why, as a cop, I said to operational police, “Just take this and when you’re talking to a young person, why don’t you just say to the young person, ‘Tell me what happened. What were you thinking? What have you thought about? Who has been affected?’” That should be what is done,

instead of saying, “You little”—whatever—“this is a violation,” and all of that stuff. That is a gross generalisation, but guess what? It is pervasive.

My concern is that we live in an era when increasingly cops are now viewing the world in terms of enforcement, when fundamentally most of their work is about dealing with communities who are in conflict. That is where we are saying this restorative stuff has a universal application well beyond just offenders.

MRS JONES: Thank you, Mr O’Connell. Mr Casey?

Mr Casey: I think one of the other issues—I come back to Terry’s point about enforcement—is that too often governments get focused on enforcement. In New South Wales particularly, but even in the ACT, we have people talking about crime rates and that sort of thing. If we think about the job of a police officer, the job of a police officer is about decision making. Yet how do we run police agencies? They get run more like military campaigns. You do not do policing in a squad of five with a sergeant. Policing is the individual exercise of authority that is original. There is a High Court case about it.

We need to look at the way we train and manage police officers. We need to look at having police organisations that are managed more in the way we manage the DPP. We need to professionalise policing. Cops can then understand—and we need to start measuring as a community—success in terms of community building.

One of the programs Terry and I put together when we were in the police managed to reduce crime by factors of 30 to 50 per cent across the board without significantly increasing the arrest rate. So we need to look at policing done from the perspective of evidence, and we need to look at treating police officers as professionals rather than as grunts. That is my point. Yes, training would help, but we need to go a lot deeper.

Mr O’Connell: Can I throw in one last little story that relates to when I first started. It was in June 1973 when I was a cop in Springwood. I went to a dance and there was a young intoxicated guy fighting. I restrained him, took him out of the hall and he ended up king hitting me—knocked me down and blackened my eye. I took him home. I had his mum come in the next day and we sat through it. We discovered that 14 months prior his dad had been killed. He was an angry kid. The truth is that, 15 years later, this young fellow ran into me and said, “I never got into trouble.” What I did was to change the conversation.

I am saying that I do not expect cops to get hit and then sit down and have a deep and meaningful. But what I am saying is that the potential, based on the experience we have had, is that if you have the right conversation, you can actually pick up on every issue. But do you know what? It requires everyone to step back and say, “What in the hell are we on about?”

THE CHAIR: Thank you very much for coming along today. I have a question which I do not want you to answer but I would like you to give some guidance on it. We have not had a chance to look at your submissions in detail, obviously. Within these submissions, is there anything that touches upon an offender’s experience in outcomes in relation to restorative justice processes? Is there anything in there that we could

have a look at?

Mr O'Connell: Yes, particularly in the area of probation.

THE CHAIR: There may be some questions as a result of us having a look at your submission, and we may have to come back with some questions on that. On behalf of the committee, I would like to thank you both for appearing here today. Your contributions will assist us greatly in our deliberations on sentencing. The committee secretary will be in touch with you regarding the transcript of what took place here. You can have a look at that, and if there is anything we need to correct, we shall do so. If there are questions on notice, we would be appreciative if you responded to us on those. I now declare this hearing closed.

The committee adjourned at 1.13 pm.