

REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON YOUTH JUSTICE

YOUTH JUSTICE

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Wednesday 15 April 2026

The Committee met at 9:05.

PRESENT

The Hon. Aileen MacDonald (Chair)
Ms Sue Higginson
The Hon. Emma Hurst
The Hon. Dr Sarah Kaine (Deputy Chair)
The Hon. Stephen Lawrence
The Hon. Cameron Murphy

PRESENT VIA VIDEOCONFERENCE

The Hon. Scott Barrett

The CHAIR: Welcome to the first hearing of the Select Committee on Youth and Justice. Firstly, I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Aileen MacDonald. I am the Chair of the Committee.

The Committee has resolved that the first session of today's hearing will not be broadcast. Members of the public and any media present are not permitted to film, broadcast or photograph the first session, which is to be held from 9.00 a.m. until 9.45 a.m., after which filming and photography are permitted for the remainder of the day. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Ms DEBORAH TSORBARIS, National Children's Commissioner, Australian Human Rights Commission, sworn and examined

Ms KATHERINE McKERNAN, NSW Advocate for Children and Young People, affirmed and examined

YOUNG PERSON A, Policy Adviser, Office for Youth, Office of the Advocate for Children and Young People, affirmed and examined

The CHAIR: I welcome our witnesses this morning. Thank you for taking the time to give evidence today. Would you like to make an opening statement?

DEBORAH TSORBARIS: It's fantastic to be here with my colleagues, doing this together. I thank both of you, first of all. Thank you for this opportunity to provide a short opening statement. I congratulate the members here today for having this inquiry on what is a really significant issue for many of us here and certainly for the commissioners around the country. My name is Deb Tsorbaris and I am the National Children's Commissioner, a position that is situated down the road from here on Pitt Street, within the Australian Human Rights Commission. I am appearing here today, as I said, alongside Katherine and Young Person A from the NSW Office for Youth. As I said, it is really nice to be in such good company.

I will make an opening statement that highlights some points from the commission's submission and then Katherine will make her own statement as the New South Wales advocate. At the outset, I acknowledge the traditional owners of the land on which we are meeting today, the Gadigal people of the Eora nation, and pay my respects to the Elders past, present and emerging. I would also like to thank the Committee for conducting this broad-ranging and in-depth inquiry. My hope is that this inquiry signals a growing interest by government to respond to offending by children with evidence-based approaches rather than reactive and damaging measures. The issues facing many children at risk of criminal justice involvement are multiple and complex. Any measures that are taken to reduce their involvement in the criminal justice system must be coordinated, holistic and based on evidence of what works, whilst always protecting their human rights.

The Australian Human Rights Commission's submission to this inquiry is based primarily on the work of my predecessor, Anne Hollonds, in her report *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*. I will not go over the many recommendations in *Help way earlier!* in detail, but it is worth emphasising that the report and its recommendations repeat what many stakeholders that work with children and young people have been saying for many years. Many of the 150 children and young people and 49 family and community members in *Help way earlier!* articulated to the Australian Human Rights Commission that they needed help way earlier.

Many children at risk of or in contact with the criminal justice system are dealing with, as I said, complex issues including poverty, intergenerational trauma, violence, abuse, racism, homelessness, mental health issues, unsupported disability, drug and alcohol use, and inadequate health care. That's awful that that rolls off the tongue, but it is, in fact, the case. I hate using these terms because we're talking about real people who are struggling, but these are significant issues that these kids are facing. These social determinants of justice involvement show that children's rights to health, safety, culture, participation, non-discrimination, adequate standard of living and, importantly, education are currently not being realised for many children at risk in this country.

Implementing evidence-based systems reform requires all governments to redesign and improve coordination in and across our basic service systems, including health and education, so that they are fit for purpose and are able to address the complex needs and human rights of the children we're talking about here today—but also much earlier. We wait way too long to provide the support that these children need. It also requires improved capability and transformation of frontline child protection and justice systems, including training on child development, neurodiversity, mental health, and domestic, family and sexual violence. We also need to address disadvantage, including poverty, lack of affordable housing and food insecurity. This Committee would know the housing issues are deep and very complex now.

We need better public transport and access to affordable support and cultural activities. These are things that children have told the commission are missing from their communities and are out of reach for their families. However, despite substantial evidence on the drivers of offending by children, policy responses predominantly take place at the criminal justice end, such as tougher policing, stricter bail laws, longer sentences and incarceration. These punitive responses are ineffective at reducing offending by children in any long-term or sustainable way, because they do not address the underlying causes. I say to this Committee that punitive approaches, including detaining children in facilities that are designed for adults, do further harm to already traumatised children, many of whom are Aboriginal and Torres Strait Islander children, many who have been involved in the child protection system, and many with disabilities.

I have to say the commission's work on solitary confinement and the deaths of children in custody in parts of the country are appalling. To reduce the multiple and complex issues that children face, we need to work across State, Territory and Federal governments and across portfolios within governments. The leadership of this Committee is really important in me saying that. I know you're doing some very good work in New South Wales, but we need your leadership on this issue nationally. Examples of such coordination exist, such as Victoria's recent amendments to the Child, Youth and Families Act in 2025, which are designed to strengthen early intervention and coordinate a multi-agency approach to support children involved in the child protection system. Further, there is Scotland's whole-of-system approach that includes multi-agency, coordinated work to address children's needs early on and embed children's rights throughout government laws and policies.

In our supplementary report you will see some of this, but there are also promising prevention and early intervention initiatives, many under funded NGOs and ACCOs, that are taking place across the country. Such initiatives will maximise effectiveness when they are implemented as part of a whole-of-government, systemic and child-rights-based approach. This includes ensuring that our laws and policies uphold children's rights now and into the future, and set out in the United Nations Convention on the Rights of the Child. These include to only be detained as a last resort; to be treated as child first and foremost; and, if they are detained in very limited circumstances, to be safe and to be protected from cruel and degrading treatment, in facilities where the primary purpose is for their rehabilitation and integration within the community.

I say this, and I don't want to divert from my opening statement, but you'd be hard-pressed to find the Convention on the Rights of the Child in any funding agreement where agencies are working with children. I have to say these things actually need to change in terms of a rights-based approach. To uphold these rights, the commission has recommended on numerous occasions that all governments across Australia resource and expand the availability of evidence-based diversionary programs, especially including those by Aboriginal and Torres Strait Islander community controlled organisations that are culturally safe; raise the minimum age of criminal responsibility to at least 14 years; prohibit solitary confinement of children, defined as 22 hours or more a day in a cell without meaningful human contact—I'd say to all of you who haven't been out to our prisons and don't understand what that means that it is seriously damaging to our children—and agree to implement nationally consistent and enforceable standards for detention facilities for children.

Sadly, while some States have taken the initiative to implement some of these recommendations, some States are going backwards. I have to say, for those involved in this system, it's really difficult to understand how we can go backwards given these are tiny children that we are talking about. I'm not sure how many of this Committee have children, but I'm not sure that we would be very happy to see our kids placed in these circumstances. I urge this Committee and the New South Wales Government to consider a holistic and human-rights-based approach to addressing this issue. Thank you for taking the time to listen to those of us who are bringing these issues forward. It is heartwarming.

KATHERINE McKERNAN: Chair, Deputy Chair and members of the Committee, thank you for the opportunity to appear before you today and for establishing this important inquiry into Youth Justice in New South Wales. I also acknowledge the extent of expertise that is coming before the Committee today. I really look forward to the other evidence that is being provided, because it is a really good agenda that really demonstrates the expertise of the sector and our Aboriginal communities and so on. I look forward to that element of evidence as well. I want to begin by acknowledging the Gadigal people, on whose lands we meet today, and paying my respects to their Elders past and present. I'd also like to acknowledge Young Person A, who sits beside me as a young person with lived experience but also as a policy officer in the Office for Youth.

Today's hearing highlights the importance of centring the voices and experiences of children and young people in shaping reform, and I look forward to Young Person A's evidence to enrich that, too. I commend the Committee for undertaking this work at a critical moment for children and young people in New South Wales. This inquiry presents a genuine opportunity to move beyond short-term, reactive responses and instead examine the structural, evidence-based reforms needed to keep children safe, supported and out of the criminal justice system. I appear in my capacity as the NSW Advocate for Children and Young People, an independent statutory role established by the Advocate for Children and Young People Act 2014.

My mandate is to promote the safety, welfare and wellbeing of children and young people aged zero to 24, with priority given to those who are vulnerable or disadvantaged and with a focus on systemic reform. I lead the Office for Youth and am positioning our office to support government and Parliament with policy leadership, evidence, engagement with young people and cross-sector coordination on the issues before this Committee. I strongly support the establishment of this inquiry and the breadth of its terms of reference. As Deb mentioned, youth justice is not a single-agency issue. It reflects the cumulative impact of decisions across early childhood, education, disability, housing, health, policing and child protection systems. Parliamentary scrutiny of the system as a whole is therefore both necessary and long overdue.

While youth offending has declined over the long term in New South Wales, there are several worsening challenges. Those include the increasing use of remand, often for short periods and without sentence; the persistent and acute over-representation of Aboriginal children; disproportionate justice system contact for children with disability and unmet mental health, speech and cognitive needs; and growing evidence that detention, particularly short remand stays, delivers little community safety benefit while causing substantial harm. Youth Justice contact is most often the product of accumulated disadvantage, not isolated criminality. When detention is used as a default or early response, it entrenches disadvantage, increases the likelihood of further system contact and misses opportunities for effective early intervention.

New South Wales needs a prevention-first, diversion-led reform framework grounded in evidence, child development and the lived experience of children and young people. This includes investing in whole-of-government early intervention, supporting coordinated place-based and community-led prevention, expanding Aboriginal-designed and Aboriginal-led solutions, strengthening the service system around children and families, modernising legislation to support diversion, and ensuring strong post-custody transition supports so that no child leaves detention without housing, education, health care and community connection.

These conclusions align strongly with the Australian Human Rights Commission's *Help way Earlier!* report and reinforce that the reform direction before you is evidence based, rights focused and supported by the voices of children themselves. I encourage the Committee to view this inquiry as an opportunity to recalibrate how New South Wales responds to vulnerability and risk in childhood. When we invest earlier, divert appropriately and support children in their families and communities, we achieve better outcomes for children and safer outcomes for the community.

The CHAIR: You've outlined a strong case for early intervention and whole-of-government reform. What specific reforms do you think we could implement in New South Wales within the existing systems in the next 12 months to begin reducing the number of children entering custody?

DEBORAH TSORBARIS: Goodness me, that's a very focused question. I do appreciate that question. I must say that in our supplementary paper, which I hope you do have, many of the initiatives there are place-based initiatives. There's one specific Aboriginal-led initiative in the supplementary paper. My strong recommendation is, whatever you do, the first thing is we have to invest in our Aboriginal controlled organisations to do what they do so well with their communities. Definitely my view would be—and I'm sure Katherine will talk about this, too, and if you've got other speakers today—it's my observation and experience when we have ACCO-led services for communities, we see very big change early in working with children and diverting them from our criminal justice system. I would say, given the numbers of First Nations children in custody and incarcerated, that would be a priority, from my perspective.

But most of the initiatives we see across the world are place based, whether they're Aboriginal or non-Aboriginal children, and that means working with our NGO partners on the ground to work with those children at the earliest point of contact. That often means working with families, and often these families are well known to our child protection system. As you would know, there is a relationship between this system and our child protection systems that is really challenging for every State and Territory—just as challenging in every State. Often these families do become known to our child protection system, and we don't often assign family services workers early enough to those families. I would be looking at the investment that the New South Wales Government makes in early parenting and early family services with these high-needs families. I'm pretty confident, with those interventions, you can intervene really early. But they do need to be place based. So those two things.

I'd have to say, in talking to my colleagues who work with me at the commission, New South Wales is doing quite a good job in the youth justice space. It is about some of these things that Katherine talked about as being ways in which you can improve on some of the challenges that you now face. Those two things are really important. The children in *Help way earlier!* talked about—and I can quote some of their quotes—"Can you help me and my family at the same time? I need something, but can you help my family, too?" I have to say, across the country, we're not seeing the investment in parenting and family support services that we need for these families. I'd have to say, children leave incarceration with very little work having been done with their families to support them. I hope that's helpful—perhaps not specific enough, but they are definitely on the top of our agenda.

The CHAIR: You make some broad recommendations, but what specific accountability mechanisms do you think this Committee should recommend to ensure that progress is made, particularly in reducing Aboriginal over-representation?

DEBORAH TSORBARIS: I think the governance for these types of initiatives are very important. Certainly, in my working life, I've seen the responsibility for these children and these families either the responsibility of the Minister for child protection or the Minister for justice, and very little accountability or

responsibility placed on other Ministers or other heads of department. I referenced in my comments a Victorian initiative which is called the stability families bill. I think the Minister in Victoria was deeply troubled that she would be responsible for the children but have none of the levers. For example, if a family has no housing, they've got a couple of children that are coming in contact with the criminal justice system and the remainder of those children will be removed, and housing is the issue, the Minister for Housing needs to be held accountable—and the secretary, actually—to provide that housing, to immediately respond.

My view would be that when we see that sort of legislation and those requirements made, you get more accountability across government to respond to those families. There are not a lot of these families we're talking about. There are not a lot of children in custody, so we need to make sure that we know about them and that each secretary is held accountable for responding. That requires a particular sort of governance—an inter-department committee. I think Ministers across portfolios are probably now, more than ever, in each jurisdiction going to need to put together governance that responds in that way. Let's just wait and see what happens in Victoria in terms of that response. But I think that in Victoria—and you would know that the data is pretty compelling—we have got problems with lots of kids in bail now, and I think some of these decisions have been made because of that.

The CHAIR: If I can turn to the advocate, with regard to the Early Intervention Investment Framework, what specific governance structures or lead agency would you recommend to ensure coordination across those departments, to avoid what the commissioner has just said?

KATHERINE McKERNAN: I think that Deb's answer was really good in terms of the legislative framework, and the coordination between departments is really good. The thing I would add is Treasury's role in that piece. Again, looking to Victoria and the Early Intervention Investment Framework that they've had established since about 2021, it's about even just mapping what investment is in the early intervention space and what investment is in the acute space, and having a whole-of-government look at what is happening there and looking at how we shift investment away from crisis to value-add to the early intervention space. It's really looking at where the funding is going and how we are funding adequately to make a difference, and including that accountability alongside the legislation, so that there is that Treasury responsibility in terms of investment and making sure the investment is going to the right places. I would echo Deb's answer for the first question around making sure that that's placed-based work that is done and led by Aboriginal communities. That's really important as well.

The CHAIR: You acknowledge that there are existing programs but there could be improvements on those. What evidence do you think best concludes that current investments are insufficient?

KATHERINE McKERNAN: I'm not sure that we have a view of what the investment actually is, so that would be my suggestion to start with—to actually understand what investment is being made. I think we've provided in our submissions, and you'll hear from people today, around some really good evidence-based work that's happening across New South Wales. I think it's a combination of knowing what we're investing in and knowing what's out there, and how we build and grow the good work that is out there and really support communities to be doing that work.

The Hon. Dr SARAH KAINE: I just have one which builds on the questions asked by the Chair. Having looked at the submissions today, there does seem to be this idea that the outcomes of the system are also dependent on the education system, the health system and our policing framework, and you've spoken about a whole-of-government response, which is appealing. Perhaps you've got examples other than Victoria, internationally. I worry about a whole-of-government approach where no-one takes responsibility because it's everyone's responsibility. I wondered if you could speak a bit to that. Also, are there other examples? Because it's not just the out-of-home care; it's also education and excluding kids from school. It's our health system. I just wondered if we have any more concrete examples to go on, and how do we avoid no-one being responsible?

DEBORAH TSORBARIS: Before I go to the question, can I just make a comment to go back to your question about First Nations work. Certainly, it would be my view that specific governance for Aboriginal controlled communities would be required alongside and within any governance. There is not a lot of trust, justifiably, from our First Nations people with our systems. We see a lot of really good results when Aboriginal controlled organisations have specific governance and more control in designing and implementing their systems work and the delivery of services for their communities. We're seeing more and more evidence gathered about the delivery of those services, not just in the justice and child protection systems but also in the early years, when we see some of the fantastic early years services that our First Nations organisations run. I think some specific work on that is going to be required.

I have the *Help way earlier!* supplementary report in front of me. Not that I don't want to specifically answer your question, but in this we talk about some of the evidence-based practices that we actually need in any

initiative, which I would draw your reference to. To Katherine's point about "Can you give us examples about what might work elsewhere?", we would love to do that work. There has not been a lot of work done on that. There is what we have in front of us, which is three or four or five examples in a supplementary report—Scotland, Wales. I think the Victorian example is an interesting one, but very new, so we don't know how it is going to go.

I'd have to say that my view as a commissioner would be that what we're doing isn't working so, yes, we can be nervous about setting up whole-of-government structures. The thing I will reference about Victoria is it's legislated, and those Ministers and those secretaries have to report publicly on the actions they've taken. Some of those things are very new. We rarely see that. I do think we need to add to the equation accountability. The reason I use the word "accountability" is because kids tell me all the time that they don't think that us adults that run the system are very accountable. They say it all the time.

I think that whatever we do with these systems, they have to be accountable to the public, but they have to be accountable to children and their families. I've kind of been persuaded through talking to children that in any governance structure, we need to have that and public reporting on what secretaries have done to make sure that children are in school; that they're getting the sort of flexible education they need to remain in school, not just the set and forget; that their health assessments are done; that they've had their ADHD assessment; that they're getting the mental health support; that they're getting the drug and alcohol support; that mum is given the sort of income and financial support she needs to feed her children; and that they have the right housing in the right place. All these are the responsibility in some States and Territories of different secretaries. No wonder we can't deliver on it.

The Hon. CAMERON MURPHY: I wanted to ask about the levels of funding, and really whether funding is adequate or not for these other services. I was looking at the Productivity Commission *Report on Government Services*, in particular youth justice services, which is in table 17A, and it says that for young people aged 10 to 17 years in the population, for the past 10 years, double the amount has been spent on detention-based services versus community-based services. Is that something that we need to focus on in terms of that ratio? If we're spending more on community-based services than detention, is that something that will go a long way towards solving the problem?

DEBORAH TSORBARIS: We are building more prisons, so that's where the costs are. When you build more prisons, you fill them up. I'm sorry to say it; that's very crass. We have more children on remand across this country—and certainly you've referenced it, Katherine—than we've ever had before because of tightened bail laws, but we are building more prisons, which is where the costs are. What we would say is that if you divert those resources into early intervention services for children and their families—these children have families that care about them and love them—then we will see the change, but it will take time. I think that working with communities and researchers to better understand the evidence about what is working is essential in that. But I think to Katherine's point, specifically, in New South Wales, first of all you have to understand what your spend is and what programs you are providing that are non-detention-based services. What is the actual amount? And then you can work from there. But there are definitely things that are working.

The Hon. CAMERON MURPHY: Is there a measurable way to target that?

KATHERINE McKERNAN: Again, looking to Victoria in terms of their Early Intervention Investment Framework, they have mapped the investment, and that framework has been in place since 2021, and even with mapping it. At the moment in Victoria, 5 per cent goes to early intervention and 30 per cent to crisis across the system. They are now able to talk about what they are investing and how they are increasing the investment in early intervention, and that then creates a framework to measure both resourcing but also impact as well.

We would really point to looking at adopting something like that in New South Wales, so we can, first of all, see what the investment is and then also make some informed decisions about making sure that there is comparable lifted investment in the early intervention space, and then measure the changes that we should be seeing. We have seen the evidence of what works in terms of early intervention, so really seeing that change. I reiterate just making sure that investment in early intervention is community based and is looking at all those wraparound supports and supporting the family as well as the young person and, most importantly, working with the Aboriginal communities where there is a significant number of Aboriginal people, to really make sure that they are led by community and make the difference that we know the evidence shows us elsewhere works.

The Hon. CAMERON MURPHY: Is the Victorian framework the best one? Is that best practice that we should be adopting?

DEBORAH TSORBARIS: Let's stop talking about Victoria. I just happened to come from Victoria, which is why I am loath to keep talking about them. I do think that there are learnings they would share. It isn't perfect by any stretch of the imagination. It is a small bucket of money held by the Treasurer, with an attempt to

try and move the dial, but there is a lot of unmet need in Victoria. There are still a lot of very big social issues. It's not the panacea, but what it does do, as Katherine said—it's a model. I am sure that the Treasury people would be happy to talk to you about, if they were doing it again now, would they do it the same or would they do it differently. It really does need to have local applicability. New South Wales is a very different place. We don't even have remote in Victoria. You can drive for six hours and you're in the Mallee. It's a different State with different geography and a different population, but I'm sure that you could adapt it.

The Hon. STEPHEN LAWRENCE: Young Person A, I wanted to ask you if you could give us a perspective on the way that young people at risk of exposure to the criminal justice system understand or even know about changes to the criminal law. For example, when bail laws get tightened, politicians talk about how that is going to improve community safety and should change behaviour. I'm wondering if you could give us a perspective on whether that's a realistic perspective.

YOUNG PERSON A: I think most of their education on changes of laws and legislation will come, obviously, from their lawyers, if they were involved in committing a certain offence where laws have been changed. Besides that, I don't think they would know much of what's changing, unless they would be watching it on the news and that kind of stuff. Most of our knowledge of court and the system comes from actually sitting in a courtroom. When we are in the community, not many young people focus on changes to legislation and things like that.

The Hon. STEPHEN LAWRENCE: That's very helpful.

Ms SUE HIGGINSON: Thank you for your time and evidence. I've been pushing for some time, along with others, to raise the age here in New South Wales. We are the one State that hasn't done anything. We have sat stagnant. We are still at the age of 10. Obviously, as you referred to, we have seen some awful backward steps. We have seen the NT go forward and then come back and lower the age back to 10. In terms of that important campaign to raise the age at least from 10 and push it up, is that still a really important focus that we should be looking at in New South Wales? I would love your views, including yours, Young Person A, if you have a view on that.

DEBORAH TSORBARIS: Ten-year-old children are tiny. If we had a 10-year-old, unless they come from a very tall family—if they walked in here, they are tiny. They haven't even finished primary school.

Ms SUE HIGGINSON: I've got grandkids. I know.

DEBORAH TSORBARIS: If you think about a 10-year-old, they are tiny. And then if you think about a 10-year-old that is coming in contact with the criminal justice system because we haven't been able to provide the supports to them and their family, that is troubling too. From a children's rights point of view, we are not supporting the convention in this country when we haven't lifted the age of criminal responsibility. There's a conflict there for me and for the commission. Those children are little. They're not making informed decisions in the way that a much older child would, and they don't understand the consequences. Often they are with much older children; they're often not acting on their own. I think that we will have to continue our persistent advocacy to raise the age of criminal responsibility in this country. It is sad that the momentum for that has been lost, but that doesn't stop people like myself and Katherine and Young Person A, from continuing to say that it's an impossible situation that we're putting children in in this country. We just have to stay the course. It is critical.

Ms SUE HIGGINSON: Young Person A, what is your view in terms of 10-year-olds, 12-year-olds, 14-year-olds and 16-year-olds in terms of the age of criminal responsibility?

YOUNG PERSON A: I can talk to my own personal experience. I was one of those young people who managed to slip through all the cracks growing up. I never went to a PCYC, I never had any involvement with community organisations and I never had early intervention from government. It got to a point when I was around 15 years old and I ended up spending about 4½ years in a Youth Justice centre. From my own personal experience, it's a shame that this was the best thing for me. Going to custody actually was probably the best thing that could have happened to me, because it took me out of my toxic environment and it put me into a kind of more stable environment where it was controlled and it was away. I couldn't commit any offences. I wasn't a harm to myself or to others.

Where I'm trying to go is it's not about locking up kids at certain ages. We have to look at their home life. We have to look at what's happening outside. When it comes to early intervention, we obviously have to include families because families sometimes—if I'm a young person committing offences, obviously my family isn't the best, for lack of better terms. Everyone has their own problems—mums, dads et cetera. If a mum and a father or a family—whatever's looking after that child—have all these issues that they've gone through growing up and they can't even look after themselves, how can you expect them to be able to look after a young person? It's not about locking up 10-year-olds, 11-year-olds and 12-year-olds. We have to really look at what's happening outside.

When we look at custody, for example, a lot of young people, if we look at their life in the community, their houses are unstable—they're toxic. They hate school, they don't understand what's happening at school and they're not included. They're experiencing poverty, maybe drug abuse—all these different issues. When they go to custody, they're in an environment where there are no drugs and there's no alcohol. Mum and dad aren't arguing; they're not hitting each other; they're not doing drugs. I get to hang out with my friends, I get to play footy and I get to play cards. I don't have to worry about where my next meal's coming from.

So you put them into this environment where, all of a sudden, they've had no—I'm not saying they have all their rights when they go to custody, but they've had this absolute rubbish of a life growing up and then they go into custody, where they finally don't have to worry about eating their next meal. They get used to that for a bit and then you release them back into the exact same problem that they were in. Why wouldn't they want to go back to custody? Sometimes custody is better for certain young people than what their outside life is, so I think looking at anything that you do when it comes to a young person and early intervention, you have to be careful that you don't create a dependence on the system for certain young people.

Ms SUE HIGGINSON: I have a question for the advocacy organisations about their work. In the last few years under the New South Wales Minns Labor Government—I'm unashamedly very critical of this—we have seen this tough on crime, punching down, law and order thing. We've seen massive changes to youth custody and bail laws. The remand figures have spiked. We've never seen it at such a rate in New South Wales ever before, particularly for First Nations kids. I asked the Premier, "Do you understand that your laws and your approach mean that we're going to see more, particularly First Nations, kids behind bars?" He said, "Yes, that's what's going to happen." This mentality that it's got to get worse before it gets better—can you explain to us what that means for the work you're doing and the children and young people that you work with?

DEBORAH TSORBARIS: Can I respond to the evidence? I want to give you some data, because Young Person A's comments are actually the most pertinent I've heard today about what children say about the relative "This is my home life and I'm better off here." But what it does tell us—and this is some data that's in the *Help way Earlier!* report that, when I read it, really shocked me. I'll read it to you. Of all children and young people aged 10 to 17 who were under sentenced Youth Justice supervision at some time between 2000-2001 and 2023-24, 41 per cent returned to sentenced supervision before turning 18. This is the one: Of children and young people aged 10 to 16 in 2022-23 and released from sentenced detention, 70 per cent returned within six months and 84 per cent within 12 months, which supports what Young Person A was saying. This is from South Australia. It states:

Research conducted in South Australia has shown that 'if a child has their first contact with youth justice between the ages of 10–13, 91% will experience at least one night in detention, 83% will experience 3 or more supervision orders, and 75% of those will return to sentenced supervision ...

It doesn't work to have this as our default position, which is to increase bail laws, put kids on remand and move them into—it just doesn't work. The problem with this is it then takes decades to undo. From our perspective, the evidence is very compelling about the system we are creating. We are going to keep on saying what we are saying about the evidence, we will keep talking to children and their families, and we will be putting the evidence in front of committees like this about turning things around. I will say that there is certainly a lot of concern in the community around community safety. We understand that, but these policies don't work. If the policies don't work and you've got concern in the community, you need to sit down and have a different conversation—and a more honest conversation with the community about your policies—because we are going to end up with a bigger problem. That would be my view.

The Hon. EMMA HURST: Thank you all for being here today. We really appreciate all the work you do. I've got a quick question for Young Person A in regard to some of the discussions that were just had this morning around prevention, early intervention and a whole-of-government approach. From a really practical perspective for someone that has got lived experience in this space, if this change was to happen and these recommendations were all implemented, what would that mean for children that are getting caught up in this system? I know you talked about being in custody and almost becoming dependent on that. If we switched the whole system, if someone had been able to reach out to you with an early intervention, what difference would that have made?

YOUNG PERSON A: If the Government tomorrow said, "We're going to give \$1 billion to end youth crime" and all this sort of stuff, if a young person cannot shift their own perspective in life and say, "This is not worth it for me; I need to do X, Y and Z in life," then all these services and the early intervention—let me speak from my own perspective. This was as simple as it was for me to change my life. I remember I was in custody, and I did something and got into trouble. My unit manager at the time came and sat down with me and said, "This is what you're in for. How much money did you make?" I told him my number, and he goes to me, "If you were

on Centrelink for the amount of time that you're going to spend in custody, you would be doing better off than being in here." That one simple thing he said to me shifted my whole perspective.

I said, "This is pretty stupid. I don't think I want to do this anymore." You can have all the interventions and you can have all these amazing things, but it's up to the young person to shift their own perspective on life. Someone has got to be there to sit down with this kid when they are 13 or 12 or whatever and say, "This isn't worth it for you." I think you need the right things in place for a young person so that if they do stand up and say, "I do want to change; I do want to do something," there isn't all this red tape involved for them to do something next time with their lives. But, ultimately, it's down to each individual and each kid to say, "This isn't for me." I hope that gives a bit of perspective to your question.

The Hon. SCOTT BARRETT: There has been some really compelling evidence here today, but I've got a very practical question for the Advocate for Children and Young People. In your submission, you talk about things like midnight basketball. I guess across the State there's different successes of programs like that one. I'm wondering if you can point to some of the things that influence the success or otherwise of those sort of programs?

KATHERINE McKERNAN: I think that part of the submission is about the importance of really early community supports that provide that connection so that conversations that Young Person A talked about, needing to help change young people's perspectives, can be had in a really informal and fun setting. Again, I would point to the comments and points that Deb and I have been making in terms of really making sure that it's coming from the community, that what is organised, whatever fun activity or sporting activity that is organised, is organised by people that have respect from the young people who may be involved with the activity, so really needing to be place based and led by communities is where it's most successful. But, again, I think it points back to the fact that we don't have a framework or an understanding in New South Wales of what is being done in communities, and I think we really need to be knowing that so that we can support that better. I hope that the people giving evidence after us today will give you some really good pointers and highlights of what really does work and how they make a difference.

DEBORAH TSORBARIS: I will make one reflection about the rec stuff—I do think that we've seen the demise of youth work in this country, and I think Young Person A's reflection about that one particular individual that really was effective in your situation. We don't really have a workforce strategy that says, "This is really important work. Who's going to work in it, what are the qualifications and how must we support them?" It's often up to individuals. It will be really interesting to see, as the other speakers come through, whether something comes through to you that is about what this workforce looks like, where are they and who are they? Because whether they're in an early intervention service or they're in our Youth Justice facilities, it's never too late, as Young Person A said, to engage in a way that's really meaningful for a young person. I'm not sure that the work is as valued as it really needs to be, given the current conversations that we're having.

The CHAIR: Thank you, everyone, for your evidence. I don't think there were any questions on notice, but if there were, the secretariat will be in contact. Thank you very much for attending today.

(The witnesses withdrew.)

Ms PETA MacGILLIVRAY, Senior Research Fellow, Social Determinants of Justice Research Hub, University of New South Wales, affirmed and examined

Professor EILEEN BALDRY, Emeritus Professor of Criminology, Faculty of Law and Justice, University of New South Wales, affirmed and examined

The CHAIR: Welcome, and thank you for making time to give evidence today. We normally ask if you have a short opening statement, but we would really like to get into questions. If you have opening statements that are written, perhaps you could table them and then we could just get stuck into questions, if you're willing to do that?

EILEEN BALDRY: We're very happy to get straight into questions.

The Hon. STEPHEN LAWRENCE: Thanks so much for coming along—it's much appreciated—and thanks for your submission. In the last couple of years, I can't remember which bill it was but the Parliament debated some changes to bail laws. I got some research done from the Parliamentary Research Service that went through crime statistics for a 10-year period and then aligned in the statistics the point in time of every previous punitive change to bail laws. You couldn't, it seems, see any correlation between harsher bail laws and crime rates. The offending rate in the community just seemed to continue inexorably, quite irrespective of whether certain numbers of people were spending longer or shorter periods of time on remand. I was just wondering if you both might have an opinion on why that is. Why is it that punitive bail laws seem to have no interaction with the rate of harm that's being caused in the community from criminal offending?

EILEEN BALDRY: The first thing is that I think everyone is probably aware that the rate of offending—crime rates—have not actually gone through the roof. They, in many cases, have reduced. The one that has gone higher by a long way is domestic violence. People who research that think that that is largely because of higher reporting. It's terrible. That's the first thing I'd say—that responding in a moral panic sort of way to things that are actually not happening is not helpful. That's the first thing. The second thing to say is that remanding someone rather than bailing them is the harshest thing you can do. You're taking away someone's liberty, despite the fact that they haven't been found guilty of anything, and you are putting them in a circumstance that is very likely to ensure that they come out worse than they went in.

The third thing to say about that is that we see, with this massive increase in remand over the last three or four years, the rate or proportion of people, when they come to their final hearing—more than half do not get a prison sentence or a detention sentence. That really underlines the problem of using remand as a so-called safety mechanism. Then, very particularly to your question about why it isn't stopping offending, it is because, as our previous colleagues were saying, nothing has been done to reduce the circumstances to which someone returns. That is the fundamental aspect, and it's something that we'd be very, very happy to talk more on.

The Hon. STEPHEN LAWRENCE: I might ask you a more specific question, Peta. As part of preparing for that speech, I looked at the clear-up rates for certain offences. I looked at, for example, car theft and break and enter. I can't remember if this was in respect of kids or adults or both, but the clear-up rate—the percentage of crimes that are actually solved after being detected—was very, very low. I think it's fair to say that even if you're applying a harsh bail system, you're only inevitably—particularly for offences like that—applying it to a pretty small percentage of the offenders out there anyway. Then you've got this sort of calculation which is how many of those who got bail would have offended, as opposed to the ones that are locked up and therefore can't offend out in the community. Can you talk about how using bail laws in to intercept crime seems to, when you think about it and look at the numbers and statistics, be a bit like "needle in a haystack" reasoning? Is that something that you could maybe elaborate on?

PETA MacGILLIVRAY: Yes. I think that's a good characterisation of the operation of the changes or tinkering with the bail laws, as Eileen said, for the few that are captured by that, and when I say "a few", it's reflected in the huge numbers that we see. But the reason why bail doesn't affect what we experience as disruption at a community level is because it can't address the causes of the causes at a community level that needs the response. The community-based supports and relationships that are built, accountability that's meaningful to young people that comes from grounded options for them to build connection and belonging—that's the real response that gets the outcome, which we want from a community safety perspective.

To Eileen's point, while bail may give the perception of action and punishment for perceived wrongdoing, it's actually not addressing the real issues at a community level, which we have lots of opportunities to do with the right approaches, the right investment and working with stakeholders that share the same goals. There are lots of community organisations and stakeholders that you'll hear from today that are doing that already, some of who are watching this morning.

The Hon. STEPHEN LAWRENCE: It seems to me that politicians' statements that they're going to protect the community through these sorts of laws then get repeated in the media in a completely uncritical way. Politicians say, "We're going to make you more safe through changing bail laws," and then, as has always happened in the past and then happens in respect of that instance, there's no change to offending rates. How do we change that dynamic where maybe politicians are held to account a bit more in terms of actual results of what they're doing and the media maybe is a bit more educated and critical about what's actually going on? There seems to be a pernicious cycle here.

EILEEN BALDRY: The law and order push was particularly evident in New South Wales in the 1989 election, and law and order was absolutely sort of blasted everywhere. You're absolutely right: The newspapers, but particularly certain newspapers and certain television channels and so on, just ran with that. Why is that? There's a sociological answer to that, and the sociological answer is that people who want to either get into Parliament to be in power or to retain power have various leverages. One leverage is frightening people, scaring people, and we have seen that for centuries; it's not new to this century.

A lot is evident that it really takes bipartisanship—but really, of course, it's not just bipartisan anymore; there are all sides in government—to agree that this is not the right way to support our community and to make our community safe. When we see that sort of thing happening, you have much better outcomes. It has rarely happened in Australia. There has been some work on that, particularly in the ACT and in Victoria, from time to time. There have been points at which leaders of parties have agreed "We won't make law and order the leverage that we're going to push in this election." But that, in a political sense, is really the only way you can change that.

There is then the issue of shock jocks and media that think that, and they do. They think that this gets them a big audience. It gets them some audience, but the underlying new element in this today is, of course, social media. The problem for politicians is that social media can run riot, say whatever it likes, put out there all sorts of information which is not right, is incorrect, particularly about kids who are supposedly offending. I don't know how to address that, other than to try to persuade politicians to stand firm and not be railroaded into kneejerk reactions that they think are going to make their constituents happy. It's a problem.

PETA MacGILLIVRAY: I would add to Eileen's point that the approach that this inquiry is taking around a research and evidence base is a really significant move. What we're seeing in the operation of the youth justice system and its related criminal justice system agencies today is what would be described as a knowledge-policy rupture, which is a term from Professor Barry Goldstone from the UK. This is an experience that we've seen in the UK as well, where the research and evidence base is not being used in policy and law reform, and the consequence is more system harm.

We're actually at the point where the system putting a young person in detention is producing what we would characterise as adverse childhood experiences—the same types of experiences as a young person or a child experiencing domestic violence. When you have children and young people who have the lived experience that we know is disproportionately represented in the youth justice system, like being in out-of-home care, experiences of abuse and assault, serious poverty and social disadvantage, being excluded from school—these are the children that we see disproportionately in the youth detention system.

Often the solutions which are presented as only being achievable or accessible in youth detention are not able to be delivered in a youth detention setting because, for children and young people who have these needs, it's not appropriate, particularly children and young people with disability or cognitive impairment, who we also know are overrepresented in the youth detention system. However, in a community-based setting, all of those positive benefits of connection, belonging and access to the types of supports that the lived experience advocate told us this morning would make a difference and be meaningful—they are all accessible in the community. We have to invest and support those options to mature, to be learned from, and for the evidence of their effectiveness to be documented and shared. That takes time and it takes investment.

There was a question earlier about the proportion of funding that's available for those types of options. That balance is not right at the moment. You'll hear today from the Community Restorative Centre. They have a youth program supporting young people leaving custody. They have a fraction of the funding that they need to actually connect people in the community once young people are released from custody, but we also don't have enough investment to build those options. There are people working in the community sector who believe that those options can work. There's lots of evidence of what's working, but we need more of that.

Ms SUE HIGGINSON: On that final point, it's interesting because Mr O'Reilly, who heads up Youth Justice in New South Wales, has made very clear to me that, of course, it costs a lot more to incarcerate a young person. I think we're nearly at \$1 million per year.

EILEEN BALDRY: Over.

Ms SUE HIGGINSON: Over, now. I wanted to ask, if I could, about the criminogenic nature of when we place a young person into custody. With your expertise and that long view of criminogenic inputs, what do you think is the criminogenic impact of the kind of laws that we have at the moment, which are seeing more young people in remand and so forth—even the idea now that we have changed our *doli incapax* laws slightly to assist the police to rebut *doli incapax*, so we can deal with younger people and put them into Youth Justice prisons. On a long view, what criminogenic impact do you think this will have on crime and crime statistics in the longer term? If you could, please explain the criminogenic impact in your answer.

EILEEN BALDRY: I think Peta will have some very insightful things to say, particularly about Aboriginal kids and that circumstance. I'll give a broader perspective. I don't like the term "criminogenic". What I and all my colleagues have seen—and we talk about evidence—is our book, which I did recommend to the Committee and I gave you a chapter out of that as my submission. There are two fundamental things. One is equity. This is about equity. You do not have one child in juvenile detention who comes from a high economic circumstance, or even a middle class. Work we have done over many years—Peta's been involved in this.

We can tell you the 50 towns and suburbs in New South Wales where almost all of the kids and young adults who end up in criminal legal management come from. They are not Mosman and Vaucluse. They're not the middle-class suburbs. These are the suburbs where the people are the poorest, where unemployment is high, where there's high housing need—all of the things we've mentioned. This resulted in our developing the social determinants of justice, and Peta is now working in part in that centre. Equity is fundamental. There is a term, "criminalising", which, in my view, is a more important term and a better term than criminogenic.

Criminalising means that the State makes someone a criminal for something they are or that they do. Let me give you two examples. One, not so long ago, being a homosexual was illegal. Homosexuality was what we call criminalised. You take that away as a criminal act, and it's no longer criminalised. What we see—and we have seen for decades and decades and decades—is the criminalising of disability. A 10-year-old, 11-year-old, 12-year-old child who has cognitive disability—usually it's not just one disability. ADHD—may well have some other disability.

They are at the most vulnerable point to be arrested because they have so little impulse control. Kids have low impulse control anyway, but kids with disability even more so. Then you have the point at which a child may know that something is wrong but, because they have so little control over how they decide to act and almost no understanding of the consequences, they are criminalised for their behaviour. When we moved to talking about criminogenic, lack of equity is criminogenic, poverty is criminogenic, being abused as a child is criminogenic, because that child is experiencing the outcomes of inequity in their lives.

I think it's really important to note that it's not just one of these things. I have a son who has cognitive disability, but he has all the protective factors and he's not poor. But if you're an Aboriginal child, you have cognitive disability, you have very poor housing or you're homeless, you have poor nutrition, you have lack of access to suitable and appropriate education and so on, all those things then mount together and accumulate to make that circumstance criminogenic for that person. Once we get to detention—I mean, you know.

PETA MacGILLIVRAY: We have evidence that contact with the criminal justice system itself is criminogenic. That is why diversion is such an important principle and policy and potentially reform—because once a child or a young person has gone to court and is in the system, that becomes a criminogenic factor. The legal system and the operation of the legal system itself begins to drive that process. Diversion is foundational to addressing criminalisation.

The CHAIR: I will follow on from that, if I may. What specific changes could frontline systems make, say, to police or for bail decisions, or even disability support services, to most effectively prevent those pathways for children entering the justice system?

EILEEN BALDRY: I think it would be enormously helpful if we relieve poverty, particularly for Aboriginal communities, very poor and unemployed communities, and communities where there are high levels of drug use—so providing equity there. The evidence is very clear from elsewhere—internationally, in particular—that if you provide a means by which to live reasonably, that immediately reduces the potential for being caught up with offending and being caught up in criminal legal matters. Let me give you the example—I know everybody talks about the Nordic experience and the exceptionalism, but it is exceptional. One, they have 15 as the age of criminal responsibility; and, two, they have family support—it's not perfect, of course—disability support and early educational support, which is equitably distributed, not equally.

Equity is needed to ensure that those who are the worst off are actually given an opportunity to get to the same position or level as others do. There are so few children in detention in Nordic countries on the whole. That has meant what we term a "virtuous cycle", because they have received the kind of care and support that they need

from birth and as they're growing up. Therefore, they never get to that position of a disastrous cycle for their lives. That is a really fundamental thing. We have examples—and Peta has more than I have—of good ideas and evidence that they work. One of my colleagues and friends, Emeritus Professor Ross Homel at Griffith, has for almost all his academic research life sought to find out how to prevent—what do you do to prevent children ending up offending and ending up in adult prison, which is almost inevitable.

He and his colleagues did a terrific experiment, a research program that started about 20 years ago. This was in early childhood education. I won't give you all the details—I can send you the link to the papers. But the outcome of it was that there was universal access given to, I think it was three schools with preschools in Queensland, and they were compared with three schools of the same socio-economic background. These are all very low socio-economic places with very high juvenile offending. What they did in early childhood education was provide, for every child, communication—addressing communication needs.

Now, one of the key things that most people may not know is that one of the main reasons that kids get involved in offending and get involved with the police is they often have very poor social interaction. They don't know how to communicate their needs, or they try and communicate their needs and they are not heard, like many Aboriginal kids. But the result of all of this was that support was offered to the families of all those children. A lot of kids took it up and a lot of families took it up. They were in this program, which cost so little because they were public school teachers, and they supplemented—they had two extra teachers supplementing the communication needs.

The outcomes were extraordinary. Comparatively, those kids whose families were involved, 15 years on, there was so little and, in one particular cohort, no contact at all with police, despite the fact that the trajectories of all the kids in those suburbs and schools had very high contact with police by the time they're about 14 or 15. The comparative schools went as usual—high contact with police, juvenile detention and so on. The point I'm making here is that this is not a justice intervention, and justice intervention is not going to solve this.

As Peta has said, this is about place-based stuff, community stuff. It's how you address the needs of kids who are the most needy. I can tell you that I've been into primary schools when I was doing some research on this, and the teachers could point to the children they knew, in five years time, would be being picked up by the police. They wanted to be able to do something for them, but they didn't have the means to do it. So here's an excellent, obvious place to begin to do this. Every child goes to school. Make schools a place where you can address these things. I think you have some thoughts or examples of Aboriginal preschool?

PETA MacGILLIVRAY: Yes. For me, my lived experience, I was an Aboriginal child in an Aboriginal preschool—Tarumbal, in Rockhampton. I and my family, and in our community, we've recognised this for 30 years, how significant Aboriginal preschools are. There's work being led at a national level by SNAICC and Catherine Liddle to ensure that early childhood development through Aboriginal preschools and Torres Strait Islander preschools are expanded, recognising how significant that is as a preventative measure for lifelong education engagement.

Here in New South Wales, it's really important to recognise models such as the Dharriwaa Elders Group's Two River Pathway to Change. They are reckoning with the reality that there are babies and toddlers who need that early work in preschools. But then there are also young people who are in need of supports, who are on a trajectory where it's predictable that there'll be police contact and potentially youth detention experiences, and who need to be brought back into a community care response. That is the work which is done deeply and in a trust-building way with families, because there is a legacy of harmful intervention and paternalistic intervention where there's a lot of activity but not a lot of tangible supports that are made available locally.

To Eileen's point about the inequities at a community level, communities are calling for real, felt change now, and they continue to exist in communities that are experiencing overcrowding. No solutions to that are coming radically, but there are huge amounts of commitment to working differently with young people. You'll have the benefit of hearing from Loretta Weatherall this afternoon about what that looks like in real terms at a community level.

There are other examples. For example, Mounty Aboriginal Youth and Community Services are working with young people who have had very intense and compounding experiences in the out-of-home care system and the legal system. The needs of that group of young people in a different geography are important because the peer networks, the community networks, and building connection and belonging amongst young people is the strength. Mounty is taking the approach of actually engaging young people where they can lead solutions in a positive way, with their vision for change and that systems work to actually get young people the help they need.

They have tangible ideas around dealing with drug and alcohol use, about how people are using violence and about how that change might happen through healing and reckoning with past harms. They're talking about

those types of things. Their voices are really important in what prevention work looks like and what early intervention looks like, the point being that a lot of these solutions are community led. For the young people who have the experiences and the impacts of these systems, their voices are critical. They're saying, "We don't see a lot of redemption coming from these systems", there being very little political will or accountability to deliver any of that. The real opportunity is in how we can be supporting and enabling communities to do a lot of this work until we see some commitment from governments to effect real change.

The Hon. STEPHEN LAWRENCE: We still, in New South Wales, have a situation where police are searching young people on suspicion of possession, for example, of very small amounts of cannabis. In terms of this criminalising choice and the consequences that it has, how important is drug law reform as part of that picture?

EILEEN BALDRY: It is a fundamental thing. I am still waiting for the ice report recommendations to come to fruition. They were very good. They address these. I'm sure you all know the history of this. In the '80s we followed the United States into this war on drugs. What did that do? In the United States it filled their prisons, and it started to do the same in Australia. It is still a huge issue. But I think a really key factor here is that searching young people and finding small amounts of cannabis and so on is counterproductive because what does that say? That just says, "Okay, well, I'll just be more careful next time. You won't find it." That won't make any difference to that person, necessarily, wanting to use drugs.

But a key factor which is ravaging many communities is the bringing in of ice, as was noted in that inquiry, into communities and getting young people hooked on it, and that then of course is criminalising. These are really terrible cycles of continuing to criminalise for something like drug use. We can see quite clearly that the drug laws that we have do not reduce the level of harm the drugs do. I think that someone like Matt Noffs—you will all sort of know of Matt and his program, which is now both in New South Wales, Queensland and I think ACT. Maybe it's moving further afield as well. What he's doing is picking up the 15-year-olds who have already been criminalised. The program that they run is very successful, but it is for such a small number of people. It really requires decriminalisation, and it requires a different approach. We all know it's a public health issue.

PETA MacGILLIVRAY: From a community perspective, the role of policing has to be named in the enforcement strategy that's relied upon to deal with these issues. While the primary response is an enforcement strategy from police and street policing, other options aren't enabled and supported to mature and build and come up as a real alternative to a policing response. There are models that can be used, particularly in contexts where there's not going to be a residential rehab, there's not going to be specialist services, but there are models where community care and organisations that have relationships with children and young people and families can be doing work too, particularly using education models for looking at drug and alcohol use. That is another way of doing the early intervention and prevention work. In appropriate cases where a more clinical intervention is needed, then that can be explored, and those options are important. But if we're starting at the beginning of the pipeline, the solutions really are in supporting community options.

The Hon. STEPHEN LAWRENCE: Just lastly, on the age of criminal responsibility, I'm not sure that in the perhaps dysfunctional state of law and order politics in New South Wales the campaign to take it up to 14 is too realistic, at least in the short to medium term. What do you think about taking it to 12 in the short term, noting that it's a tiny quantity of kids aged 10 to 11 who are realistically in the system? We could cut them out, I think, quite easily. Is that a sort of compromise that you think might be good in the short or medium?

Ms SUE HIGGINSON: You don't have to go that way.

EILEEN BALDRY: Anything is better than leaving it at 10. You might note that that's what the ACT did. They went to 12 and then they are going this year to 14. I guess that there is an element of that to not scare the horses, so to speak—to say the world doesn't collapse and we don't have 11-year-olds running around beating us in our houses because we've raised the age. We'd love it to go up to 14 at least, if not 15, and that's the international bench point. We have to be pragmatic. I understand perfectly well what you're saying and that in the current climate when some States—well, a Territory and a State—have gone backwards, it would be lovely to be bold but it's better than not.

The CHAIR: I have lots more questions but I'm going to put them as supplementary questions. Thank you for your time today. Thank you for providing submissions. If you could table your opening statements, that would be very much appreciated. Thank you again for coming today.

Ms SUE HIGGINSON: And also the reference you made to your colleagues.

EILEEN BALDRY: To Ross Homel. Yes, to Ross's work. I'll send that in.

The Hon. Dr SARAH KAINE: Also the guy with the policy—

PETA MacGILLIVRAY: The knowledge-policy rupture?

The Hon. Dr SARAH Kaine: Yes.

EILEEN BALDRY: That's Barry Goldson and Barry is one of our authors.

The CHAIR: We will come back after morning tea at 10.45 a.m.

(The witnesses withdrew.)

(Short adjournment)

Mrs STEFANIE JANDL, National Youth Services Specialist, the Salvation Army, sworn and examined

Miss MIEKE WATERS, Policy and Advocacy Adviser, the Salvation Army, sworn and examined

Ms JUDY BARRACLOUGH, Chief Executive Officer, Youth Off The Streets, sworn and examined

Ms MARTA VASQUEZ, General Manager, Young People Services, The Y NSW, affirmed and examined

Mr MARK JACKSON, Coordinator, Youth Programs, Camden, The Y NSW, sworn and examined

The CHAIR: Welcome and thank you for making the time to make a submission and give evidence today. I don't know if you have opening statements. We want to get stuck into questions and we thought, if you tabled your opening statements, that would allow us more time. If you really want to, maybe condense them to two minutes if they are beyond two minutes. I'll leave it up to you. What would you prefer to do?

JUDY BARRACLOUGH: I'll make a very short opening statement. I'll cut back on what we had and then submit the rest.

MIEKE WATERS: We will do the same. Thank you for the opportunity to appear before the Committee today. I would like to first acknowledge the Gadigal people, the traditional custodians of the land in which we meet today. We believe that every person deserves to feel safe in their community. But all justice, particularly youth justice, must be compassionate, holistic and evidence based. By transforming the way we respond to young people who offend, we have the critical opportunity to ensure that every child and young person feels supported and empowered to thrive. Our submission highlights the many factors which may lead young people to offend, and how none of these are addressed by a system designed to punish rather than provide stability and consistency.

Principally, the responses to young people offending must focus on prioritising physical and emotional safety, supporting rehabilitation and setting children up for future success. The Salvation Army has seen how effective diversion—be that police diversion, restorative justice conferencing, or work development orders—can support the young person to explore the causes and consequences of their actions. These programs promote a flexible response to offending and positive behaviour change, while timed and high-value prevention and early intervention programs are crucial to address the needs of young people who offend holistically, to reduce recidivism and increase community safety. We welcome your commitment to this inquiry and appreciate the work this Committee has done to understand the drivers of crime. Thank you for the opportunity to appear.

JUDY BARRACLOUGH: I'll provide an abridged version. Again, thank you for the opportunity to appear on behalf of Youth Off The Streets. Youth Off The Streets has, for more than 30 years, worked with children and young people who are experiencing homelessness or complex disadvantage. Our services include early intervention, prevention and, of course, youth justice programs. Echoing the earlier statement, the youth justice system does tend to prioritise punishment over prevention and fails to respond to the effects of intergenerational trauma and disadvantage.

I wanted to draw attention to the contrasts. The data shows that New South Wales spends close to \$1 million to incarcerate a young person for a year and, of those, almost 63 per cent reoffend within 12 months. In contrast, for around \$3,000 per participant, Youth Off The Streets' early intervention program achieved full re-engagement in education and employment, and zero reoffending during a one-year program period, with young people who were at risk of engagement with the youth justice system. So, for little more than the cost of incarcerating a young person in New South Wales for one day, Youth Off The Streets has shown that we can engage children and young people, support them to develop and achieve meaningful life goals, and stay out of the justice system for one year, emphasising that young people do not enter the justice system by choice.

They are there because of factors beyond their control, such as family breakdown, poverty, mental ill health, school disengagement, homelessness and the impacts of intergenerational trauma. We have presented in our submission six recommendations, including raising the minimum age of criminal responsibility; greater investment in trauma-informed, education-led early intervention programs; investment in diversion programs; a particular commitment to diversionary programs for First Nations children; expansion of the Youth Koori Court; and expansion of youth homelessness prevention and housing options. Thank you for the consideration of our submission. I'd be pleased to take questions.

MARTA VASQUEZ: Thank you for the opportunity for The Y NSW to appear before this important inquiry into youth justice. At The Y NSW, we have a vision that all children and young people in New South Wales are positively impacted and living inspired lives beside us due to our programs. We've proudly been a part of the community of New South Wales since 1853 and are a part of the oldest and one of the largest youth organisations in the world, the YMCA, which spans 120 countries. We know it's no accident—and we've heard similarly from my colleagues—that young people become involved in the youth justice system. It's often a result

of layered, coexisting and complex vulnerabilities, such as trauma, disengagement from school, family instability, poverty and unmet support needs, which is why our focus must be not only on risk factors but also on recognising each young person's strengths and building the relationships, skills and opportunities that help them thrive, as well as set them on a trajectory that would be different without our support.

In lodging our submission to this inquiry, we chose to focus on the underlying drivers of children's contact with the criminal justice system, particularly school disengagement and educational exclusion. At The Y NSW, we deliver evidence-based programs to support young people. In particular, today I'd like to share with the Committee information about our alternative suspension and Streetgym programs. With tens of thousands of students suspended from New South Wales schools each year, we believe that much more needs to be done to address this challenge and that there are currently not enough structured supports available for young people.

Alternative suspension, however—which we currently deliver in Broken Hill, Lake Haven, Oran Park and Penrith—is informed by years of evidence. It helps to reduce risk factors linked to offending, keep young people connected to pro-social supports and interrupt escalation into justice involvement. We've been delivering the program since February 2023, although it comes with more than 25 years of evidence from Canada and beyond. So far, more than 500 young people have attended the alternative suspension program in New South Wales. We're pleased to work with schools and other community organisations to provide truly person-centred supports in community. Mark and I are pleased to be with you today and look forward to supporting the Committee however we can.

The CHAIR: I might start with The Y NSW. With regard to the alternative suspension program which you just talked about, could you outline what it would cost to scale this program so that it could be delivered across New South Wales, and whether there is a sufficient workforce to actually do that?

MARTA VASQUEZ: For each individual site, our budget looks like somewhere between \$200,000 and about \$250,000 per site. We absolutely believe that every young person should have access to this kind of support. It would depend on how we did that, how we would be able to scale it across New South Wales. But, yes, approximately between \$200,000 and \$250,000 per site.

The CHAIR: What were the sites you said—Oran Park, Penrith and Lake Haven?

MARTA VASQUEZ: And Broken Hill.

The CHAIR: So there is a regional one as well.

MARTA VASQUEZ: There is, yes.

The CHAIR: Would you be open to having the Committee visit one of those sites?

MARTA VASQUEZ: Yes, we would really welcome that. Absolutely.

The Hon. Dr SARAH KAINE: Ms Barraclough, what do you hear from young people? We've heard from the advocate and others this morning, but what do you hear from young people about what would have made a difference to them in avoiding being caught up in the justice system?

JUDY BARRACLOUGH: I also refer you to our submission where we do refer to the voices of the young people we support. There are a few things I would say in answer to that. One would be identifying the challenges as early as possible. For example, when a young person may first have interaction with police, having the relevant police liaison officer referring that young person to a support service to give that young person a caseworker and the relevant access to programs. Another would be access to youth services such as youth hubs. Young people need to be able to easily access the support that they may need, whether that's navigating the justice system or other elements of getting their lives on track, to avoid being caught up in the justice system.

Definitely support in relation to being engaged with education. There are so many barriers, for a young person who is facing complex disadvantage, to education. I also echo The Y's comments about suspension programs. They're really valuable in working with young people who've been identified at a school to have antisocial behaviour. I think bringing it up to a systems-level issue—acknowledging that a young person who is engaged with the justice system more than likely has been engaged with other parts of the system as well. So being able to connect the information between different systems of government.

The CHAIR: In one of the recommendations, you say:

- Invest in trauma-informed, education-led early intervention programs to keep children and young people engaged in learning.

Should we move beyond trauma informed, to be trauma responsive rather than informed?

JUDY BARRACLOUGH: I think they're inextricably linked. When we refer to the term "trauma informed", it's being very cognisant that the young people who are the people that we're talking about more than likely have experienced more than one experience of trauma—so making sure that programs are aware and sensitive to that trauma need. But, absolutely, the nature of programs responds also to specific types of trauma.

Ms SUE HIGGINSON: Referring to The Y's submission, how accessible is the Alternative Suspension program in New South Wales? You talked about that. It was developed in Canada. How could this effective program be expanded? Is that something you've looked at or is that something you're working on? Could you tell us a bit more about that?

MARTA VASQUEZ: Yes, it's absolutely something we're working on, and of course it's a challenge as far as funding is concerned. At the moment, we are supported by philanthropy to have our four sites open. That funding runs out at the middle of next year, so it's absolutely a challenge. It's very possible to be able to scale it. It's not expensive by comparison to the effects of having young people disengaged from school. We're also not staffed in the same way that schools are staffed. Schools are staffed with teachers, which is very different to us. We use youth workers, like Mark here, who are perfectly placed to be able to support these young people through these challenging times and find the genesis of the reason why they have been excluded from school.

Ms SUE HIGGINSON: In terms of it being philanthropic, have you ever sought public funding? Are there any particular reasons that you've been provided as to why you haven't been successful this time, and you should try again next time, or anything like that?

MARTA VASQUEZ: We are working towards, at the moment, we made an application for education funding through the SESP grant, so we're hopeful that will help us scale in New South Wales. As far as philanthropy, I'm sure that my colleagues here will relate that it's sometimes philanthropy—we'll be looking for something that's kind of shiny and new and interesting, and that's exactly what this program was a few years ago. But it's challenging, I think, to continue to go towards the same type of funding.

Ms SUE HIGGINSON: To Youth Off The Streets, we've seen over the past couple of years—I've got crude ways of describing it and I should try and develop some more sophisticated ones, but this real kind of punch-down on kids, a bit of law and order. We've got a youth crime explosion problem, even though if you're looking at real datasets and so forth and you're looking at things in context, we haven't, but that's what the politics has told us we've had. We've now seen some very strong legislative responses, changes to bail laws for young people, even changing the traditional *doli incapax* prosecution burden and making it somewhat easier for police to incarcerate the youngest of people that the criminal law can impact. Have you seen any impact on the people you work with and the young people you interact with in relation to that particular policy response and—I'm just going to say it—this demonising of young people that we've seen both in the media and on the floors of our Parliament?

JUDY BARRACLOUGH: Yes, we have seen impacts and can answer that from a number of different angles. In terms of the experience of young people themselves, yes we have, and I'm sure you would have been presented with data to show that the number of young people who are in remand has increased, the number of young people incarcerated, particularly from vulnerable populations. It's certainly resulted in locking up more young people, and a remand situation is really devastating for children who are as young as 10. That has been a significant and worrying impact.

Your term "demonising" I think is seen in a number of different ways. It's seen in the experience of young people in their daily lives, young people who are in their teenage years who are challenging to love, I guess, if they've been in a situation where they've been caught up with the wrong crowd, or particularly those who are unaccompanied young people. That has an impact on how they experience society, but even more so, it does have an impact on funding as well, so it's less attractive, if you like, to fund a young person who's falling between the cracks of a child system and an adult system. That is an important element, also. So, yes, we very much advocate for the reversal of the changes that have been brought in, in regards to bail and the other matters that you referred to.

Ms SUE HIGGINSON: Is there anyone else that wanted to—including your workforce, the people that you work with have, have you noticed an impact or a change in the last few years? Salvos, do you have any views on that?

MIEKE WATERS: I think overall we are very concerned about the public and media and general sentiment that we need to get tough on crime. I think there is a significant body of evidence to say that children and young people require stability, support, love and strong role models around them to foster a better future. This sentiment that we do need to punish young people, it doesn't add up. It doesn't work in the long term. We at the Salvos really want to see responses which are going to support young people, build positive relationships and

support structures around them, and address experiences of disadvantage, which are often the cause of the offending behaviour. That includes on families and intervening earlier as well.

The CHAIR: With the Salvation Army, you've made 35 recommendations. If I go to recommendation 34, basically, from a child rights perspective, are there any jurisdictions or places where you've seen that implemented and done well?

MIEKE WATERS: If you don't mind, I'm just going to the place in the submission.

The CHAIR: It says:

The Salvation Army recommends that the NSW Government prioritise the rights and best interests of children in designing, developing and delivering responses to youth justice in line with the United Nations Convention on the Rights of the Child.

MIEKE WATERS: We very much advocate for a rights-based approach. In terms of other jurisdictions which may have done this well, I would need to take that question away.

The CHAIR: I'll go to recommendation 35, where you say:

The Salvation Army recommends that the NSW Government invest in the development of formal mechanisms that empower children and young people with lived experience of the justice system to provide advice ...

How would you see that as them being able to provide—what mechanisms would you see?

STEFANIE JANDL: I think it's also about having the opportunity to ask young people who are involved in our system in terms of what the experience was like for them, as well as what would have been helpful for them at any given point in time at those different trajectories for a young person. Especially with the young people that have become involved in the system at the age of 10, 11 and 12, there are so many forks in the road. It's hearing from young people in terms of what would have been different. What could have changed this trajectory for you? What did you need? And it's listening to what our young people have to say.

The CHAIR: Ms Barraclough, you say a whole-of-government response is essential—better coordination between housing, health, education, child protection, the justice systems, all of those. What does that look like in your eyes?

JUDY BARRACLOUGH: I acknowledge it's not a simple answer. What we're referring to is the points of intersection. One potential mechanism is in relation to screening. Where a young person might engage with one part of the system—for example, in education, schools will know whether a young person is at risk—it's being able to have a way of capturing and referring that information so that the next part of the system can access that. Screening, I think, is important, and monitoring and managing across departments as well, and being able to provide the necessary support referrals.

The CHAIR: If it's whole of government, should it be directed from, say, the Premier's Department? How would the accountability framework fit in?

JUDY BARRACLOUGH: I would have to defer to people in the Committee as to how the mechanisms of government might possibly respond to that. At a practical level, when we talk about our team on the ground—and perhaps my co-appearing parties might have other reference points as well—it's being able to, when we have a situation where a young person has been referred to us, get the right information to support them quickly. The access between departments is really important.

The CHAIR: When there was the change in bail provisions or that legislation, what consultation were you given? This is for everyone. What consultation was there with government prior to that legislation coming in?

MIEKE WATERS: If I recall correctly, the passing of the bail laws and the posting and boasting legislation occurred very quickly. We, as the Salvation Army, opposed those laws for the reasons that we have already stated and that my colleagues have mentioned. However, because the legislation passing moved very quickly, we didn't have the opportunity to provide our input.

JUDY BARRACLOUGH: I echo that.

The CHAIR: So it's the same sort of not much consultation or quick response.

The Hon. STEPHEN LAWRENCE: Thanks all for coming along. It's much appreciated. I might start firstly with the why. I'm just wondering if you could give us a sense of how much unmet need you observe in the work that you do. How often do you see kids going into custody where you have the distinct feeling that if you'd had more funding, you could maybe have saved them? How many waitlists, for example, do you have to get into your services? Can you just give us a sense of how much more you could do if you had more money?

MARK JACKSON: Yes, absolutely. I think I might take that one. For instance, we're based in Oran Park, but we have people coming from as far as Southern Highlands to access the program. The need is definitely there, and they're willing to travel to access that support because they can see the value in it. To answer your question, I think the young people that we see coming through the program—often it's early intervention. They're not necessarily at that point where they're getting involved in the justice system, so we're able to work with them from an early age and try to change that trajectory and break that cycle of behaviour. That really starts with that punishment mentality.

In schools there's such a focus on that negative behaviour, but it's like looking at, "Okay, What's the underlying issue here? How can we resolve this underlying issue?", and build on those strengths that the young people have, rather than just focusing on that negative behaviour. That can change their mindset, which will have a ripple effect for years to come. It's hard to say for the young people that haven't had that access to that program because we've only been doing it for two years. There are young people that would have definitely benefited from it had it been here before. I can absolutely say without a doubt that we've had some amazing outcomes for young people who would have been in the justice system who aren't now.

The Hon. STEPHEN LAWRENCE: That's helpful, thank you. Have you got a sense of how many of the kids accessing your service might have come to Australia unaccompanied, maybe as refugees and the like?

MARTA VASQUEZ: I might have to take that number on notice. We know that we have had a significant number of the CALD kind of background. I'm not sure if we know if they've been unaccompanied or not.

The Hon. STEPHEN LAWRENCE: I might go to Judy. In terms of the questions that we're thinking about as a committee, I think it's probably fair to say that there's sort of one approach. It is obviously a punitive approach, and New South Wales has been pretty good at that. The other approach is a justice reinvestment approach. I'm wondering if you're able to talk specifically about evidence that early intervention programs make a difference.

JUDY BARRACLOUGH: I referred in my opening statement to a program that Youth Off The Streets ran specifically for young people who either had one or more engagements with the justice system or were identified as being at risk of engaging with the justice system. That particular program occurred across a 12-month period. There were regular weekly catch-ups with the young people and structured programs, working with them. They set their own goals but around the objective of re-engaging with education and/or employment. That particular program had 30 young people involved in it, and we saw that there was full re-engagement in education and employment and zero reoffending during that one-year program period. We also saw statistically significant improvements in psychological distress and personal wellbeing, and there was also measurable change in social behaviours as well. Clearly these are positive outcomes, and hopefully that's a *Sliding Doors* moment, meaning that they will then be on a trajectory of being engaged with society as opposed to with the justice system.

We had a similar program in regional New South Wales with the same outcome. That one was actually under the banner of a school suspension program, and the first program I referred to was actually based off some of the learnings from that. Same outcomes—100 per cent re-engagement and return to education. The evidence is very much there. They're particular focus programs but, if I broaden it to outreach and other forms of early intervention, they're all evidence based in terms of having an impact on preventing a young person from being caught up in the justice system. So, yes, I very much advocate and support the approach to early intervention and prevention. You referred to justice reinvestment. I might just comment that the previous grant funding that was available through the Government for justice reinvestment was quite difficult to access because of very constrained criteria. If that was for consideration by the Committee, that would also be something which we hadn't mentioned in our submission but that I would draw to your attention as well.

The Hon. Dr SARAH KAINE: Just a quick follow-up on that. For those of us who haven't been engaged in the youth sector, can you explain to me what those interventions are? We talk about interventions and we talk about the success of interventions. Any of you or all of you, could you explain what we mean by intervention—what are interventions, what do they look like and what are the components of them—so that I can understand a bit better?

JUDY BARRACLOUGH: I'll answer quickly first. Intervention is basically just interacting in some way. When I was talking about those particular programs, we would have 30 young people who would have been referred to us by various sources—Youth Justice, schools and others. They, in that particular program, came to our youth hub at a certain time every week. They were engaged with our caseworkers and youth workers to run through a particular programmatic curriculum. There was onsite interaction as well by youth workers, who would work with them around their particular issues. Other forms of intervention might be as simple as an outreach or a drop-in. We run an outreach at Bankstown every Thursday. It's a meal and some sport on the oval but, most importantly, it's soft entry by building rapport with our caseworkers and youth workers and being able to then

funnel them through into more intensive engagement. Another form of intervention is casework, which is a one-on-one problem-solving intervention for, usually, only three to six months.

Ms SUE HIGGINSON: You said the justice reinvestment funding was hard to access or had some difficulties. Can you elaborate on that a little bit for us?

JUDY BARRACLOUGH: Coming unprepared on that particular topic, I'm just struggling to remember whether it was Federal or State, the particular grant that I'm thinking of. I know the justice reinvestment covered both jurisdictions. The criteria was challenging and—again, from memory—it was particularly focused, one of the grants, on Aboriginal controlled organisations or organisations that were working closely with First Nations, which our organisation does. But it appeared that the funding was very much directed to ACCOs. Other criteria—I'm not sure whether that was specific to that funding, but certainly across multiple State Government grant funding, there is a requirement for the funding to be for new resources, new staff or new activities. So it can't fund anything that would be characterised as business as usual—which is an absolute anathema to wanting to support evidence-based activity, because anything that has been running for a period of time that you can iterate and improve is ongoing staffing. To introduce a new staff member in order to get that funding is really counterproductive and quite restrictive.

The Hon. SCOTT BARRETT: Mine's a bit more of a practical question, in that we see some of these really good programs—we've had the Midnight Basketball talked about today, and there are things like the Australian Children's Music Foundation. Lake Cargelligo, through BackTrack, has a catering thing. These are all very different programs for diversion and engagement, but what are the common themes that we see in these programs that make them successful? And, on the other side, what things would go into these programs that see them fall over and not have the desired impact?

MARTA VASQUEZ: I think the success factors really are about the kind of engagement that we have with young people. I know that we see a great deal of engagement, particularly through some of our Streetgym programs. One example that comes to mind is our Central Coast Streetgym program, where we have up to 100 young people drop in on a Thursday afternoon to engage with their peers but also have that support of youth workers, if and when they need that support. To me, that speaks to a need in the community. We've absolutely heard from young people that they are screaming out for this kind of support and engagement—the soft entry point that just isn't on offer and those third spaces that just have disappeared in our communities.

I think that that definitely is one of the success factors: having that soft entry point. As far as how things fall over—well, I think we've talked a little bit about funding today. That can be a real challenge for charitable organisations like ours. We have these wonderful programs that are working super well and we have great engagement with young people, but we don't know what's going to happen next year, so it's hard to retain awesome staff like Mark. It's hard to keep that kind of engagement going with young people.

MARK JACKSON: I would also say that funders don't often fund existing programs; they like to fund new programs. If you've got a program that's working really well and having great outcomes, you're kind of forced to have to try to find new funding when you're in a market of new ideas.

STEFANIE JANDL: The other thing to add with some of these programs is: easily accessible to some of the young people that we work with. It's not always in a structured program. I think some of you mentioned that before—like drop-in centres and new services where young people can not necessarily be attached to a service but can turn up and seek support. And, whether that's for housing, or whether that's for mental health or drug and alcohol or Centrelink support or seeing a GP or anything like that, that it's easy for them to access—because the minute young people have to be put on a waiting list, we lose the opportunity for them to engage with those services.

The Hon. SCOTT BARRETT: Can I follow up not on the formal engagement programs but on some of the other activities that we could be encouraging kids to get involved in, whether that be their local sport or local choir or drama club, and using that as a way of almost covert diversion.

MIEKE WATERS: What we see in our frontline services is that there is a really great opportunity to engage young people who are at risk of offending or who possibly have encountered the justice system in an informal way, such as in sporting clubs, where there can be a community to wrap around the young person, positive support networks, role models, and an opportunity to develop living skills or a sporting skill or a skill related to art or recreation. We see a really great opportunity in engaging in those informal settings and making sure that these programs are accessible for children and families. Very often some of these programs are financially untenable for families, especially those experiencing financial hardship. If you have to pay up-front for a sporting program and you have a family experiencing financial hardship, which we know can be a risk factor

for offending, it becomes untenable to engage that young person. We really want to see low-cost or free activities which are accessible to all children and families in New South Wales.

JUDY BARRACLOUGH: I might add, if I may, echoing what has been said, but also really reiterating the comment about third spaces—having support for places like youth hubs, where there's a multiplicity of services in one place. Sometimes that may be through other organisations that are not necessarily directly youth services. In Dubbo, for example, our team works with PCYC and the various agencies gather together for a Fit for Life program in the mornings with breakfast. It's another example of soft entry. Generally, the different services do interact well with each other where there are easily accessible spaces for young people.

MARK JACKSON: Yes, I can definitely second that. We've got a youth space at Oran Park and it's a co-located space, so youth services come and use that facility. In terms of referring young people, I've got headspace coming in once a week and meeting the young people. If I need to make a referral, they already know that person. It really makes those links very effective and very easy. Yes, I would welcome anyone to come and see that space and see how that works. It's very effective.

The CHAIR: I might take you up on that.

MARK JACKSON: Yes, absolutely. Any time.

The CHAIR: We were talking before as a Committee about places or site visits that we'd like to do. I see the Salvation Army has a program in Moree, the Deadly Diamonds Youth Leadership Program. Is that something that the Committee could go and visit to learn more about. What's it about?

MIEKE WATERS: The Deadly Diamonds program is a mentoring program, so it is not necessarily aimed at targeting specific risk factors, but it's one of those more informal programs which allows young people to develop their leadership skills and build positive connections with the other young people in the program and their community. It is something that I would absolutely love to follow up with you, and the Salvation Army welcomes the Committee to our programs.

The CHAIR: For Youth Off The Streets, would there be a program that you could recommend that the Committee could see in maybe Dubbo, Moree or Western Sydney?

JUDY BARRACLOUGH: Certainly. We would be very much welcoming the Committee to experience the early intervention in the form of outreach in south-west Sydney and Bankstown. Unfortunately, the programs that I mentioned specifically, working with young people to re-engage them with education and employment—the funding for both of those programs ceased. We're not running those right at the moment, but seeking to do so again. The other is a program that you've visited yourself, the Aspire to Inspire. That's run inside the juvenile justice centre at Reiby.

The CHAIR: I've been to Oran Park; it's an amazing facility. Is that somewhere we could go to?

MARK JACKSON: Absolutely, yes.

The CHAIR: We might follow you up on all of those as a site visit to see early intervention in action, if that's okay.

The Hon. EMMA HURST: I just have a couple of questions for the representatives from the Salvation Army. Thank you, everyone, for coming today. Just looking at your submission, you talk about embedding children and youth voices in policy and practice reform, and making sure that we're hearing specifically from those with lived experiences and making sure that that's really informing policy. Just for the benefit of the Committee, can I get you to talk briefly about the importance of this. Also, to try to get an understanding of the best way that the Government should be ensuring that those with lived experiences have their voices heard within that policy development process, is that a specific committee that's put together? Is it an advocate that works directly with the government but also works with those with lived experience? I'm just wondering how we best make sure that that actually does happen and what a potential model could look like.

STEFANIE JANDL: At the moment we are spending a lot more time looking at focus groups and lived experience groups and youth advisory groups as well. A lot of our sites across New South Wales have either site-specific or State-based advisory groups, where we have the opportunity to bring a number of young people together and hear from them in terms of the direction of the service and what the service could be doing to better meet the needs, but also as an opportunity to consult with young people in terms of, if there are certain practice developments or programs that we are facilitating or planning, to have their input into them as well—and then, broader, if there are political opportunities for them to input into, or submissions, that we also have an opportunity

to present that to those advisory groups and then feed back that information.¹ On the flip side is then having the opportunity to report back to those young people in terms of how their voices have made a difference and how we've actually put that into practice.

MIEKE WATERS: Something that I think we consider when embedding a lived experience voice in any sort of feedback mechanism, formal or informal, is ensuring that that process is meaningful for the young person and that they understand where they're feeding their information into, whether it's public or private, and how they can provide information—whether it's through an informal discussion, whether they can provide it in a video, or whether they can provide it in a picture. All of those things need to be considered in all mechanisms and ensuring that the young person feels heard and is aware that their feedback may or may not result in immediate or long-term changes.

The Hon. EMMA HURST: Is there anywhere in Australia or anywhere in the world where governments have set up some kind of system or model to make sure that the voices of people with lived experiences are helping to inform policy that we can learn from here in New South Wales?

MIEKE WATERS: We do have a program in the Salvation Army related to modern slavery. It's not related directly to young people, but it's called our Lived Experience Engagement program, which works directly with the Attorney General's department to feed into reforms around modern slavery and trafficking. That is absolutely something we would be happy to discuss further. It is an existing pathway, and, yes, it's a program that we have already.

The Hon. EMMA HURST: A program like that could also then be used in this space to make sure that those voices are helping inform policy in a similar way.

MIEKE WATERS: As long as we're not doing a direct copy/paste and we are making sure it's accessible to young people, I think we could take the learnings from existing pathways and adapt that to young people. Yes, we can absolutely work towards that.

JUDY BARRACLOUGH: I might also suggest that some of the existing youth advisory groups that our various organisations have can also be tapped into for policymaking. We've had that opportunity before with the Minister for Youth Justice. A group that we run and facilitate in south-west Sydney, which is youth based and youth led, came and visited with the Minister. That was relatively informal. I know that those groups and young people would be delighted to be accessed for purposes of policy.

MARTA VASQUEZ: It would be remiss of me not to mention our New South Wales Youth Parliament program as well. We just had camp last week—I'm still recovering—for 100 young people that came together and have started discussing their bills. That will be debated in these walls in July, and one bill in particular is focused on youth justice. That might be of interest to the Committee.

The Hon. EMMA HURST: Is that something that you can table and provide on notice for us?

MARTA VASQUEZ: Yes, I will.

The Hon. STEPHEN LAWRENCE: This is a question for Judy. I think you said something, Judy, in your opening statement about connection between State organisations and NGOs. I think maybe you were talking about the flow of information. I was wondering if you could elaborate on that.

JUDY BARRACLOUGH: I was somewhat referring to earlier comment, just recognising that there is a system failure in terms of the flow of information between various arms of government and different parts of the system, particularly being able to identify early in a young person's journey whether they're likely to end up in that situation. Again, it's speaking to the ability for organisations to have screening mechanisms to start with to identify those risks, but also then to be able to share that information to monitor and manage across different departments.

The Hon. STEPHEN LAWRENCE: Just a general question: Does anyone have any particular information about unaccompanied kids, whether there are particular programs for them or particular mapping of their criminogenic needs and so forth?

JUDY BARRACLOUGH: I'll speak briefly. I know you referred earlier to unaccompanied in the sense of migrants. The work that Youth Off the Streets does with young people who are experiencing or at risk of

¹ In [correspondence](#) to the committee received 13 May 2026, Ms Mieke Waters, Policy and Advocacy Advisor, The Salvation Army, provided a clarification to the evidence of Mrs Stefanie Jandl, National Youth Services Specialist, The Salvation Army.

homelessness tends to be unaccompanied young people in the sense of they're unaccompanied by a regular family system, parent or carer. All of our programs really are focused on being able to work with a young person who's outside of a stable family unit, particularly in the homelessness space. I'd be happy to provide more information about any aspect of that subsequently.

The Hon. STEPHEN LAWRENCE: I have a more general question as well. We had a witness earlier—he is now a young man, but he had been a young person with lived experience of the system—who talked about having spent four years in custody from the age of 15. I gathered from what he said that that was one continuous period. He said that it had been beneficial for him in his particular circumstances as they were. But I wonder if you have evidence about the impact generally of short periods in custody for young people, particularly pursuant to bail refusal.

Having worked in the criminal law, you would occasionally still hear a magistrate talking about the merits of the short, sharp shock, which is not something most experts think is a good thing in terms of a short period in custody. Are you able to give us any evidence about particular case studies or general observations about kids that you've been in contact with who have then gone into custody for short periods? Has it been a good thing? Has it been a bad thing? What's your general view about that?

STEFANIE JANDL: I think it very much depends on the young person. But if we're looking at young people from an early age, we know that if a young person enters custody, whether it's on remand or for a sentence period, we then increase the chances of them having ongoing contact with that justice system or increasing the risk that that young person is in, and then also the disconnection that they then have within community. If we're putting a young person into custody for a period of time, they're then disrupted from school and they're disrupted from home life. If a young person is already homeless and they go into custody, they often lose their placement as well.

I obviously don't have stats in terms of the numbers of young people that we support, but we do have a crisis refuge based in Surry Hills, so we often see young people come in and out of custody. I think it's a huge disruption for young people who have got supports in place. They go into custody for whatever length of time and then come out and there's a disruption to some of those support systems. On housing, if a young person has gone into custody and was living at home, then it disrupts that family environment as well, because parents are like, "You've gone into custody. Things are increasing. You can't be at home anymore." It all has ongoing implications for young people.

JUDY BARRACLOUGH: Anecdotally, occasionally we hear the comment, "It's safer in juvie. I get fed; I get a bed." To use that as a reason for incarcerating young people is an absolute tragedy. Really, that speaks to the absolute need and the lack of supply in the homelessness space. We need to be able to have, as we talked about before, those soft entry points for young people before they get into that situation where they can regard being incarcerated as somehow better than their experience. Echoing Stef's comments, the data does show that there are increased rates of reoffending and there is increased antisocial behaviour et cetera. Yes, pouring the focus of priorities and funding into preventing a young person from needing to be in that situation is really the far more long-lasting and beneficial approach.

The Hon. STEPHEN LAWRENCE: I have a general question again, for anyone who might want to answer. Have you got any thoughts on whether the current drug law regime—which, for example, sees young people being stopped and searched and, in some circumstances, taken to court for possession of small quantities of cannabis and so forth—is a positive thing in terms of dealing with these issues?

MARK JACKSON: I think it's good that they're cracking down on these drugs, and on knives in particular as well. We've had a lot of experiences with young people at our programs carrying knives. Usually it's for safety; they're just carrying it for their own safety. But I think there is definitely a need to be firm on these issues. Thankfully, I haven't had to call the police, but just having that as a backup and saying, "I'm actually responsible to call the police and let them know that you have a knife, and these are the offences"—that is often enough of a deterrent for them. Rather than going into that system and getting into trouble, it's just that knowledge that that is the outcome. It's the same with drugs as well. But, in saying that, it's a desensitisation, like the previous question—if they get incarcerated once, then they're much more likely to reoffend. It's the same with suspensions. We've seen if they get suspended once, they're desensitised, and then they'll get suspended again, and it just creates this trajectory. I think that's where I don't think necessarily that punishment is the best option.

The CHAIR: I have a question in terms of reporting on an investment in early intervention. It doesn't appear that there are any reports on the community. Would this be helpful, do you think, if not just reporting on the early intervention services available, but also mapping what services are available? That was a nod, for Hansard.

Ms SUE HIGGINSON: This is something that came up in a different submission, and it's similar to my colleague's question about drug laws and the impacts on young people. Have you had any interaction with fare evasion, in terms of public transport? I'm from the region, we don't even have public transport up there. But from the urban, metropolitan area, young people getting into that pattern of jumping on and off and of fare evasion—is that a thing?

STEFANIE JANDL: Yes, absolutely, especially in the city or around the suburbs where young people can jump on and off trains, young people end up with significant fines through Revenue NSW—thousands and thousands of dollars of fines, which then have ongoing implications for that young person later on. A lot of young people can't get their licence because they've got too many fines. A lot of the programs that we support at Salvation Army—we've got WDOs, so the opportunity for young people to pay off those fines by engaging in some of those programs. Whether it's drug and alcohol support, mental health support, casework support, that's a really good opportunity for young people to engage, and by engaging in those programs or those supports, that effectively pays off those fines for young people. But young people would have upwards of \$5,000, \$10,000 worth of fines sometimes.

Ms SUE HIGGINSON: It seems very strange, doesn't it? We criminalise children and then we do—anyway, it seems like it's this vicious cycle. Surely there's an off-ramp somewhere.

The CHAIR: I think it was in one of the other submissions that public transport should be free for children.

JUDY BARRACLOUGH: Another consideration in that is just for young people to be able to access the services that will make a difference. That's directly related to their ability to access public transport.

Ms SUE HIGGINSON: That's right. It seems like one that is almost perverse, that if a young person is jumping on and off—I mean, the idea that we want young people to be able to freely move, to connect, to communicate, to access, and then we're going to punish and fine them and make them more poor.

MARK JACKSON: It's like suspending young people for truanting. It's illogical.

Ms SUE HIGGINSON: Yes.

The CHAIR: It doesn't make sense sometimes, does it? Thank you everyone for your time today. Thank you for providing your submissions and the evidence today. It's greatly appreciated. If there are any questions on notice, the secretariat will be in touch. Again, thank you. We look forward to either visiting onsite somewhere or further interactions about what we can do as a Committee with our recommendations.

(The witnesses withdrew.)

Mr MATT DIMECH, Manager, Youth Justice Policy, and Solicitor, Criminal Law Division, Legal Aid NSW, affirmed and examined

Ms JANE SANDERS, AM, Principal Solicitor, Shopfront Youth Legal Centre, affirmed and examined

Mr JACK LUMSDEN, Solicitor, Shopfront Youth Legal Centre, affirmed and examined

Mr JAMES CLIFFORD, Managing Solicitor, Children's Criminal Practice, Aboriginal Legal Service (NSW/ACT), affirmed and examined

The CHAIR: Welcome, and thank you for taking the time to give evidence today. Would you like to start by making a short statement? Because we've only got a short time with you, we've suggested that maybe you will table your opening statements, but it's up to you. You can make them shorter, or we can dive straight into questions.

MATT DIMECH: I'm happy to dive straight in.

JANE SANDERS: I think that's the best way to use the time.

Ms SUE HIGGINSON: I want to start perhaps with you, Mr Clifford. I work with the ALS a little bit around consulting on policy matters. Also, I'm based in the north and have had quite a lot to do with the criminal justice system as a crime lawyer in the past. This came up earlier, but I am hearing, distressingly, quite a lot that there are young people that are saying, "I really just want to go in." It's much easier in right now than it is out, in terms of juvie and going into youth detention. Right now we have a whole plethora of new laws that make it easier for young people to be sent in. Do you have anything that you would like to share with the Committee about this in terms of this cultural trend that is happening, how long it's been happening, what it means in terms of what you're seeing in the courts across New South Wales right now, and what this is doing to communities, families and young people?

JAMES CLIFFORD: Sure. That is a sentiment you hear sometimes. I'd probably start by saying it's not the majority of experience of young people. I think that when we hear that kind of comment of wanting to go in, it's so galling that some young people feel that way. Certainly, that is something that you do hear and are shocked by. We operate a visiting legal service where we send lawyers into the youth detention centres—all six of them—once a fortnight, at least, in person. A lot of the kids in there are not keen to be in there and are eager to get out, return to their families and resume their lives. I do think when you do see that sentiment come up, it's a product of the enormous investment we place into detention centres that we don't place into community-based services. When you have a young person saying, "I want to go in there because I'm in a classroom that has six kids in it," that speaks to the lack of availability of appropriate supports in the community.

That being said, I would probably want to caution against a sense that a lot of young people feel that way. I think that it's an experience of some, but the vast majority experience custody as a place where they are isolated, where they feel cut off from their family and where they are forced to form connections that they otherwise wouldn't. I think even sometimes you hear, "We have these small classrooms and small schools in custody. We have these trade programs." A lot of Aboriginal kids we know are disproportionately experiencing the punishment aspect of youth detention centres. They're in confinement more than non-Aboriginal kids. They're segregated and separated. What school looks like in that context is often a packet given to them in their cell, and that's education for some young people who can't read and write. You do see that trend to a degree. I think it speaks to the underfunding of the community services that will actually make a difference. But I wouldn't want it to be perceived by the Committee, I suppose, that the majority of children are sort of seeking that kind of admission when I think the majority are doing everything they can to sort of stay out.

Ms SUE HIGGINSON: Thank you. I'm so relieved. This is for everyone now more broadly. We have seen some very serious tranches of legal changes impacting young people and incarceration and the criminal justice system. We've seen the changes to the bail laws, which I think shocked quite a few people in terms of the direction. We've now seen the response to that with the massive increase—or the rate of increase was so rapid—in terms of remand numbers because the changes were to the bail laws, and then that tranche of changes that related to prosecution requirements relating to doli incapax and, for want of better terms, making it easier to rebut the presumption of doli incapax and therefore potentially making it easier for young people to be sent out of the court the other direction. How have these changes impacted your work? How have these changes impacted the culture within your workforces as well and the relationships you have with clients, young people and families, and where you see us heading? Mr Dimech, if we could start with you.

MATT DIMECH: Certainly there was a lot of concern, particularly with the changes to the bail laws, from my colleagues and I. We did see that increase in remand rates as well as an increase in the Youth Justice

custodial population following the announcement of those laws. That does seem to have tapered off somewhat recently but is still somewhat higher than it was pre-22C. In particular, there was obviously a lot of concern surrounding the review into doli incapax in New South Wales. I don't think we're yet to see how that is going to play out because they only came into force a month ago, but I would suggest that a lot of eyes are on what trends might come out of those changes. We're still yet to have the implementation of the changes to the Young Offenders Act, which would increase and expand the opportunities to divert young people, as well as the case management aspect of the findings from the independent review into doli incapax.

There is still some hope that following that implementation fully there will be more opportunities to see young people diverted away from the youth justice system into a more therapeutic space such that they aren't needing a criminal justice response to what typically are issues relating to social disadvantage, poverty, disability and such. I think there are some real opportunities on the horizon to see a lot of those issues being addressed in a different way. But certainly with those new developments that you've identified, particularly the changes to the bail laws, there certainly was an impact on the way in which both our services were being delivered as well as from those numbers in Youth Justice custody and such.

JANE SANDERS: I don't really have anything to add to that, but might I just give you a quick response to the first question that you asked and an addition to what Mr Clifford said. The perhaps wish of a very small number of young people to be in custody is against a backdrop where the alternative is being on bail with really onerous conditions—often inappropriately onerous having regard to the alleged offence and also their age and their developmental and social circumstances. They may have enforcement conditions, which means police knocking on the door or shining a torch in their window at three in the morning, them having to get out of bed and wake up the whole household—their younger siblings, mum, dad and whatever—and also constant police harassment when they're out on the street as well.

For many young people, imagine what that's like—every day or random days, two or three nights a week, having that constant police presence which is experienced as harassment. Also, of course, it's got to be said that young people in this cohort often are living in households which are grossly overcrowded and dysfunctional—there may be family violence—or they may be homeless. Life for these kids on the outside is tough. That is no excuse for us to be saying, "Oh well, let's just put them in detention because they prefer it." We've got to improve life on the outside.

JACK LUMSDEN: Could I add to that as well? We were just talking about it before coming in—it's related. Often you'll get the instruction from a client that they just want to plead guilty and get it over with. That might be despite the fact that there's a viable defence to the charges, but they don't want to have to keep coming back to court because that just re-traumatises them. Usually they come from a background of intergenerational trauma—often, I would say, rather than usually—and they've got all sorts of complex issues going on. Coming to court is a real burden. For many clients, they might not be going to detention if they get convicted, but it still is just not what they want to do. They don't want to be coming back to court because it's just traumatising for them. That's a real thing that we see often.

JANE SANDERS: Particularly they don't want to be subject to all of those bail conditions. We might be able to coax them to come back to court for a hearing if we think they've got a really good defence, but not if they've got a curfew and police knocking on their door every night for months until the hearing date.

JAMES CLIFFORD: I would agree with everything that has been said, but I also want to underscore the 22C point and the impact that has. We have a legislative framework at the moment for children where, to sentence a child to custody after they've been found guilty of an offence, it has to be wholly inappropriate for them to receive any other penalties—a good behaviour bond, a youth justice conference and so on. We don't have that in the Bail Act. The Bail Act, for 22C, says that, unless there's a high degree of confidence, they won't grant bail. It's harder than show cause, in our experience, to argue—much harder. I think the Supreme Court's made that finding as well in some of their judgements.

What it means is that we have a system where it's very easy to send a child who's not been found guilty of any offence into custody, but there's an appropriate high threshold to find that, yes, there is nothing we can do but send this child into custody once they have been found guilty. We can see that in the enormous remand rate—the influence that has—and that remand rate, of course, is steepest for Aboriginal young people who wish to defend their matters. We don't have a conviction rate where people are being convicted all the time. It's very common to have a child who spent significant time in custody, whether in one go under a 22C matter or whether it's in and out a number of times following breaches of bail, ultimately found not guilty of anything. And those charges could be withdrawn on the day by police. That's extremely common.

The result of that is that we're treating young people who haven't been found guilty of a crime with the most onerous penalty that can be imposed without any of those safeguards, based on the police fact sheet being

taken at its highest. It's been really difficult at the ALS, where we've wanted to try to underscore to magistrates—and judges now—to operate that kind of critical thinking, in terms of the strength of a prosecution case, and how that influences whether or not a charge should be what is, effectively, pre-emptively detained. The difficulty with 22C is that you can't take into account the strength of the prosecution case as a factor, so we have a number of challenges.

We have a young person in Northern Rivers who had two charges that he was on bail for, and they got withdrawn by police—no evidence offered. But, because he was charged with a further offence while he was on bail for those two matters, he was captured by 22C. He didn't get bail despite the prosecution conceding problems with the prosecution case. In the end, he had that difficult decision of do I sit in custody—in regional areas, often for months at a time, and, again, regional areas are where Aboriginal young people are more likely to be in custody for months at a time—or do I plead guilty and get my non-custodial penalty. That's a completely perverse way to run a justice system.

JANE SANDERS: It is a perverse incentive to plead guilty. It's bad enough—we work at The Shopfront, also, with young adults 18 to 25, and we see it with show cause for adult matters. You could be in a show cause position. You could be on bail for something very minor. You're charged with shoplifting, also very minor, but it's technically a serious indictable offence. Suddenly, you show cause. That is a perverse enough incentive to plead guilty because you may not get bail; yet, if you plead guilty, you'll get a fine or you'll walk out with a conditional release order. For children, 22C is that 50 times over.

The CHAIR: I interrupt for a second to play devil's advocate. You say, "Repeal section 22C of the Bail Act." How do you respond to concerns in the community that it would weaken their safety and allow repeat offending?

JAMES CLIFFORD: I'm happy to speak to that. What I would say to that, firstly, is that spending time in a juvenile justice centre does not make people in the community safer at all. I think, particularly for 22C, you're effectively removing a discretion that exists for a judge who already has to consider unacceptable risk. They're already considering the safety of victims and of the community. They're looking at if the child has offended repeatedly on bail—that's front of mind for a judge in terms of determining whether or not someone should be granted bail. What you're doing by removing that discretion is you're taking away the opportunity for a young person, who shouldn't be in there, to go in, to make a bunch of friends, to be labelled and identified by the community—and by the police in particular—as a bad kid who is not deserving of the basic respect that you would want.

That child becomes further alienated from a safe and productive life. Then, when they get released in the community, perhaps after being found not guilty, what they're going back into that community with is a greater risk than what they went into it with before. I think, for many victims—I take seriously what they've experienced. Of course, at the ALS, many of our clients are victims. There are high rates of victimisation of kids who are in the criminal justice system. I think many of them don't want to see it happen again. That's a priority. Saying that we're going to go with this very expensive and traumatising process that makes it more likely it will happen again, for a brief period of containment—it's not addressing that safety, and it's not actually achieving what might otherwise be sought.

MATT DIMECH: If I could also build off that, we've seen from this Government's funding into specific, regional, place-based programs—Moree being the first and probably the most significant of those, given the lead time that we've had to see the effects. We have seen a significant reduction, particularly in property-based crime, in that location. The programs that we've seen come out of that funding, even though they are relatively new—the impact that we're seeing and certainly the feedback that we're getting from that community is that they are having positive effects in terms of providing that community-based support, which clearly is very much needed in a number of regional locations, not just Moree. But we are seeing that positive impact in that community, and the data does seem to support that assertion as well.

The Hon. Dr SARAH KAINE: My question synthesises much of the evidence we've heard already, and in the submissions, but I want to get your impressions as practitioners with these young people. We've heard about the social determinants of getting into the justice system. It would seem that we are pretty good at criminalising poverty, disability, trauma, race. Can you reflect on that, given the young people that you work with?

JANE SANDERS: I'll try to be brief. Of course, I could go on about this all day. I might also just loop back to a question that was asked by Ms Higginson when we came in. It was answered by Stefanie—sorry, I forget her surname—from the Salvation Army. It was about public transport fines and the like. That is where the criminalisation of poverty often starts: with regulatory-type offending. We have been advocating for years that public transport should be free for under-18s. It absolutely should be. Even then I foresee some difficulty if kids

are going to have to carry around ID to prove they're under 18 and the police and the transit officers are going to give them penalty notices, or speak to them and demand ID to show their age.

Making it free is not without problems, but the entry points into the criminal legal system for kids who live under these circumstances—there are so many entry points. The entry point can be as simple as that. The entry point, of course, can be just living in a community which is a low socio-economic area and it's over-policed. It can be not being at school or, as another panellist said, suspended for truanting, and you're hanging around during school hours and, again, you're more visible to police—even if you are not wilfully going out and offending, just because of where you are or, perhaps, not being able to afford your train ticket.

We really need to look very carefully at gateways—all of those entry points into the criminal legal system—because it's not only just all of the public transport fines and the knock-on effect of the fines, as the other panellist pointed out, but it's also a point of contact with police. How many fact sheets have I read, how many hearings have I run: Young person is approached at the barriers at the train station—"Oh, you haven't tapped your Opal card", or "You've paid for a concession fare. Where's your concession card?" That is a point of contact and then it's "Oh, well, we're going to search you." Sometimes they give a reason; sometimes they don't, but they'll find some sort of reasonable suspicion, which may or may not hold up in court.

Then they'll find "Oh, your phone. Have you got a receipt for that?"—goods in custody; or "Give us your passcode for your phone. We just want to see"—trawling through their messages; might find some photos of graffiti, seize the phone, Cellebrite it. It just goes on and on, or there's the "Get fucked. I'm not giving youse me phone, you C-U-N-T", or whatever—"Okay, right, offensive language." And then there's the trifecta. This is still happening, and we know the courts have been going on about it for years. When LEPR, the Law Enforcement (Powers and Responsibilities) Act, was enacted—and that's more than 20 years ago now—that arrest as a last resort was very much at the forefront. That's now been eroded, sadly, but this is still happening. We really need to look carefully about the policing, police contacts with young people as the entry into the system. This is young people who are not even offending, or not in a major way, but they are being drawn in because of this police contact.

Matt mentioned in a previous question also that amendments to the Young Offenders Act are due to come in, I think, around June, which will broaden the availability of diversion. I'm hoping—I don't know, but I'm hoping—that's got to be accompanied by some really good training for the police and also, might I say, a massive cultural shift. We've seen in a different context the recent report about the early drug diversion initiative where police have the discretion to refer somebody off to a health counselling session and give a penalty notice rather than a court attendance notice for minor drug possession. We see, firstly, that a lot of people are not eligible at all, but even for those eligible people—

The Hon. EMMA HURST: They're not using it.

JANE SANDERS: —police are exercising their discretion to charge rather than divert among—guess what?—the most disadvantaged demographic. If the Young Offenders Act and the increased opportunities for diversion are really going to be utilised, massive cultural shift and training needed. Sorry if that went a bit off topic.

Ms SUE HIGGINSON: No. It takes me quickly to raising the age of criminal responsibility. It's where you go, you think, "Wow, that's the circuit breaker, isn't it?" You could take a whole cohort. Is there a view in your institutions that raising the age to some degree would really assist with that mission? You wouldn't have to educate the police because there wouldn't be a criminal responsibility for 10 to 14 year olds, for example.

MATT DIMECH: I think all of us are on the same page with respect to that.

JANE SANDERS: Yes, we are.

MATT DIMECH: The real question there becomes what replaces a criminal justice response. Clearly, there has been some thought and some investment done with respect to what that looks like. We're still a long way to go in terms of looking at, particularly, the older cohort. When we are seeing disproportionate numbers of young people in out-of-home care, First Nations young people or regional young people that are being criminalised at much earlier rates and much more significant rates than the non-Indigenous metropolitan young people cohort, there really does need to be some further examination done as to what culturally appropriate and trauma-based responses can perhaps address those issues.

JAMES CLIFFORD: I was just going to say on that point—as Ms Sanders was speaking, I wrote down that idea of discretion and culture change being such an enormous challenge, and that the solution that we need to look for in many ways is about removing young people from a police-led response in the first place. That's raise the age. I know that Mr Dimech mentioned about the work that has been taking place. I mean, there's a *Therapeutic*

Pathways for Children report—I'm not sure if evidence was heard about that—which was developed along with the DCJ and the ALS under the Closing the Gap implementation plan for a new way of addressing young people. That looked at young people under 14, but I think many of those lessons go to young people who are older as well.

It looks like moving away from responses like youth action meetings held by police as a response to try to address these issues—in the case of Aboriginal young people, it looks like empowering Aboriginal community controlled and community based organisations to do that work—partly also because the solutions you have from a police response, or a court-led response as well, are gatekept behind the infrastructure of a court system. You have to go through this long process of a brief of evidence, being on bail and a hearing date that's months away, when we know there are these enormous socio-economic underlying needs that we just don't address until that's resolved. If we stepped out of that whole system, you could have an immediate response. It's not contingent on Youth Justice supervision that lasts as long as the bond, but it's just a community-based organisation that's there before they get in trouble, if they're in trouble or after they're in trouble.

It's so clearly the solution there, and I think that we're getting closer in terms of the thinking and work that has been done to flesh that out for New South Wales. But I think that kind of change would make an enormous difference, because as much as I'm excited about the Young Offenders Act changes—the Young Offenders Act is great in many ways. If you look at that legislation, it talks about entitlement to be dealt with by way of a caution. It's very strong language. In practice—and I've had those meetings with police to try to say, "Why was this kid not diverted?"—it is very difficult to get them to change a view about it. That's not just from maliciousness. That's also from a point of, "They exercised their right to silence, so I can't divert." "Did you offer for a diversion?" "No, I didn't, because I told them I want to interview them." Well, there goes the opportunity to divert.

MATT DIMECH: One of the more common barriers for us when we're having that first point of contact with a young person entering the criminal justice system is over the telephone. For the ALS, it's through the Custody Notification Service, and for young people who are non-Indigenous, it's through the Legal Aid Youth Hotline. One of the routine issues that we come up with—partly because of the complexity of the legislation but also because of a real underlying issue, I would suggest, in terms of training of police in the space of diversion—is a complete absence of knowledge about how the legislation actually applies in practice.

When we ask a police officer who's dealing with a young person, "Are you considering dealing with the young person under the Young Offenders Act?", it's not uncommon for us to hear that that hasn't been considered yet. There's often an experience of on-the-job training going on with the lawyer who's responding, where we're having to take the officer in charge through the Act. Given the way in which the Act as it currently applies is not particularly clear in terms of certain offences and their eligibility, it can often mean having to spend some significant time advocating for the young person's opportunity to be diverted, rather than it being a straightforward or a presumptive option.

JANE SANDERS: Also, the police very much typically—not always, but typically—have the child under arrest, and they're calling the hotline or the Custody Notification Service. They want to interview the kid there and then. If the young person admits to the offence there and then, they say, "Fine, we'll refer them for a caution or a youth justice conference, or whatever. But if they don't participate in an interview right now, then we're sending them to court." The young person ideally should not be arrested in the first place at all. They should be given the opportunity to come to the police station with a support person at a time of their choosing, having had the opportunity to get legal advice. What I think people used to call "tag and release" is something that really should be adopted by the police if they have arrested this young person.

Sometimes arrest is necessary if it's an unfolding situation and the kid is running away. They might have to. But once they've established their identity and where they live or who their support people are, they should be releasing them and giving them an opportunity to get legal advice in a less pressured environment than on the hotline at midnight, where hopefully the lawyer may have an opportunity to read the COPS narrative or the proposed facts and get their head around the allegations a bit more. Then I think you will find that the rates of admitting to the offences or, as it will be under the new Act, not denying them will appropriately improve and, therefore, more young people could be diverted.

The Hon. SCOTT BARRETT: This is a bit risky, because I'm hoping someone knows what I'm talking about. Under the Children (Protection and Parental Responsibility) Act, I understand there's a discrepancy for Orange in that, if a person under 16 is in danger of being physically harmed or abused or is likely to commit a crime, they can be transported to a safe place. I wonder if someone knows more about that and can elaborate on the benefits or otherwise of this, or if they can understand why that's in place just in Orange.

JAMES CLIFFORD: Yes, I actually know a bit about this. There is a power under that Act—and I have to be careful with my words, because it's not something that's very common and, as you said, it's only in Orange—

to declare a certain area under that Act, which then empowers police to remove a child from a public place and take them home or to a different location. As far as I know, it is the only place where that has been sought and granted. I think it has been folded over for some time. Recently—perhaps 18 months ago—we were consulted on whether it should expand. From the reports we've received—and it goes to what Ms Sanders mentioned before—it does pose concerns for me, because what's interpreted by police on the ground as warranting a child to be effectively forcibly taken back home will vary enormously.

For kids who are more likely to be perceived as needing to be taken off the streets, I think there's an element of unconscious bias, at best, that perhaps seeps in there. That can then also lead to what Jane mentioned earlier. If you say to a young person, "That's it. You're being too rowdy. We're taking you home," and they say, "I don't want to go home," that could be for a very legitimate reason. It might not be, but it could be. We know the cohort we're dealing with. They say, "I'm not coming with you," and you say, "You have to, or I'm going to pull you into the paddy wagon." Next minute we've got an assault police officer charge and they're back at the station calling the Custody Notification Service.

I think what you want is a relationship where, for those kids who are unsafe outside—and it does happen in some places where we're talking about young people. I think every client I've had has been living in poverty to some degree. Young people who need help cannot have the police as that responder or to have that conversation, because a lot of young people I know will be happy to go home with someone they trust or go to a safe place with someone they trust. It's very rare, for the cohort we're talking about, for that person to be the police—although I should say that in other locations I think part of the reason they don't need this power is you can also just ask and make an offer to a young person to say, "Would you like to come back with me?"

The other thing to underline there is that, as part of that *Therapeutic Pathways for Children* report, they're also looking at alternative responders to situations where young people are in need, and how much more effective they can be if it's from an Aboriginal community organisation for Aboriginal kids where they're known to the person and have somewhere safe to take them. That's a lot of the evidence that has come out about after-hours places that young people can go to, which I think is really positive. That's part of what we're looking at with that bail accommodation and some youth drop-in spaces in Moree and Mount Druitt and other places as well.

JANE SANDERS: That Act is a real anomaly, particularly as there's just one area declared. But remember also that under the Care and Protection Act there are powers for either child protection workers or police to remove children from situations where they're at risk of serious harm. That includes for under-16s if they're habitually frequenting a public place and they're at risk of harm. There are already powers under the child protection legislation, and that's probably where the powers should be. There are a whole lot of problems with the child protection system and with child removals and First Nations young people. I'm not saying that's perfect, but there is absolutely no need for that parental responsibility Act. I'm old enough, sadly, to recall when it was first enacted. It was one of those political moments where people were saying, "Where are the parents? Let's make parents more responsible for their kids," and, "If kids are out on the streets, we should be taking them home." But it was only ever piloted in a couple of locations, and I think rather than being repealed, as it probably should have been, it was just quietly allowed to just roll along in one location.

MATT DIMECH: On the Orange point, I think it's probably also noteworthy that in that particular community, we have a lot of young people who report quite concerning interactions with police within that context. Lending itself to what Jane said earlier about those initial contacts with police being the gateway into the criminal justice system, within that community we've had several young people whose first interactions with police under that particular power in that location have occurred within the context of being in a public place, perhaps consuming alcohol or acting a bit rowdy that has then led to them being escorted to a police car and taken home. I'll leave it at that.

JACK LUMSDEN: Can I just add to that as well? I think that's why it's just so important to invest properly in community organisations and things like Just Reinvest, so that these kids can have support in community which is relevant to them, whether it be culturally appropriate or otherwise, people that they know, community leaders who they can speak to, so it's not just a police response to these sorts of issues. I think that's just so important.

The Hon. SCOTT BARRETT: Is what I'm hearing, then, that the outcome of that probably is a good thing, but maybe the tools we're using to get there aren't the most appropriate ones, where if it was culturally appropriate organisation, to pick them up and take—

MATT DIMECH: Is it a good thing that we're utilising police to provide that kind of response?

The Hon. SCOTT BARRETT: Yes.

MATT DIMECH: When we spoke about, again, gateways into the criminal justice system, if we're using police to exercise a child protection function or a health function, that is only, in my view, much more likely to

increase future interactions, that unconscious bias that James spoke about earlier. The feedback we also get from police at courts and over the youth hotline or the Custody Notification Service is that they don't want to be providing that particular service to community, but there's an absence of other institutions or agencies to provide that service. Where there are alternatives being provided within communities, like what we're seeing in Moree with the bus coming around at nine o'clock and picking young people up to take them home, or extended hours of service at youth-based services to facilitate providing them dinner and other activities in hours outside of school, in those communities we are seeing positive responses from the community. I would hope police are also seeing a significant change in terms of the services that they're being called out to provide to the community, as well. They can better focus on what they're actually there to provide.

The Hon. SCOTT BARRETT: That was the point I was trying to make.

The Hon. CAMERON MURPHY: I wanted to follow-up on one of the issues that you've raised, which is about funding. I asked questions about this in an earlier session, but the Productivity Commission report on government services, and in particular youth government services, suggests that per young person we're spending twice as much on detention-based services as opposed to community-based services. For all of the last decade, it's been like that. Is there some sort of a benchmark that we should be looking at, where until we get to the point where we're spending more money in the community than we are in detention—or is there a framework that's been adopted somewhere else? People have talked about the Victorian model. What should we be doing so that we've got something that's measurable, that we can determine we're spending money in the right areas—in community-based services, rather than in detention?

JAMES CLIFFORD: I think you've sort of spoken to it, really, in setting out that imbalance. I think supporting that as well as Treasury's Indigenous Expenditure Report, which says we spend the most money on Aboriginal people in jail and child removals, and certainly that idea of a benchmark to say, "Before you say that jail is genuinely a last resort, you need to reflect that in where you're funding", and it should be the inverse—

The Hon. CAMERON MURPHY: So it should be the other way around.

JAMES CLIFFORD: At best, it should be the other way around.

JANE SANDERS: But how much that should be—maybe the Just Reinvest people who are giving evidence later this afternoon might have a view on that.

JAMES CLIFFORD: I think you'll also get much more bang for your buck from that approach in terms of the result. You have young people spend—for many young people, it can be years. I've certainly had clients who, from when they're 11 or 12 when they first get arrested to when they leave the justice system at 18, have spent the vast majority of their life locked up, with small interruptions in between when they're released, and longer and longer periods. It's a gross waste of money. Then we have relationships. I think of Eric Brown, who's a very respected Aboriginal man who does great mentorship work, who does a lot of it for free because he can't get funding to do it.

There are people who are out there doing this work in community, but they're not accessing the money that is available. A lot of it unfortunately gets absorbed in large organisations. Particularly for Aboriginal people, there are great people in the community who do the work out of their own sense of obligation. If that was funded and expanded, you could have an enormous impact in terms of the changes that that leads to, as opposed to these detention-based responses. We have Youth Justice centres with 12 kids in them and they're staffed 24 hours a day. There's a huge amount of resources poured into them.

The Hon. CAMERON MURPHY: Costing \$1 million a kid.

JAMES CLIFFORD: Yes, \$1 million a kid for a year. It's staggering. Then, on the other side, all these kids are living in poverty. It's galling.

JACK LUMSDEN: The thing that also hasn't been raised but I'm sure everyone's aware of is that studies show that the majority of kids who end up in detention have some sort of intellectual disability or FASD or something like that. I'm not sure what the specific statistics are, but you only need to look to WA, to the Banksia Hill study that happened a couple of years ago, and look to other studies as well. Why aren't we treating these really young kids when they first come into the system? Why isn't there a health response? Why are we putting all this money into a police and justice response when they come from families that have been through this over and over again, and they're getting re-traumatised on top of whatever cognitive disability they might have? That's not every kid, but it is a significant number of kids, and it's just hard to watch happen over and over again.

JANE SANDERS: They don't have the capacity. It's not that we're saying, "Oh, poor kids. Poor little kids." We are, but that's not the point. The point is these children do not have the cognitive and developmental capacity to respond to criminal sanctions, deterrence and bail conditions requiring them to be home at a certain

time. Some of them can't even tell the time. They just don't. These sorts of traditional criminal sanctions, even if they are ostensibly being modified for children, are just so grossly inappropriate and ineffective. Our system is still this blunt instrument. There are many people within the system—including, thankfully, a lot of judges, as they now are, of the Children's Court—who get this. But there is still such a predominance of views within the system and the broader community that we need to tell kids that there are going to be consequences for their actions. It's not as simple as that.

The CHAIR: Could I just follow up on that. Well, I don't think it's a follow-up, but you've said in your submission that we already know what works. There's evidence there but we're not implementing it. What do you think are the barriers to the New South Wales Government implementing some of what we already know works? What should we do as a Committee to address that?

JANE SANDERS: Politics is a big barrier. I have to say, when the Minns Government was elected, I think it was the first State election in many years, in my memory, which was actually not run on law and order. It would have been such a great opportunity—and I'm sorry to look at Messrs Lawrence and Murphy here as representatives of the Government.

Ms SUE HIGGINSON: And Dr Kaine.

JANE SANDERS: And also Madam Deputy Chair. It would have been a great opportunity to take a principled and evidence-based approach to youth justice. Yet we get section 22C. I understand the concerns. Crime, particularly in some regional communities, is real. Victimisation is real. Community fear and concern is real. But we get these responses like 22C when there would have been a great opportunity. I know there has been funding also accompanying 22C to actually fix underlying problems in Moree. Politics is a real barrier. We know from Queensland and Victoria "adult time for adult crime". Again, there's no such thing as adult crime when you are a child. We need to get past that lazy kneejerk politics. These are children we're talking about, and our community, quite rightly, has no tolerance anymore for child sexual abuse, whether it's committed in the home or by the church or whatever—no tolerance.

Sexual abuse is not the only form of abuse that children suffer, and the abuse that our most vulnerable children are suffering in the justice system—and I'm not talking about necessarily direct physical violence as in being beaten up by police, although that happens, but the emotional abuse, the systems abuse and the neglect of their developmental needs. Politics is a massive barrier and just having the courage. Money is always—we never have enough money, do we? But, again, we need the courage to be able to pull money out of custodial and policing systems and invest it where it's really needed. They're barriers, so politics, which in turn links to community attitudes, and budget.

JAMES CLIFFORD: I suppose not pushing back on that in a bipartisan way to say, "We hear the concerns. This is what actually works." Holding that line and showing the evidence of how it is effective I think would address many of those concerns to say, "This is what actually works, and here is the proof in the actual rates, the drop." It's really frustrating the way that these last few years have played out and sitting on the sidelines, especially where we're going to invest more in these place-based responses and on the other hand we're going to introduce these bail responses, which directly undermine the work that has been done by those other responses. It's not that they're operating separately. The bail response really undermines the other more therapeutic responses.

I know that we received funding as part of a suite of other additions to Moree, and it was great. We got a youth unit stood up in Moree. We have a youth officer there who's helping kids comply with their bail by addressing those material needs, going to the house and getting to the family. It ends in December this year. But the risk of that is those bail laws are meant to be short term and they've been expanded once. I think they'll be expanded again. Will they include more offences? That's the kind of concern; you introduce the possibility of having more onerous bail laws for a 17-year-old than an 18-year-old. You've crossed a line there in terms of what's permissible, and it can be hard to go back. You see the criticism the Government gets—"Why not expand it? Why not have other offences?" Because once you cede that ground that that is the answer, the flow-on effects of that are really despairing.

The CHAIR: We've come to the end of our time. Thank you for your appearance today and for giving your evidence. I don't think you took any questions or notice, but if you did, the secretariat will be in contact. I genuinely thank you for appearing today.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr JONATHAN HALL SPENCE, Principal Solicitor, Justice and Equity Centre, affirmed and examined

Dr RORY GILLARD, Senior Research and Policy Officer, Community Restorative Centre, affirmed and examined

Ms MARISA MOLITERNO, Manager of Advocacy, Research and Policy Unit, Community Restorative Centre, affirmed and examined

The CHAIR: Welcome, and thank you for making the time to give evidence today. Would you like to start by making a short statement?

JONATHAN HALL SPENCE: I think we've agreed that CRC can go first.

RORY GILLARD: Yes, it just sets the scene a little bit. I want to say thanks for having us today. My pronouns are they/them. Marisa's pronouns are she/her. We work in the policy and research unit at Community Restorative Centre. CRC is a lead non-government organisation supporting people exiting prison in New South Wales. Of relevance to this inquiry, we've got a program called Pathways Home. They support young people involved with the criminal legal system who want support for their alcohol and other drug use. We would like to share the story of a young First Nations person that we've supported through our program, Clarence, and we're going to use pseudonyms throughout to protect their privacy. Clarence has shared:

My story with juvenile custody began when I was 12 years old. Growing up, my world was full of crime, drugs and alcohol—it felt like everyone around me was involved, so I thought it was just a normal part of life.

Clarence also shared the "trauma and pain" that contextualised moving in and out of the prison system and his experience of realising he had FASD after a period of not being diagnosed. He shared:

In 2024 I found out ... [I had developed] FASD ... I don't always think the same as other people, I am often doing things without thinking first. I often forget things or I get muddled up.

Clarence additionally shared the way that poverty contextualised his incarceration, and he said, "A lot of people think we commit crimes just for fun, but for many of us, it's for survival". Clarence's story is contextualised by numerous social determinants of incarceration, including systemic racism and discrimination in terms of the hyper-incarceration of First Nations peoples, and having initially unsupported mental health needs and disability. He experienced early police contact. He experienced poverty, trauma, unsupported alcohol and other drug needs, and more. His story speaks strongly to the strength and survival strategies that he, as a young person, has had in navigating this context. For instance, he's shown bravery, vulnerability and strength in sharing his story with us and advocating for better supports for young people like himself to live life free of the prison system.

Another sign of Clarence's strength is seeking support from services like Community Restorative Centre and attending a men's group to support him in living the life that he wants to lead. We argue that being met with police contact and prison system involvement, young people like Clarence are better supported by policy approaches that are supportive and divert them from these systems. For us, such approaches include raising the minimum age of criminal responsibility to at least 14 and alternative first responders to the police. Such approaches also include the genuine reinvestment of funds away from the prison system to prevention and diversionary programs that are culturally appropriate and inclusive. We particularly support stable and sufficient funding for the work of youth-led and Aboriginal community controlled organisations in that space.

JONATHAN HALL SPENCE: I also have a short opening statement. Thank you for the invitation to appear before the Committee. I'm appearing on behalf of the Justice and Equity Centre, formerly the Public Interest Advocacy Centre. We're a social justice law and policy organisation that works with people and communities who are experiencing marginalisation or disadvantage. One role that our organisation plays is coordinating the New South Wales Raise the Age campaign. We endorse the submissions made by Raise the Age to this inquiry because 10 is too young for children to be in prisons. I'll start my opening statement by saying that the single most impactful thing the New South Wales Government could do for youth justice right now is raising the age of criminal responsibility. The best way to keep children out of the criminal legal system is to stop putting them in it in the first place. The evidence on this point is undeniable.

Our submission to this inquiry is far-ranging, but I would like just to touch on two further areas briefly, which we say are ripe for reform. The first of these is police checks at the homes of children on bail, where there is no suspicion of breach of bail and no court-ordered enforcement condition. One family we represent, whose children were 11 and 13 years old, had police come to their homes 150 times in 20 months. Often that was late at night or early in the morning. They would bang on the door and shine torches through the windows, disrupting the children's sleep, causing them to miss school because they were so tired. That's 150 times in 20 months, and not once were they found in breach of their bail.

How are kids meant to build good habits and engage with school and sport and art and all the things that we know keep them out of the criminal legal system, when they have police showing up at their house in this way every night? The Law Enforcement Conduct Commission has said that police should cease doing these checks and instead use the enforcement condition procedure in the Bail Act: Apply to the court. Allow the court to weigh the criminal history, risk of further offending and the impact on families, and, if checks are warranted, authorise them, with appropriate limits on frequency and timing. Police have rejected this recommendation. We think it is time for Parliament to take action on this issue to clarify that bail checks cannot be undertaken by police in the absence of reasonable suspicion of breach or a court-ordered enforcement condition, because children do not need more police in their lives.

The second area for reform is the use of solitary confinement on children in detention centres. We represented a 17-year-old who was placed in solitary confinement in his cell for 25 days after an incident in detention. He wasn't allowed to attend the centre's school. He had one hour for recreation each day, where he was handcuffed and on his own other than two guards, and had to eat meals with his hands because he wasn't permitted cutlery. He said of this experience that it broke his mind. The New South Wales Supreme Court said that this was all perfectly legal. How can that be? How can our laws permit the treatment that that child went through? How is that meant to encourage that child to do better once they leave detention? Reform is needed. We need greater limitations and safeguards on solitary confinement in Youth Justice centres. We need laws that incentivise a different approach: an approach that meets children where they are and helps them to do better, not that locks them up and throws away the key. I welcome the Committee's questions.

The Hon. SCOTT BARRETT: I'd like to ask about the intergenerational nature of this. Has anyone got any stats for me on how many of the kids having contact with the judicial system are out of families where that has occurred with mum or dad or guardians?

MARISA MOLITERNO: There is a significant overrepresentation. I believe it's in the vicinity of about 70 per cent, but I can find that exact statistic and provide that to you on notice.

The Hon. SCOTT BARRETT: More than the actual statistics, has anyone got any suggestions on when and how we provide an off-ramp for that?

MARISA MOLITERNO: In terms of providing the off-ramp, we need to understand the context of the family unit. While there may be parental incarceration, the reasons for the social determinants of parental incarceration are very similar to that of youth incarceration. The family is still undergoing poverty, housing instability, unmet health needs, overpolicing—all of those things. They've experienced the arrests of parents et cetera, which has also then caused more early experiences of trauma. It's that contextualisation of all the things that are impacting that family, and it's actually about addressing those needs. That needs to happen.

The Hon. SCOTT BARRETT: I'm happy to come back to this, but, as I'm asking for those stats, can we also see how many kids of youth offenders are offending as well? Those are two different things.

MARISA MOLITERNO: Sorry, can I clarify? Do you mean how many people who have been in the juvenile system then have children in the juvenile system?

The Hon. SCOTT BARRETT: Yes. Obviously, not everyone who has that issue as a kid then has kids who have those same issues. There are obviously some good examples of how they've broken that cycle.

RORY GILLARD: Just going back to your previous question about statistics around people impacted by intergenerational trauma in the prison system, I know in a lot of CRC's work, we really support the work of Aboriginal community controlled organisations and Aboriginal communities in coming up with those solutions. We're not a First-Nations-led organisation, so that's why we don't really want to speak in detail about that, but just recognising that 56.4 per cent of young people in child prisons in New South Wales are First Nations, so it's impacting a lot of people in youth detention.

But I guess something that Yung Prodigy raised in their submission to this inquiry was particularly a lack of statistics around when kids are in child prisons. There's not data taken on the number of them who also have parents in prisons. They say that's a kind of erasure of their experiences in some of their social media work. We really support the work of Yung Prodigy, particularly. They're a youth-led organisation and they support children who are impacted by parental incarceration. The last time I checked, it was something like 25 per cent of kids who have parents in prison, but we can definitely check that and take that as a question on notice.

The Hon. SCOTT BARRETT: Mr Spence, you made a point of the advantages of people engaging with school and sport and art, and that being a tool to keep people away from this path. I wonder if you could spend a little bit more time on that for me, please, particularly if you have any really good examples that could be

extrapolated. I know we hear about these specific diversionary programs or engagement programs that are in place, but even further upstream than that might be the local footy club or netball team.

JONATHAN HALL SPENCE: Yes, absolutely. All the literature suggests that locally designed and delivered initiatives—whether it's school programs, sports programs, or art and craft programs—are hugely impactful when it comes to kids avoiding involvement in the criminal legal system. I don't have any specific examples to hand, but they certainly exist and I can certainly provide them on notice to you, because we do say that, again, investing in place-based activities for kids is one of the best possible things we can do in terms of breaking that cycle you've identified and making sure they have prosocial activities to engage in and are not engaging in behaviours that might lead them into the criminal legal system.

The Hon. SCOTT BARRETT: We've heard about the need for mentors and life coaches. Is there a way that we can upskill the local cricket club, or members of the cricket club, so they can play that role?

JONATHAN HALL SPENCE: Definitely. We know that children are influenced by people that they trust and respect, so if we can identify those people and support them with whatever it is they need, whether that's funding for new cricket bats or sports uniforms—in some of the writing, one of the big barriers to these activities is just the cost. Some families don't have the money to pay the cost of sport registration or uniforms or for balls and bats and other things. Finding those people in the community, as you say, who are trusted and who are influential and giving what they need to deliver the services to kids would be a massive thing that we can do.

The Hon. SCOTT BARRETT: Does anyone have an example for me, please, of not incarceration and not going home but—in Mount Isa, for instance, they have a boarding house for kids to go to school. They stay at the boarding house and go off to school. It isn't a forced thing, but it is another alternative for kids that might mean they get their three meals a day, they get a decent night's sleep and they have a safe place to stay. Are there any good examples of that that you can point to?

RORY GILLARD: Yes, I mean, there's a couple. We mentioned one of them in our submission. I'll go to the Dharriwaa Elders Group and their partnership with UNSW. They made a submission and they have some really fantastic activities—creating frog habitats for children. They had over 300 young people they engaged. They gave us stats from 2024 to 2025 in their submission—you know, tie-dyeing clothes, cooking classes with native ingredients, a lot of that work done with Elders. That sounded really fantastic. They also talked about exceeding their KPI that was set about court appearances, I believe, and they had some excellent qualitative feedback that they included in their submission. One young person said, "I want to come to this every day."

But I guess the other one that you probably would be aware about is the Maranguka Justice Reinvestment Project. As you might know, KPMG did an assessment of that. That was in Bourke. KPMG did an evaluation of that in 2017, and that showed some fantastic outcomes. It also involved Elders and First Nations community members working with young people to prevent involvement with the criminal legal system, and that has some fantastic stats about the reduction in domestic family violence, increase in retention rates for year 12 engagement and reduction in adult criminal legal system involvement. It just had some fantastic outcomes.

Ms SUE HIGGINSON: This is probably for you, Mr Hall Spence—or anyone, if you have any insight. I'm just curious if you have any grasp on why the New South Wales police have resisted that recommendation about the bail compliance checks and not using that as this front-loaded tool. When you hear about the scenario of 150 times in 20 months—I had a sense that this was being overused, particularly in regions, but I had no idea there would be an example that stark. Is there any understanding on why? Is there a culture that they think this is good policing? Where does this come from?

JONATHAN HALL SPENCE: There's no explicit confirmation from New South Wales police on why. Their position is that they have the legal power to do bail checks in the way they suggest, so they will do them in that way. The most likely explanation is they want the flexibility to go whenever they like to check on a child. We know that under the Suspect Targeting Management Plan, which is now thankfully discontinued, police were encouraged to use bail checks to disrupt young children that they were targeting under that program. From our perspective, there's a concern that that culture is continuing, of looking at bail checks as a tool to target and disrupt young people in certain communities. We say the procedure in the Bail Act is very clear. If police feel there's a need to bail check, they can apply to the court for that order. I should note in the example of that family, police did apply to the court for an enforcement condition, and the court refused because they said it wasn't necessary in this case, but then police went anyway to the home. It's possibly a flexibility thing or possibly a disruption thing, but there has been no explicit confirmation.

Ms SUE HIGGINSON: There were two other things you talk about in your submission I wanted to touch on. One was the use of firearm prohibition orders and young people. If you could elaborate on that a little bit, please.

JONATHAN HALL SPENCE: Again, firearm prohibition orders were a tool that police were encouraged to use under the STMP to target and disrupt young people in the community. Again, our concern is that those practices continue, notwithstanding the end of the STMP. The police commissioner has a very broad discretion to impose a firearm prohibition order on a person. They don't need to have been charged with a firearm-related offence; they don't need to have been convicted. It's very hard to challenge them once they're made. They enliven very sweeping search powers. We represented another family who had the tactical response group kick down the door four times looking for firearms, doing these searches. Again, they never found firearms, but they rolled in heavy to this family's home for a 17-year-old. We just think that that's a really inappropriate way for police to be using these powers. Again, we're concerned that firearm prohibition orders enliven these broad powers, which are increasing contact with police, which is not what we want for children.

Ms SUE HIGGINSON: In terms of the impacts on children and young people, you may be the child that is the subject of this police intervention, police harassment or whatever we want to call it. But then other family members—what are the general symptoms that follow after that? I know I've seen footage of those kinds of situations and just watching them through a screen is petrifying. They're horrendous being the person there and if you're a young person. Do you have any accounts of the problems that would then flow on?

JONATHAN HALL SPENCE: They're experienced by children as extremely terrifying and intimidating as well. We've had children say to us that it has really damaged the way they think about police—as this coercive force rather than a group that should be there for the safety of members of the community. We've also heard reports that for some of these kids, they feel like they're doing their best to not be involved in the behaviours that might have led to them being on bail or having an FPO put in place, but then police kick down their door and they feel like it's just not worth it and their efforts are all for nothing, because police just keep coming into their lives. That feeling of being beaten down, disheartened and not able to get things together because police are just always there—it's just very invasive.

Ms SUE HIGGINSON: It acts as a disincentive to try to do the right thing anyway, as well as the trauma that happens from it—like, why bother?

JONATHAN HALL SPENCE: That's right. There's no positive affirmation of changes; there's just this negative affirmation of more police involvement.

Ms SUE HIGGINSON: My last one is on bail support programs to ensure bail compliance and reduce reoffending. Are there examples of those kinds of programs that you can share with us?

JONATHAN HALL SPENCE: Yes, there are. There's one referred to in our submission, which I can't now remember off the top of my head. I think it's the Moree bail supported program. But, yes, if the choice is between sending someone to prison or to a supported bail facility, we say a supported bail facility is a much better option. Mr Barrett was asking about facility models. In some jurisdictions, like New York, they've moved away from big centralised facilities and moved to a program they have called Close to Home, which is smaller facilities closer to where the child lives, so they can maintain connection with their family and community. If the view of the State is that they can't be at liberty in the community, they can be in these small facilities close to their support networks. There are certainly alternative models out there. Did you want to add anything on bail support?

MARISA MOLITERNO: Yes, I would like to add something. While our program Pathways Home does support people on exit from custody, that includes young people on remand who are then granted bail, to provide that wraparound outreach, case management and counselling—that coexisting model. While it might not have a residential component, it definitely does have the supports around supporting someone to maintain their bail. That is part of the components of the work that we also do.

Ms SUE HIGGINSON: Are you properly resourced to do that work? That's a silly question, isn't it, because there's never enough. Are you resourced to provide that work?

MARISA MOLITERNO: What we're resourced to provide is, through two different funding streams, we have four caseworkers and one counsellor who do an outreach and holistic case management model in particular locations. While the funding we receive doesn't cover the entirety of that program—we self-fund portions of it—it is still highly cost effective and is still less than what it would cost to incarcerate a young person for a year.

Ms SUE HIGGINSON: Is that something that can be leveraged up to roll out?

MARISA MOLITERNO: Yes.

The Hon. EMMA HURST: Thank you all for coming today and for all the amazing work you do in this space. I want to ask about strip searches on children within prisons. I wonder if you have any information that you

can provide us about any resistance that there is to prohibiting strip searches on children in prison, and why there hasn't been this obvious move to the alternatives, like scanners.

MARISA MOLITERNO: Corrective Services and Youth Justice often say that it is a standard practice. It happens far too frequently than any young person should exhibit. That happens every time they return to the centre after family visits if there's concern. But we know from research where the statistics are completed that there are very few results found that people have anticipated when they've done strip searches, but far more harm is done to a young person. I think it's the standard operation that they have had for a very long period of time, and that is their process, which has been part of the challenge. Did you want to add to that?

RORY GILLARD: I guess I will just recognise the obvious point that, I think, it was in 2022 that the Ombudsman recommended that strip searches be eliminated amongst children. Obviously, you've got that memorandum of understanding between Corrective Services and Youth Justice, which is that you shouldn't be doing full strip searches, but if there's a riot or disturbance, that can be allowed. But I guess just generally, listening to a lot of the people that we support who experience prison as a dehumanising environment that's based on power and control, strip searches are in alignment with that culture.

The Hon. EMMA HURST: We've got a few submissions that really talk about criminalising disability in Australia, and I've asked some questions in budget estimates around the lack of appropriate screening in youth detention, in particular. I wanted to ask everyone to talk a little bit more about some of the problems there, and what we're seeing and the major changes that we need in that space.

MARISA MOLITERNO: For a lot of young people, we see when they've spent a lot of time in youth justice, it's actually an ideal time, if they are in one place, to be able to get these assessments done. We have spent sometimes up to two to three years advocating for FASD assessments and cognitive assessments. These are for young people who have spent 83 per cent of their youth in a juvenile facility, and it's still taken us two to three years to have that happen when they've had eight nine-month stints on remand. If that's the experience that a young person has with an advocate behind them and a service behind them, imagine the young people who don't have that support.

The Hon. EMMA HURST: What are the barriers there? For someone on the outside, that makes me very angry to hear. But why is there so much resistance? Is it because there's a lack of funding? Is it kind of, "This is how we've always done things"? Why is it so difficult to get this change?

MARISA MOLITERNO: Sometimes it's about the coordination, and that's what Justice come back and say—it's about the coordination, and getting a young person sometimes to have leave from the centre to be taken to where an assessment needs to happen can sometimes be a barrier. We've known that, across even specialist supports and other medical things, depending on the charges the young person has and the resourcing of the centre, they will say that that's part of the reason that it hasn't happened. Whether that's a legitimate reason, I do not believe so. For other reasons, I'm not sure why. We push, but it's generally a lot of—how do I put this?—passing the buck about responsibility.

The Hon. EMMA HURST: Mr Spence, I know your submission talks a lot about this. Did you have anything further to add?

JONATHAN HALL SPENCE: I will just add that part of the issue is a lack of services to do assessment and support for children with disability, particularly in rural and regional areas, and particularly culturally safe services for First Nations young people. I think we need changes from Youth Justice, but we also need to see an investment in those services to make sure there are more people who are well qualified to work with these young people to carry out those assessments and develop the supports that they need. As with a lot of things here, it's a whole-of-government approach, really, that's needed.

MARISA MOLITERNO: And most families cannot afford the cost of assessments in the community.

The Hon. STEPHEN LAWRENCE: Thanks so much for coming along. My first question is for Mr Spence. Could you elaborate a bit on the issue around the bail enforcement issue, and in particular, would you be suggesting any particular legislative reform in that regard?

JONATHAN HALL SPENCE: That's right. It was a recommendation of the Law Enforcement Conduct Commission that if police didn't accept their recommendation and ceased doing the checks, that there be legislation to clarify that police can't conduct bail checks in the absence of an enforcement condition or reasonable suspicion. At the moment, police rely on the implied licence to enter property to do those checks. The LECC was of the view that that's maybe a bit tenuous and recommended that legislating would just put it beyond doubt and establish a clear position.

The Hon. STEPHEN LAWRENCE: In relation to the firearms prohibition order, is one of your concerns that, as I understand it, there's a 28-day period within which one can appeal to NCAT?

JONATHAN HALL SPENCE: Yes.

The Hon. STEPHEN LAWRENCE: And that once that 28-day period is gone, there's no way to extend it? Effectively, you get one and you're stuck on it forever. All those powers are enlivened in respect of you. Are you suggesting that there should be some enlarged mechanism to appeal?

JONATHAN HALL SPENCE: I think increased appeal mechanisms could be helpful, but we also say that a somewhat easier fix would just have them lapse after five years. Rather than continuing indefinitely, they would continue until five years. If the police determine that it should extend beyond five years, then you can go back to NCAT again and say, "Things have changed in the last five years. It's not appropriate for this to continue." Just having that stopgap after five years would be a good starting point.

The Hon. STEPHEN LAWRENCE: In terms of the issue of broad search powers that you raise, I sat on an inquiry that delivered a report last year in relation to cannabis. We made a recommendation that cannabis, in respect of small quantities, be a fine-only offence, whereas at the moment it carries a maximum penalty of two years. We also, I think, made a recommendation around search powers being limited so that you can't search people merely on account of a reasonable suspicion of possession of a small quantity. Are those things that you would endorse?

JONATHAN HALL SPENCE: I'm not familiar with the cannabis recommendations, but we certainly say that the firearms search powers under the FPO are currently unconditional, whereas we say they should be conditioned on a reasonable suspicion that there has been one of the firearms-related offences committed. At the moment, I think less than 1 per cent of searches find a firearm or ammunition or firearm part each year out of something like 8,000 or 10,000 searches. There's an extremely low success rate. We're concerned they're being overused and, perhaps if there was that reasonable suspicion requirement, then they would be a lot more limited and targeted in their use.

The Hon. STEPHEN LAWRENCE: I just have a couple of questions for you, Dr Gillard, if I could. You were talking about Maranguka, and I think you talked about another particular project as well. I'm not here speaking about Maranguka, I should say, but I'm concerned that sometimes we set organisations up to fail in a way. We give them a bit of money and maybe three, four, five or six staff members working in a community that might be extremely disadvantaged. Crime statistics often move around, so it's quite easy to point to substantial improvements in a short period, particularly in a small community.

Where you're talking about a small community, you can have large jumps. I'm interested in your observations on this proposition: To meaningfully change crime rates in a particular community, you really need an injection of resources and support into that community, the likes of which we haven't really seen, I don't think, in our times. How careful do we need to be in, for example, looking at projects that fund pilot projects that are then evaluated after a year or two? How careful do we need to be in using the results of that evaluation to determine whether particular programs continue to be funded, in light of just how big this task is?

RORY GILLARD: I also didn't say that the KPMG report showed that in 2017, when Maranguka was evaluated, there was \$2.5 million in savings to the government legal sector and society, so that's quite notable. I definitely take your point, and something we mentioned in our submission was we're interested in genuine justice reinvestment. Often, in our work, we might see that the DCJ New South Wales website talks about supporting justice reinvestment, and the Federal Attorney-General website talks about supporting justice reinvestment, but sometimes we notice that what's actually happening is the creation of small-scale funds for projects rather than a genuine reinvestment of a large scale of funds from the prison system to projects. We're really interested, in terms of our policy work, in that genuine work. I agree with what you say. I remember when the bail law tightening was being debated in 2024, there was some commentary—including from a Greens member—which sounded great, which was more about just giving regional communities the money to do the work. We really support those kinds of place-based approaches and communities knowing what's best for them.

The Hon. STEPHEN LAWRENCE: When I look at these figures, for example—and Mr Murphy I think was talking about these earlier, but it's the figure that we spend per young person aged 10 to 17 in the population, and this includes community-based services and detention-based services. Total expenditure in 2021-22 was \$412 per young person in that age group; 2022-23 was \$406; 2023-24, \$427; 2024-25, \$393 per person. You just start to get the impression of management of a social problem, rather than a meaningful attempt to embark on transformative change. Would you agree with that?

RORY GILLARD: Yes. We definitely asked some young people who access our program. We said, "It costs almost \$1 million a year to lock up a young person in New South Wales. As someone with a lived experience

of incarceration, how would you like to see that money better spent?" Some people talked about better programs and programs that are run by people with lived experience of the prison system, and more activities in their communities. I know you might have watched the Mounty Yarns vid, which is fantastic, where they explicitly asked a similar question, which is "What kind of programs would you create if you had that money, rather than spending that money on the prison system?" Some of them talked about, "Probably run more programs through schools. Get approvals to take kids out on cultural trips, cultural days, getting them to engage more in that kind of stuff." Another young person in that project said, "I reckon it should go towards going on a camp just to show them fellas that there's more out there, there's more things that they can do and experience." Those are some of the lived experience quotes from young people who would really like to see that money spent in better ways.

The Hon. STEPHEN LAWRENCE: In terms of a trial of what works, what do you think about the idea of a regional trial where a particular discrete regional community is selected and we trial actually a transformative investment in social programs, maybe accompanied by a relaxation of drug laws or executive mechanisms, and actually have a proper trial in a sort of properly drawn community area to actually see what we can achieve rather than what we seem to do at the moment, which is obviously ongoing services, which are important and they manage a particular social problem? We seem to sporadically in small quantities invest in programs here or there, and I just wonder whether we're really testing the limits of what we can achieve. Would a regional-based trial with a really sustained investment in these families and in these communities be something worth looking at? That's just a broad question for you all.

RORY GILLARD: Yes, 100 per cent. Something Yung Prodigy mentioned in their submission, which was really important, was the outcome should be generated by young people. Although I just sort of quoted a KPMG report just looking at what kind of outcomes young people want to see with that, I really like that in their submission.

MARISA MOLITERNO: If you're looking at a genuine investment, it needs to encompass all the things that factor. That's why the all-of-government approach really is necessary because we know the impacts of housing instability, we know the impacts of poverty, we know these things, so just placing one individual program into an area and expecting it to solve the broader systemic issues is not going to be achievable. You're setting programs up to fail.

The Hon. STEPHEN LAWRENCE: I totally agree.

JONATHAN HALL SPENCE: If we were going to do that, we'd just need to make sure it was designed and delivered with local organisations because they know the needs of their communities better than anyone. They're a source of very deep expertise that we can draw on when designing those kinds of investments.

The Hon. STEPHEN LAWRENCE: This is something that occurred to me when I was on council in Dubbo, which is a community with quite high levels of social disadvantage and Aboriginal overrepresentation in the criminal justice system, but on the other hand is also a place with almost full employment and lots of opportunities. Lots of different communities are there and there are lots of linkages to communities around western New South Wales, and it's in the Central West but it's also a comparatively isolated community in some ways. It just seemed to me to be maybe exactly the sort of community that we could trial a sort of transformative investment in.

MARISA MOLITERNO: From our work in working in Dubbo—we don't have a youth program in Dubbo but we have an adult program in Dubbo. The housing instability in Dubbo is—we find it very difficult to house people in the Dubbo region. While people may have other areas, the housing stability isn't there, the resourcing in terms of access to brokerage, access to other elements that people need is not there, and that's our experience.

The CHAIR: I wanted to go to that housing issue. In your submission, Mr Hall Spence, you talked about significant investment in housing services and diversion programs. Of your 16 recommendations, three go to that housing issue or the unmet housing needs of people. If we were to prioritise, of your 16 recommendations, where would you put housing?

JONATHAN HALL SPENCE: I would say that we'd love to see all 16 recommendations be acted upon, but housing would definitely be up there. Stable housing is such a solid foundation for people to build on in terms of gaining employment, engaging with school and engaging with other things. Knowing you've got a place to go home to is just massive, so we would certainly say housing has got to be close to the top of the list.

The CHAIR: We heard from a witness earlier today—and I hope that his experience is the exception rather than the rule—when he went into custody, it solved some of those unmet needs. How could we do that in the community, instead of in custody?

JONATHAN HALL SPENCE: I think we must do it in the community. We must do it at an earlier stage, and that means working with communities to identify opportunities to create new housing—and new affordable housing, particularly—in places like Dubbo where there is that great unmet need, because people don't want to move hours away. That's going to be a destabilising thing for them. We need housing in the communities where they have family connections and community connections, and where they know the schools, the sports teams and the other things. We need to be looking at investing in community housing at a much earlier stage of things.

RORY GILLARD: Do you mind if we just add to that as well, quickly?

The CHAIR: Sure.

RORY GILLARD: Some of the young people who access our program talked about the significance of housing for them, and one person said, "Guaranteed, if I didn't have a home to go to, I would have reoffended just to survive." Another person said, "For me and the people I know, offending is often for money, not for fun. We come from the street, and there is not enough food, money, clothes and basic things to live." That really speaks to that connection between housing—the need for housing to stop reoffending.

The CHAIR: It's like the hierarchy of needs, isn't it?

RORY GILLARD: Yes, and CRC also supports—there's a Homelessness NSW campaign to increase funding to specialist homelessness services by 50 per cent to be more preventative as well. That's another thing that we support. They also have another demand in that campaign, which is to increase community housing and public housing to 10 per cent of stock. That's something also that we support.

MARISA MOLITERNO: And just to add, it's that point of poverty. If we think about how a child under the age of 16 can't access Centrelink because of the way Centrelink is structured, then if we're looking at—yes, we need housing, but we actually need money to put food on the plates as well, because that's, again, the hierarchy of needs.

The CHAIR: Thank you for your evidence today and for your submissions. I think you took one question on notice or you wanted to expand on it. The secretariat will be in contact with you with regard to that, and we will probably send you some supplementary questions as well. Thank you for your attendance today.

(The witnesses withdrew.)

Dr FIONA ROBARDS, FHEA, Senior Research Fellow, Child and Adolescent Health, Faculty of Medicine and Health, University of Sydney, FASD Research Australia, affirmed and examined

Professor ELIZABETH ELLIOTT, AM, FAHMS, FRSN, Director, FASD Research Australia, Child and Adolescent Health, Faculty of Medicine and Health, University of Sydney and Children's Hospital Westmead, before the Committee via videoconference, affirmed and examined

Ms JANE SPRING, AM, Chair, Disability Council NSW, affirmed and examined

The CHAIR: Thank you for making time to give evidence, and for your submissions. Would you like to make a short opening statement?

JANE SPRING: The Disability Council is the New South Wales Government's advisory body on disability inclusion. We bring lived experience of people with disability across a wide range of impairments and life circumstances to advise government on how policies, services and systems can work better for everyone. Our submission is based on the premise that young people with disability have the same rights as any other person to safety, to education, to participation and to a future. But, unfortunately, these rights aren't realised in practice. There's no single point of failure. The system is fragmented, inconsistent and too often reactive. What we need here is a system-wide commitment focusing on accountability and respect for rights across education, disability, health and community services in order to improve outcomes.

We've focused our recommendations on five key areas. First is training: ensuring that the workforce is equipped to recognise, respond to and support young people with disability, including trauma-informed and disability-aware practice. Second, assessment: improving the consistency and quality and availability of how needs are identified, so that supports are timely, appropriate and equitable. Third is around NDIS interface and case management: strengthening coordination between systems so young people and families aren't left navigating gaps or bearing the burden of system failure. Fourth, data: building a clearer shared evidence base to understand what is happening, for whom and with what outcomes. Finally, funding monitoring and accountability: ensuring any commitments made are properly resourced, outcomes are tracked and agencies are accountable for delivery. We see this as a human rights issue, and we feel that young people with disability should not have to fight the system to access what they need. We do think that we could do better with the right settings, coordination and accountability.

The Hon. STEPHEN LAWRENCE: I want to ask a few questions about the fetal alcohol syndrome issue. I think a couple of people here might be appropriate for that. I'm after a bit of a summary—

The CHAIR: Sorry, I forgot to ask the other witnesses. Professor Elliott, would you like to make an opening statement?

ELIZABETH ELLIOTT: Actually, Dr Robards is going to read our statement.

FIONA ROBARDS: Thank you for the opportunity to appear today. We represent FASD Research Australia, the NHMRC Centre for Research Excellence in Fetal Alcohol Spectrum Disorder, which is led by the University of Sydney. Our centre brings together national and international expertise to improve the identification, management and prevention of FASD, and to translate evidence into better outcomes. We acknowledge the traditional owners of the lands on which we're meeting today, the Gadigal people of the Eora nation, and pay our respects to Elders past, present and emerging.

FASD is a lifelong brain-based disability. Recent estimates suggest that 3.6 per cent of the general population—and that's one child in every classroom—has FASD. Rates are much higher in certain contexts, such as juvenile justice. In the Western Australian Banksia Hill facility, it was found that 36 per cent, or one in three detainees, had FASD. FASD affects thinking, language, impulse control, memory and judgement—abilities that are critical to understanding rules, distinguishing right from wrong, complying with court orders and participating meaningfully in legal processes. When FASD goes unidentified and untreated, young people face ongoing disability and are at risk of repeated contact with Youth Justice, incarceration and poor life outcomes.

Our recommendations focus on how the youth justice system can better respond to children and young people with neurodevelopmental disability, including FASD. First, early identification is critical. All young people should be screened and assessed at first contact with the youth justice system to identify their needs and strengths, including cognitive capacity. Early identification of children at risk of FASD allows early diagnosis, interventions and support to improve outcomes across the life span. It requires increased capacity for free, public, freely available FASD diagnostic services, particularly for vulnerable families; the development of an appropriate FASD screening tools for justice settings; and clear referral pathways from justice to health.

Second, youth justice practice must be FASD informed, so young people in Youth Justice should have access to legal services, support programs, education and health care that are adapted to their developmental needs and disability. Youth Justice standards should be aligned with international best practice and include clear guidance on implementation, and isolation and restrictive practices should be avoided. Third, workforce capacity and system navigation matter. Police, prison staff and legal professionals at all levels of the justice system require training to better understand and support young people with neurodevelopmental and mental disabilities, including FASD. Disadvantaged young people and their families should be assisted to navigate health services, including access to Medicare and NDIS.

Fourth, incarceration should be a last resort. Investment is needed in evidence-based alternatives to incarceration, including community-based services for young people with complex needs and youth work programs which are less costly and more effective. This will require long-term infrastructure investment, particularly through Aboriginal community controlled organisations, to support young people and families. Culturally appropriate approaches to justice such as the Youth Koori Court should be supported.

Finally, prevention and human rights are fundamental. Measures to prevent harm from alcohol use in pregnancy, including education on alcohol harms and legislation to restrict access to alcohol, are critical. Addressing the social determinants of alcohol use is essential to prevent long-term intergenerational impacts of alcohol on Youth Justice involvement. Positive reform must be grounded in a child rights approach, ensuring that young people can express their views and have them respected. We strongly support increasing the minimum age of criminal responsibility from 10 to 14 years, in line with international practice and evidence on child development and neuroscience.

The Hon. STEPHEN LAWRENCE: Thanks to you all for coming along—much appreciated. You've sort of answered most of the questions I had, Doctor, but I have just a couple. Are you able to give us a sense of the percentage of young people in the criminal justice system that are getting evaluated or screened for FASD?

ELIZABETH ELLIOTT: Perhaps I could answer that question.

The Hon. STEPHEN LAWRENCE: Sure.

ELIZABETH ELLIOTT: We only really have data from the Banksia Hill study, and my understanding is that virtually none of those nearly 100 children who were in detention had had any screening prior to the Banksia Hill study. Certainly, I think only one of them—and there were 36 per cent of them were diagnosed with FASD—had previously received that diagnosis. This really suggests to us that there were missed opportunities all along the way—missed opportunities of identifying their problems at school. Many of these kids had been in out-of-home care, so missed opportunities by the Department of Communities and Justice to screen and identify their capacity then, and then missed opportunity when they offended or, as many of them had done, reoffended—missed opportunities to assess what was their cognitive, language and other abilities.

The Hon. STEPHEN LAWRENCE: Do you think that psychiatrists and psychologists who might be doing court reports—so having an hour or two with a kid prior to court proceedings, and then making a diagnosis and presenting a report—are screening for this? Are they sufficiently aware of the diagnostic criteria and so forth?

ELIZABETH ELLIOTT: I think they're becoming increasingly aware of the diagnostic criteria and the need for screening and diagnosis. But my understanding is—and you'd really need to speak to the legal professionals—that it's too late by the time they get to that stage. Really, they need to have the information in front of them that this child has been seen by a paediatrician, a multidisciplinary team or another specialist and had consideration of their various diagnoses. These kids might have autism. They might have ADHD. They might have language disorder. They might have an intellectual disorder, as well as having an overarching diagnosis of fetal alcohol spectrum disorder. It's not the sort of assessment that can be done in a courtroom in an hour. It's the sort of assessment that we do over several weeks and at least a day in person with the child.

The Hon. STEPHEN LAWRENCE: What's the utility in a diagnosis? Say you're talking about a 16-year-old who has committed a fairly serious criminal offence. What's the practical utility of the diagnosis, given that it's a behavioural group of symptoms, as I understand it, that might also place them in various other categories of diagnosis? What's the practical utility? I accept that it might, for example, inform the court's assessment of their culpability inherently. But from a treatment point of view, what's the utility?

ELIZABETH ELLIOTT: From the treatment point of view, I guess there are several issues. One is that if you identify a child who has got fetal alcohol spectrum disorder, there's an opportunity to prevent that from happening again in that family by offering the mother support to get services. Secondly, with any neurodevelopmental disorder, the earlier it's identified, the better it responds to early intervention because we know that the brain of a young infant and child is very plastic and can respond. You get much better outcomes in later childhood—educational and other outcomes, behavioural outcomes—and in adulthood if you can get in early.

These children with fetal alcohol spectrum disorder also often have physical disabilities because alcohol actually disrupts the development of the organs, such as the heart and the lungs, let alone disrupts and can cause abnormalities of brain development. The advantage of having a diagnosis really is that you can get early intervention in place and, hopefully, prevent that child from ending up in out-of-home care and then progressing to juvenile justice. You can help prevent another child being born. Importantly, as you say, you can give the court a better understanding of what capacity that child has to understand what they've done to not do it again, to give accurate witness reports rather than confabulate, and to understand the court processes. I think we've heard quite a bit about this from the lawyers in previous submissions.

The Hon. STEPHEN LAWRENCE: That's really useful. Thank you. Lastly for you, Dr Robards, you talked about legislative reform around access to alcohol, I think. Could you just talk about what you meant by that?

FIONA ROBARDS: We've done a review of policies relating to prevention of prenatal alcohol exposure, as well as FASD, at the international level, Australian level and Australian jurisdictions. It's very clear that one of the best ways of preventing FASD is to use alcohol control measures which limit access to alcohol, so taxation, advertising—those kinds of things.

The Hon. STEPHEN LAWRENCE: So you're not talking about localised alcohol bans or person-specific alcohol bans; you're more talking about availability.

FIONA ROBARDS: Community-based measures.

ELIZABETH ELLIOTT: However, if I could just butt in here, at the local level, we've seen this particularly in Aboriginal communities where there have been very effective community-led alcohol restrictions—a variety of different types—which have really made a huge difference to the amount of alcohol that has been purchased in the community and have substantially increased attendance at school and decreased the rates of alcohol use in pregnancy, as well as in the general community. I've done a lot of work in the Fitzroy Crossing community in the Kimberley in Western Australia, and that's really a prime example of how community-led alcohol restrictions have been effective.

The Hon. STEPHEN LAWRENCE: Has that translated to lower rates of fetal alcohol syndrome in that community?

ELIZABETH ELLIOTT: We haven't repeated the study that we did back in 2009 until 2011, because it was very expensive and time consuming. However, we do know that the rates of alcohol use in pregnancy have decreased and there's certainly a very high level of awareness of the harms of alcohol in pregnancy.

The CHAIR: Professor Elliott, you recommend screening all children with their first contact in the justice system. I wonder what that would look like, given that sometimes children aren't in the centres for very long. If they've got a sentence, some of them might only be there for 24 hours. How can we do those assessments given that sometimes not all people are in there for a long time?

ELIZABETH ELLIOTT: Yes, I understand exactly that situation. We've been working with the Koori Court in Parramatta and, again, it's very difficult to capture kids who are coming in and out of the court system. What we need is better lines of communication, or good lines of communication, between Health, Justice and, indeed, Education, such that we can collectively ensure that that child, at the earliest possible opportunity, sees a paediatrician or an appropriate specialist to get that process underway. There are certain things that could be done in the court system, but I don't think that's the appropriate place to be doing the assessment. What I mean by the first contact is, if the child has been picked up by the police and/or ends up in court, they should immediately be referred to the appropriate services. That, of course, costs money, and most of the child development—certainly our fetal alcohol spectrum disorder assessment service in New South Wales is really overwhelmed. We really need to increase the capacity for assessment and diagnosis across from primary care right through to tertiary care.

The CHAIR: That leads me to my next question. To what extent should youth justice agencies be responsible for identifying neurodevelopmental conditions versus it being led by the health system?

ELIZABETH ELLIOTT: Clearly it's a health problem; it's not a justice problem. As I said, I think we really need to go right down the line. The schools need to identify children with developmental and behavioural problems early and have them assessed. The Department of Communities and Justice, if they're taking a child into out-of-home care, particularly if it's in the context of drug and alcohol use in the family, needs to ensure that that child is assessed and that the exposures that that child has had, both in utero and in early childhood, are well documented. Yes, I think we really need—and this is a very good example of that need—a cross-portfolio approach.

The CHAIR: And early intervention as well.

The Hon. EMMA HURST: Thank you all for coming today and for the very important work you do. In the last panel we talked about the need for screening for children or young people at risk of disability. One of the concerns that was raised was a lack of services to actually refer young people to if they do screen them and want to refer them on. I hoped you could talk a little bit about that and about where there are any really specific funding gaps that particularly should be prioritised in this space, to ensure that we're not screening and then having children falling through the cracks further because there are long waiting lists and other problems going forward.

FIONA ROBARDS: I feel like Professor Elliott touched on this in her last response, but I would probably add that there's a gap in that we don't actually have an established screening tool at the moment. That is the first thing that needs to be developed. Then there's a real need to develop the capacity of existing services to meet the demand, because at the moment there are long waiting lists.

JANE SPRING: I might add to this. One of the things we raised in our submission was this whole question around data. As Dr Robards has said, there is no consistent, integrated approach to collecting data on children and young people with disability in Youth Justice settings. We've got data collected across a range of systems, but it's quite fragmented, it's inconsistently defined and it's not routinely linked. At the national level, the Australian Institute of Health and Welfare collects youth justice data through the national minimum dataset, and this provides important information on supervision and detention. But disability is not consistently captured, particularly in relation to cognitive disability, psychosocial disability and complex needs. We know at the State level, Youth Justice NSW and other agencies are collecting administrative data, but identification of disability isn't standardised. It might depend on prior diagnosis, disclosure or local practice, so we're not getting a reliable or complete picture.

We've also got information held by the National Disability Insurance Agency, Health, Education and child protection. These datasets are not routinely connected, and there's very limited capacity to track outcomes across systems. In our submission, we feel that it's very important to develop a systemic and systematic approach to this so that we can actually understand the prevalence and profile of disability among young people in youth justice, and before that, plan and fund appropriate supports, and then monitor outcomes and system performance over time. We all throw up our hands about the lack of information, but we really need to come together and work on developing a consistent and linked dataset with appropriate privacy protections, so that we've got an idea of where we're going and whether the investments we make are worthwhile.

The Hon. EMMA HURST: Dr Robards, you also said that we're looking at really long waiting lists. Can you expand on that a bit? What are we looking at in regards to some of these waiting lists, and what does that mean in practice?

FIONA ROBARDS: I might throw to Professor Elliott, because she is the director of the FASD assessment service.

ELIZABETH ELLIOTT: We have a FASD assessment service which has a remit for screening and diagnosis throughout New South Wales, as well as for training and education of health professionals and research. We're really inadequately funded. We're funded partly by the New South Wales Ministry of Health and partly by the Australian Department of Health, Disability and Ageing, but this process requires a multidisciplinary team and we have a significant waiting list at present of, I think, probably around 24 months. Having said that, we do as much as we can along the way to have children assessed in part by their local practitioners. So it is a problem.

If I could just come back to the screening test, I've been in conversation today with colleagues in the US who've developed online screening tools, which could be used very successfully in settings such as the justice setting and out-of-home care that don't require specialist physician input, and would include a mixture of child tasks, parent questionnaires and a fairly straightforward examination that could be done by a nurse or a general practitioner, or really most health professionals. I think that what we need is the capacity, the funding, I guess, to put this screening tool together to test it in the Australian situation and to implement it, and to train and employ someone to do it. It's quite feasible to do that. We really just need the capacity.

The Hon. EMMA HURST: Certainly, that length of waiting list just goes to show how important these services are and how much more funding there clearly needs to be.

The Hon. Dr SARAH KAINE: I have a question for Ms Spring, to begin with. Looking at some of the submissions and thinking about the interjurisdictional issues, I wondered with regards to NDIS supports—I'm sorry, I think I may have missed your opening statements. My apologies if there was something there. I wondered with regards to NDIS supports what the situation is for children who are within the NDIS system who go into youth justice and then re-enter the community. I just wondered if you had some comments about that?

JANE SPRING: I think the comments I would have around NDIS and Youth Justice is that the interface between the NDIS and Youth Justice is quite fragmented and inconsistent, and it does contribute to gaps in support

for young people with disability. We would note that many people in youth justice are not identified or connected to the NDIS early, that NDIS supports are often disrupted during custody, with responsibility shifting to the State, and that there's no consistent approach to coordination or case management across systems. The result of this is that young people can experience gaps in support, particularly at these key transition points, including the entry into custody and release back into the community. We would like to improve early identification and connection to the NDIS, particularly for Aboriginal and Torres Strait Islander communities. We'd like to see continuity of supports, and we'd like to see strengthened coordination and clarity of responsibilities between the systems.

The Hon. Dr SARAH KAINE: We were talking about screening, for example, for fetal alcohol syndrome and other things. If someone has a diagnosis that is recognised by the NDIS, is that then taken into account through the justice system? Or is it another screening that has to take place, because then you've got the State system that assumes responsibility? Is there a double-up? I know you said it's fragmented, but is there some recognition of diagnoses?

JANE SPRING: The fragmentation I was referring to was the fragmentation in provision of services rather than relating to diagnosis, which is up the line. I'm afraid I don't know about the legal side.

The CHAIR: Can I just expand on that? There are gaps between Youth Justice and the NDIS. If they've had support in the community and they enter the justice system and then they exit the justice system, who should have that responsibility to ensure that they do have that continuity of service or that it's enforced?

JANE SPRING: We would look towards a systematic response to this problem. I don't think it's a one-size-fits-all approach. People entering youth justice are often not well supported by family or community, which is why they're there in the first place. We would look to a systematic response, which actually looked at the services, understood whether people had an NDIS support and whether they didn't and whether they potentially should, and worked out what advocacy systems could be put in place if they didn't have a support around them to help them move in and out of the system. I think it's not a simple answer, but the answer really is in doing the systematic work to make sure that part of the process of entering youth justice is that you look at this challenge and work out what needs to be done to make sure that the person is getting continuity while they're in the system and then, when they exit, they're not falling off the radar, so to speak.

The CHAIR: By contrast, you've identified police as being critical in that point, especially for young people with a disability. What tools or protocols could be introduced to enable police to identify disability and then make appropriate diversion or other decisions that stop first contact with youth justice?

JANE SPRING: Disability Council sees police as having a really important role here. Some police do this really well and others need more support. We are recommending police receive practical, disability-informed training that equips them to recognise and respond appropriately to young people with disability. There are probably three elements to this. We'd want to see them having disability awareness training, particularly in relation to cognitive, psychosocial and communication disabilities so officers can identify when a young person may not understand what is happening or may be responding differently from the way they expect.

Second, we'd like to see them having some supported communication skills, including how to use plain language, allow additional time, check understanding and engage communication supports such as formal supported communication where that's necessary. This is really important to ensure that young people can understand their rights and actually meaningfully participate in interactions with police. The third one is trauma-informed practice, recognising that many young people in contact with the justice system have experienced trauma and that responses need to really de-escalate rather than inadvertently or accidentally escalate situations and promote worse outcomes. We really think the training for police should be embedded and ongoing, not just a one-off module or something that happens early on in their career, and be supported by operational guidance and access to specialist advice where that's required.

Ms SUE HIGGINSON: I was wondering if you had any views you would like to share, particularly from the FASD perspective to begin with and then from the disability perspective. If we are dealing with young people under the age of 16 and they're presenting, we're looking at this from an already incarcerated perspective. We're talking about it as if dealing with police at this point in a young person's life is normal. What do you say to that? As professionals and experts coming from a perspective of health and wellbeing, in particular disability and affectation, where are we and where can we—I'm feeling like I want to scream my way out of this conversation somehow. I'd just love if we could just have a moment and talk frankly about that in terms of your professionalism, your expertise and what you're seeing. Perhaps if we start with you, Professor Elliott, if that's possible.

ELIZABETH ELLIOTT: Where are we? We're in a bad place. If you think about why these children are in this situation, the social and economic determinants of health have been mentioned, but the social and economic determinants of crime, out-of-home care and ending up in justice and health are all the same. We do

need to address those issues of making sure families, wherever they live and whoever they are, have adequate access to good health care, good education, transport, supports et cetera. I suppose that's a starting point. I do think the issues that Jane was referring to about police are very important. We know that within certainly some remote communities where the police have very good relationships with the Aboriginal leadership, they know the children who have less cognitive capacity, who have autism, who have FASD and other diagnoses, and they treat them appropriately.

We just need to pause. The fact that children at the age of 10 can end up incarcerated is a very bad starting point. I think one of your earlier speakers, one of the lawyers, mentioned that if the age of criminal responsibility was raised to, say, 14, which is commensurate with the developmental age of appropriate reasoning, then that would be a really good starting point. That would mean that any child who was picked up for a crime—and often they're petty crimes prior to that age—could be deflected into the health system and the community services rather than into the justice system. I'll be interested to see what solutions Jane and Fiona offer.

FIONA ROBARDS: I would just echo what Professor Elizabeth Elliott said. Many adolescents in the justice system have undiagnosed FASD. We suspect that from the Banksia Hill study. Without systemic reform, they're going to be criminalised rather than supported. Public narratives often frame youth crime as a moral failure rather than a developmental or a disability issue. We strongly recommend raising the age of criminal responsibility to 14. Incarceration at a young age only entrenches trauma, disability and disadvantage. Justice responses need to be therapeutic, rehabilitative and community based, not punitive.

JANE SPRING: From a Disability Council NSW perspective, I would go to our remit, and the role of the Disability Council is primarily to advise the Minister on matters relating to disability inclusion—advising on development, implementation and review of legislation, policies and programs affecting people with disability. That is just about everything, which gives you that "oh my gosh" responsibility moment. But I think the good thing about the Disability Council is that we bring a very wide variety of lived experience to that task. I'm very grateful for the input that fellow council members give, particularly Gail Le Bransky, who's a public service medallist, in developing this submission and taking the care that they do around issues like this.

We spend a lot of time advising government. We get to meet secretaries and heads of departments. We talk about the most fundamental issues in relation to education: making sure children have the right support; talking about the resources needed; asking for consistency in policies and programs that can be relied on by citizens; and making sure that things that governments do are inclusive and universal so that people can understand—whether it's through Easy Read or through simply clearly designed programs—where to get the help they need. I would always go back to basics when I'm asked a question like yours, because we're all people who are very much endeavouring to make sure that we're catching people before they get to youth justice but, if they do get to youth justice, we're joining up systems to ensure that we're not wasting money on long periods of incarceration which deliver worse outcomes.

I think the work that the disability Act asks all agencies to do around inclusion action planning, not just for making agencies a reasonable place to work for people with disabilities and therefore getting the input from disability into policies and programs designed by those agencies but also the outward-facing work for services to citizens, is disability informed. I think all of this is very important, and I think that society is maturing in terms of its consideration of diversity of the population—not just disability but all of those compounding factors that lead to socio-economic disadvantage—to try to improve and give people a more equitable go. That's all I can offer, but we're certainly keen to engage in this, and we think this inquiry is very significant and important.

The CHAIR: Thank you for your evidence today and for your submissions. I do not believe there were any questions taken on notice. If there were, the secretariat will be in contact, and we will probably get some supplementary questions to you also.

(The witnesses withdrew.)

Dr LEIGH HAYSOM, Director Medical Services, Justice Health NSW, NSW Health, affirmed and examined

Dr ANDREW ELLIS, New South Wales Clinical Director Forensic Mental Health, Justice Health NSW, NSW Health, affirmed and examined

Dr JAMES LAWLER, Child and Adolescent Psychiatrist, Australian Medical Association (NSW), affirmed and examined

The CHAIR: Welcome and thank you for coming today to give evidence. Would you like to make a short opening statement?

JAMES LAWLER: We're very grateful to be here to contribute to this Committee and their inquiry. Myself and many other members of the AMA NSW regularly treat children and young people who have interacted with the youth justice system or are at risk of doing so. Young people in contact with the youth justice system experience a spectrum of unmet health challenges driven by exposure to an array of known social and economic adversities. The AMA NSW strongly supports the immediate implementation of a whole-of-government approach to addressing the underlying drivers of contact with the youth justice system. This is achievable through early identification, informed prevention and needs-based care. The AMA NSW also advocates for making Medicare and PBS accessible in youth justice settings in New South Wales to avoid entrenching children in harmful cycles of institutionalisation and recidivism. Youth contact with the justice system is a public health issue. Shifting from a proactive rather than a reactive approach to meet the needs of young populations and preventing youth offending is crucial to improving health and social outcomes for future and current generations.

Ms SUE HIGGINSON: I've got a couple of questions for Justice Health to begin with. I'm curious—does Justice Health play any role in ensuring the wellbeing of young people who are in separation, segregation and confinement? It's kind of a class—they've got all these specific names and particular aspects to them. But at the end of the day, my understanding is it involves young people being placed in a particular—for want of a better term—punitive, or apparently "good for themselves in the moment" where it means they're not with other people. I'm just wondering if Justice Health has a role in that?

LEIGH HAYSOM: Yes, we do. The nursing staff who are in each of the centres who run the clinics are familiar with all of the young people in each of the centres. As part of their role in ensuring the wellbeing of those young people, any young person who's in separation or segregation would be checked every day. The nurses are mindful of any comorbid issues for those young people, and if there are any problems in that regard, they would bring them up to the clinic to review them. Whenever a young person comes into custody, they have a thorough reception assessment with a multidisciplinary team to check them for issues relating to mental health, developmental disability, substance use, withdrawal or any physical issues. We've got policies to back up those approaches. We also discuss the data with Youth Justice. We have a quarterly joint clinical governance committee meeting, which is to look at those sorts of risk issues for young people in custody, and we look at the data across the State and discuss any outliers or problems with particular young people.

ANDREW ELLIS: Probably one point is that Justice Health never makes a decision to place someone in solitary confinement, of whatever label you wish to put on it. It's not a health intervention. It's never good for anyone. It's a disciplinary action. There is capacity for young people who have been transferred to a psychiatric hospital—that's the forensic hospital—but that's overseen by the Mental Health Review Tribunal, where someone is so mentally unwell that they require transfer out of the youth justice system. It is possible for them to be placed in seclusion, but the forensic hospital has some of the lowest seclusion rates of any psychiatric hospital. It has heavily governed procedure and is used only for the briefest time to re-establish safety for staff and patients. It's not something that health staff would or should make decisions about.

Ms SUE HIGGINSON: Stepping back one degree, my understanding is that there's a lot of psychological and physiological material and evidence to support the long-running campaign that other States have acted on to raise the age of criminal responsibility to 14 or 16, because young people just simply can't be held criminally responsible in a psychological and sociological sense. What happens then to health professionals who are cognisant of all of that really solid medical material and physical evidence? Is there an incongruence between the practice you have to undertake as experts in this field in a legal framework that is not recognising your own expertise and professionalism? I'm just curious about how that works in the real world. Can you elucidate anything that helps us here in the Committee?

ANDREW ELLIS: Medical expertise is recognised to an extent by the law. There is the *doli incapax* provision. I've given evidence on *doli incapax* on many occasions. That's that grey area of responsibility between 10 and 14. As health professionals, we have to abide by the law of the land that we're working in, but there are

clear statements by the college of psychiatrists and the college of physicians about the age of criminal responsibility. It's not agreed with by the medical profession.

Ms SUE HIGGINSON: Just to be clear, what is the stated position?

ANDREW ELLIS: To raise the age to 14.

Ms SUE HIGGINSON: Then we're talking about 10 to 14. Is it a difficult field or area for you and your staff and the people you work with? You have a deep, evidence-based understanding that this is the law of the land, as you say, that you have to apply to these children.

ANDREW ELLIS: Healthcare staff don't directly apply the law, but they do stand by and watch it happening. It is difficult to work in custodial environments for healthcare staff. Our staff choose to work in these environments because they are dedicated people and there is a chance to do something differently. We try to influence. There are legislative avenues to divert people out of the justice system. We have a court diversion service to look at that and place people in clinically appropriate environments for their needs. We work within a complex realm, and we're aware that health care doesn't solve everything, but we're an important part of it. We certainly know that there are healthcare interventions that do reduce recidivism, and we would like to see them at larger scale, but it's incumbent on us to keep pointing out where we could do things differently.

LEIGH HAYSOM: It's incredibly frustrating and we feel terribly frustrated with it. It's an issue of moral distress for all of us who work in the system. We're fitting a square health system into a round peg. It's really quite difficult. As Andrew said, there are avenues for diversion at court, but it's an opt-in system, which is wrong. Doli is actively excluding those comprehensive multidisciplinary health assessments that should happen for every child of that age. Anyone who's 10 to 14 who's in contact with the criminal justice system is, by default, struggling neurodevelopmentally and with lots of other issues. Their families are struggling. It should be an opt-out system so everyone gets it, unless you've got a reason not to have a full assessment at your very first point of contact with the criminal justice system.

We're intervening way too late, and we're pushing the onus of assessments into a custodial setting where kids are spending a day or less. The median time in custody is a day. What can you do in a day? It's really difficult. Those systems that we have need to start really early, way earlier. Anne Hollonds has talked about all of this ad nauseam, but we don't meet many young people who haven't been flagged, possibly antenatally, who haven't been flagged in kindergarten, who've fallen out of school at primary school age. They're in trouble with the police many times before they come into custody.

There's a lot of time to be intervening and getting those assessments done, but it has to fit into the system. You've got to be place based. You've got to be bringing those services to where those families and children are to work with them and find out what they need. Assessing and diverting is great, and we need to do more of that, but there need to be places to divert kids and families to, and at the moment there aren't enough. There aren't developmentally safe places for these children to go to, and that's why they end up in youth justice, because there is nowhere else for the police to take them.

JAMES LAWLER: Can I just add as well, because I think it's a good question. I understand this Committee is trying to solve a problem of two parts in that it wants better outcomes—

The Hon. Dr SARAH KAINE: We're trying our best!

JAMES LAWLER: Well, lots of parts, but ultimately it's recognised that we're spending a lot of money on the youth justice system, but also not getting great outcomes. I think this issue is linked to that problem, because you have a system around children aged 10 to 14 and younger where there are broadly socio-economic problems or psychosocial problems—whatever term you want to use—and you have a lot of different agencies protecting their turf around what they're actually responsible for. Setting up an expectation where a 10, 11, 12-year-old is not responsible for driving a car, deciding where they go to school, getting a Medicare card and going to see the doctor et cetera, but is responsible for criminal behaviour leads to this problem in the system around those children where there are not clear roles and responsibilities for figuring out who should do what.

You have this problem of services trying to do early identification or trying to divert kids from the criminal justice system, police identifying kids in the community, bringing them to emergency departments, being screened by a psychiatry doctor in the emergency department, deciding they're not detainable under the Mental Health Act, discharged back to their existing supports, who don't think that they're doing the right thing, and the child continues to misbehave. These are the sort of things happening all the time in our community where nothing's really changing and being done until the child reaches a point where they've committed a serious enough offence that has to be dealt with by the justice system. I think lawmakers making it actually clear who is responsible for what at what age would be quite helpful for the systems around these children.

Ms SUE HIGGINSON: We just heard about the FASD screening and so forth. Can you see, from where you are, are there improvements coming? Are the screening tools going to develop? Are we making any progress? Is there any investment? It sounded like there's been some really good programs, or one really good study and program, but maybe we're not following up. Is there anything you can assist us in knowing?

LEIGH HAYSOM: Are you referring to the Banksia Hill study?

Ms SUE HIGGINSON: Yes.

LEIGH HAYSOM: It's a great study, and fairly standalone. You need to appreciate the resourcing that went into that to achieve those diagnoses. To translate that and generalise that into our sort of setting where kids are just flowing through is tricky, but we do need to work on some ways of readily identifying these young people, because it isn't always obvious. We're meeting young people who've got these neurodevelopmental issues that might be suggestive of FASD, but unless you're particularly trained to be attuned to those, you're just going to think, as you've been hearing from all your speakers, that their disruptive and disordered behaviour gets interpreted in a different way, and criminalised. There needs to be a lot of work around that with training.

There needs to be quick ways of potentially screening young people as they enter and having pathways and those wraparound services that follow the young person back into the community so that it can keep going because it's a long process to get that diagnosis. I'm sure you've heard from Professor Elliott about that. We work with CICADA, the service that helps with that diagnosis. We have clinicians, psychiatrists, myself, other people who do various parts of that diagnostic pathway to try to bring things together. There are lots of bits, lots of moving parts to bring together to get that diagnosis, and ultimately we want that so we can get young people on the NDIS. That's yet another tricky thing to do. It's not easy for anyone, let alone for these families.

Ms SUE HIGGINSON: If there is a young person who is incarcerated and they clearly have the need to have ongoing psychological expert help when they leave a juvenile justice centre, do they get that? Do you say, "Here you go. Here's your practising physician. This is who you will go and see. You will have an appointment on this particular day"? Is that how it works or is that not how it works?

ANDREW ELLIS: It can work like that, but it's not scaled. Justice Health Adolescent Forensic Mental Health has a community arm called Safeguards, which can follow people into the community, and it can follow people post any sort of conviction or sentence. This is one of the issues. To take on Dr Lawler's point about which service has accountability, that causes a lot of issues in this area. However, Safeguards only works for a limited number of people in a limited number of areas because it's not a universal service. That service gets very good outcomes, and we know across the board that forensic mental health interventions like court diversion, re-entry, case management and hospitalisation where necessary actually reduce reoffending and improve health outcomes at the same time. It's one of the few things that actually reduces offending in any sort of justice intervention. But we don't do it at scale. What we do at scale is incarceration and parole-type supervision.

Ms SUE HIGGINSON: Where do we offer Safeguards? When we say "limited geographically", where do we have that?

ANDREW ELLIS: There's one based in Sydney metro and one based in one rural area.

Ms SUE HIGGINSON: Do we know where that rural area is?

ANDREW ELLIS: I'll have to take that on notice, unless you can remember, Leigh.

LEIGH HAYSOM: I know there's a new service being developed in Dubbo. Is it Newcastle? We'll take that on notice.

Ms SUE HIGGINSON: Up north, for example, in the Northern Rivers the numbers are really high. Is it not there because it's not resourced to be there?

ANDREW ELLIS: Yes, that's correct. It's only resourced for those areas. It's an issue of scaling. The other issue that Dr Lawler raised about which agency does what is an issue within youth justice because some health services are provided by Youth Justice and some are provided by Justice Health. One is that I think that's a duplication issue. There is duplicative work that goes on that is probably not necessary. And then there is the issue of being able to provide care across the span of someone's involvement with the justice system. Youth Justice has a mandate to provide that while the person is within the remit of justice. There are some exceptions to that. But Health has an ability to do that across the spectrum of involvement. I think there is also an issue of engagement, and it's harder if you have a mental disorder of any kind to engage with the same agency that provides your supervision and punishment.

The Hon. Dr SARAH KAINE: Dr Lawler, I will go to you for a second. I asked previous witnesses about the interjurisdictional aspects of NDIS provision, and I think one of you here mentioned NDIS. I note that in the

AMA's submission, you talk about Medicare and PBS. I wondered if you could explain a bit some of the concerns of the AMA around that, because, to be honest, it wasn't something that I had really thought about. There are more traditional concerns, I guess, to put them that way. I wondered if you could explore a bit for us and explain those jurisdictional concerns.

JAMES LAWLER: Sure. To be honest, I don't work specifically in the justice system, so I'm not sure exactly of the day-to-day experience in there. But my understanding is that for almost every patient in Australia, they've got access to the services under the MBS and medications funded by the PBS, unless they're in prison. That creates problems when people transition between the community and the justice system. I think the justice system has contracts that they have to do for particular medications, which means that often people enter the justice system and then their medications need to be stopped or there are delays in medication actually getting to patients, which is very important for patients with severe mental illness. I think it just generally means that in a system where you want to be with young people intervening early and always trying to turn things around early on, there are gaps in care or delays in care because there are not the same services available in the justice system as in the community. But Andrew and Leigh might have more to say about that.

ANDREW ELLIS: That's correct. It's been subject to some legal challenge in recent times, but I'm not sure whether it's become systemic. It's been historically held that once the State detains someone in custody, the Commonwealth no longer funds Medicare for them and the entirety of their healthcare responsibility falls upon the State, which includes what medications they can have. You can see any doctor, as long as it's Leigh or me. So your access to Medicare is—I don't understand the constitutional law and the funding arrangements around it, but on a practical level, if there were the ability to attract Medicare, it may assist with, for example, Aboriginal medical services having greater involvement to people in custody.

The Hon. Dr SARAH KAINE: It sounds like cost shifting; I don't know about constitutional issues. I'll have to defer to my lawyerly colleagues.

LEIGH HAYSOM: Even access to particular Medicare item numbers would be helpful for adolescents to get those allied health services that we don't get funding for. Referring to the AMSs for some of their services as well.

Ms SUE HIGGINSON: Because it's not really just a cost-shifting or money issue, is it? It's the actual itemisation of the service that's being built behind those Medicare systems that they then get deprived of when they're most needed. It's something I wasn't aware of, but now clearly we are aware of.

LEIGH HAYSOM: It's a reduction in choice, isn't it?

Ms SUE HIGGINSON: Exactly.

The CHAIR: Further to that, Dr Lawler, it sounds complicated, but can there be changes made so that it can implement that system so that they can have access to Medicare and PBS in youth detention? Because I have a feeling that if they were able to access different sorts of medication, that would have an impact on the reoffending rate.

JAMES LAWLER: I'm not sure how easy it is. I know the AMA has advocated on this point for a long time, as have many other groups.

The CHAIR: Who are you advocating to?

JAMES LAWLER: We have a Federal branch of the AMA that speaks to Federal members of Parliament from time to time about this, but I think it's relevant to this Committee. Like I said, it's looking at how it can do things better, but also how it can do things more efficiently. It's spending a lot of money in trying to understand why, and part of that is that you take over responsibility in New South Wales for all of the cost of health care once people enter the justice system.

The CHAIR: It should be all of it then, shouldn't it?

JAMES LAWLER: Yes.

The CHAIR: That leads me to a question. Say a child enters youth custody and is there long enough to have an assessment and then have a medication or treatment prescribed, and then they exit the system. Is it only if they have the Safeguards that there's any—I'm trying to think of the word. Do you know that they're going to be seen afterwards, or do you just hand them their script and say, "See you later"?

LEIGH HAYSOM: There's a discharge process. The nurses lead that process, mostly, because they're the ones who are in the centres every day. There's paperwork. They would arrange for discharge medications, which is a week. We do provide scripts—we're probably not supposed to because PBS isn't available to us, but

we do. There is referral on to community and adolescent mental health. There are the Safeguards. There's the community integration team that Andrew mentioned, who will follow up the at-risk young people for their mental health and drug and alcohol concerns. They also follow them up for physical health issues as well. We would refer to ordinary processes like their community GP and other doctors or services as required, but it is very disjointed. Often young people might come into the centre and have lots of different needs, spend a couple of hours overnight and then go really early in the morning, so they haven't seen anybody. That's a big issue.

The CHAIR: Their needs are not met, then, are they?

LEIGH HAYSOM: No, not at all.

The CHAIR: Or some are, but the majority are not, and then they're put straight back into the environment.

LEIGH HAYSOM: Yes, that's right. They can go to court and then leave, and it wasn't expected that that would happen. We try to do what we can for every young person who goes to court, but it's a very unpredictable system, as you can imagine. If we know, there's lots of planning and throughcare, but that's not the case for every young person because of the way that the legal system operates.

The CHAIR: You said Safeguards was only on a scale, or only delivered in small pockets. What would it take to have it across New South Wales? I feel like if we could do that, we would have fewer people coming back into youth detention. Surely that is the aim of youth justice?

ANDREW ELLIS: Yes, well—

The CHAIR: Because it appears to be youth injustice.

ANDREW ELLIS: We could provide the cost of one Safeguards team to the Committee, and we can also show the outcomes with that. We will not prevent every reoffence, but it will, on an aggregate level, over time, show a reduction from what is the present rate of reoffending, and it will also show an improvement in health outcomes. It would cost, in one sense, but it may—

The CHAIR: It would be an investment.

ANDREW ELLIS: We haven't done the specific economic analysis of Safeguards because it's fairly new, but if it achieves those outcomes on a systematic level, it should have overall savings for society.

The CHAIR: On notice, can you provide that information to the Committee?

ANDREW ELLIS: I would be very pleased to provide that information.

The CHAIR: For children and young people who have come into youth justice with drug and alcohol concerns and are then released, is Justice Health talking to the family supports or caregivers to minimise the harm? I imagine that once a young person is released, if they're going back to that same environment—if they haven't been exposed to drugs whilst they're in custody, and then are exposed to drugs again, it could be catastrophic. Is work being done with families and support in the community to minimise that risk?

LEIGH HAYSOM: Yes. Certainly, when that young person comes into custody, there would be a risk assessment made as part of their admission assessment to talk about substance use—not just for them, but within the family—and to assess them for intoxication and withdrawal and manage all of those immediate issues. And then to have a plan for their discharge, which may include use of naloxone and things like that, and to refer them to the CIT, the community integration team, for follow-up in the community for some oversight of their wellbeing. Often the dual diagnosis CNC—the nurse specialist in the centre who has got to know that young person about their mental health and substance use issues—would be communicating with families before they're released as well. That's part of what they do.

ANDREW ELLIS: One of the positive things is we do integrate mental health and drug and alcohol together within Justice Health adolescent services, because the two are really two sides of the coin. We're missing the coin of disability. That's a bad analogy of a three-sided coin, but that's how we've been treating it.

The CHAIR: Dr Lawler, you emphasise the prevention and support in the submission, but you also note the importance of enforcing behavioural boundaries. Where do we strike that balance so that there is that prevention and support but also the boundaries between therapeutic responses and community expectations?

JAMES LAWLER: All children, as a part of parenting, need to be told what socially appropriate behaviour is. That goes for children with disability or without, or with diagnoses or without. I think it's harder for children to understand that if they've grown up in families where they've experienced significant violence or neglect, where there has been significant socio-economic adversity, or where they've seen a parent go to jail, for instance, or behave in a way where they're not respecting social boundaries. A common disorder in the criminal

justice population would be antisocial personality disorder. There's probably a thread of earlier diagnoses that come up in childhood and adolescence, like oppositional defiant disorder and conduct disorder, that are probably flagged for people who may end up with antisocial personality disorder, where there's a severe disregard for rules and society's laws.

There's really little to no intervention for those kinds of disorders. It's often picked up when children enter primary school. It might be at that point, where children have to sit in a classroom with 30 other kids and listen to the teacher and behave like all the other kids, that schools start to notice that some children are struggling with that more than others. It generally leads to maybe a child seeing a paediatrician or a psychologist. But there are structured programs for kids with oppositional defiant disorder that aren't widespread in New South Wales that children just don't get access to. There's quite simple things, and the treatment for that disorder is much more focused on things like parent management training—providing parents with the support, knowledge and understanding about how to connect positively with their children, but also predictably and consistently set limits and follow through on what they say they're going to do with their children.

Parents are not really getting much of that coaching because there are not services out there doing it. I think, more and more, because there's been more funding for the NDIS, children are being diagnosed or supported through the NDIS and receiving quite expensive behaviour support plans that aren't really informed by that sort of approach. I see a really variable behaviour support plan response from different practitioners. I'm not sure how that advice is being standardised to children. Often I'm seeing kids with behavioural problems who have got 60, 70 or 80 behaviour support plans that don't really make any sense. They've got a lot of printouts off the internet. It's costing the Government a lot of money to fund these things, and they don't say anything sensible or useful for parents. There should be quite simple approaches that parents need to manage their child's behaviours.

I don't want to oversimplify that issue, because the children who end up in the youth justice system can have a lot of other complexities, but there is not an early intervention piece around disorders like that. Not all children with oppositional defiant disorder will progress to having conduct disorder. In fact, most won't; it's about one-third. But for children with conduct disorder, again, there's not really a lot of support for parents around how to manage problem behaviours. Those are the children that are bouncing around different services, getting a bit from each. I think there is a very good program through the justice mental health network called the Teen Got It! program, which does a structured intervention for children with conduct disorder. But typically, whenever I refer to that service, it's got a waitlist of six months. There is good stuff out there but, again, it's not to scale.

The Hon. Dr SARAH KAINE: Can I ask, while we're on the same thing—I didn't want to interrupt so I let you keep going. One thing I haven't asked about—and I think I'm just assuming—is are there differences in outcome by gender? I'm thinking about the types of disorders you're talking about, Mr Lawler, and whether we see a difference in engagement with girls in the system and boys in the system. Just generally, are we dealing with the same problems with the same solutions?

LEIGH HAYSOM: No, in a word. Just to speak to James's issue, I think the issues are very complex, and we're dealing with children and families who have lost trust in institutions. Sometimes behaviours are a result of sitting in schools, not being supported and feeling like they can't cope. We've got biases throughout all of our institutionalised responses to these families and children. To simplify it down to "the child has conduct disorder", I think, is problematic, but I appreciate what you've said. The cohort in custody is very different. You've got the young women, who are about 8 per cent or 9 per cent at the moment—very small—like 16 young women who are some of the most marginalised people in our society. They come from environments where there's sexual abuse, physical violence and lots of domestic violence. They've got the highest rates of intellectual disability and the highest rates of significant substance misuse.

Homelessness is an enormous problem for young women, as it is across the world for women in contact with the criminal justice system, and there's a very high prevalence of young Aboriginal women in custody because they're also treated in unfair ways through the criminal justice system, as I'm sure you're aware. We've got the youngest young people. They're largely Aboriginal young people, again. The younger the young person is in custody the more likely they are to be Aboriginal, the more likely they are to have intellectual disability or neurodevelopmental problems, and the more likely they are to become entrenched in the system and become entrapped by it through those system biases as they go through. The younger they start their trajectory within that system the less likely they are to get out of it in a hurry. Then you've got the larger cohort of the older young men who make up the rest of the young people in custody, who have all of those issues that we've been talking about. But there isn't a one-size fit to those different groups of young people.

The Hon. SCOTT BARRETT: They say there's no such thing as a silly question, but I might test that here. Dr Lawler, I suspect this question would be for you. We hear a lot about the early intervention and, obviously, the older the kid gets the harder it is to get them back on track—to use a very lazy cliché. Earlier we heard

suggestions about engaging the whole family unit in laying the groundwork for that kid. I'm wondering, is there a time when a parent or even a potential parent is most or more likely to accept the sort of intervention or engagement that might be helpful for the future of that child?

JAMES LAWLER: It's probably hard to speak to something that would work for every parent and every family. I think, working with families, it's hard to give you a public health answer because families are already quite complex units that are hard to describe broadly. But I think we did talk about, in our submission, the first 2,000 days program, which has been a focus of the Government and which is aiming to support children in utero and families early on. We know how bad and negatively poor experiences in those first, say, five years of life impact health and social outcomes later in life. Clearly, I'm speaking to a really broad piece of prevention and early intervention when speaking about intervention at that age.

But I think that the problems of behaviour in children are not so much problems of behaviours of children as much as they are focusing on families and the systems around them, which is, I think, what Dr Haysom was describing after I spoke. I think that helping children with behaviour is about supporting families, first and foremost. There's no intervention under the age of five that really would help a child with problem behaviours on a one-to-one level; it's really focused on parent supports. That's why I think there is an opportunity there to focus on an earlier intervention or a prevention piece around children with problem behaviours.

The Hon. SCOTT BARRETT: Can we see this improving incrementally? I learn lessons that I can pass on to my kid, which then makes them a better, I guess, raiser of the next generation—are we seeing that happening?

JAMES LAWLER: My concern for this Committee—and we've sort of outlined this in our statement—is that at the moment, I think because of particular challenges that some of the agencies around children are having with escalating rates of school refusal, with any interactions with the Department of Communities and Justice in the areas I work really seeming to fall off—I think DCJ around Western Sydney and the Blue Mountains, where I work, is really struggling to engage at all, let alone early. I'm concerned that issues like that, that are popping up in these social services around families, mean that there will probably be an increasing youth justice problem in years to come.

ANDREW ELLIS: If you take the broad sweep of history, crime rates have been reducing, including youth crime rates. These social interventions, as our society becomes more sophisticated—it has reduced over time. It still hasn't gone away, though, and then there will be pockets of greater disadvantage where it is already there. I think we do actually have quite a lot of information about what works and what interventions may work, but the difficulty is providing them at a scale and in ways that is more proactive rather than reactive.

The Hon. STEPHEN LAWRENCE: In terms of, let's say, an example of a young person—maybe an Aboriginal young person from a place like Bourke or Walgett, somewhere in the north-west—who might have a behavioural disorder and ends up, at some point, in custody, what would the typical history show in terms of their first opportunity to get medical treatment in relation to the behavioural issue?

ANDREW ELLIS: In custody, actually, sometimes may be the first opportunity.

The Hon. STEPHEN LAWRENCE: So there's often not, for example, referrals as part of primary school or something like that?

ANDREW ELLIS: It would depend on the individual case, but we do see people for whom this is the first time they've had contact with a health service of any type. It can be quite a novel experience for people to do that. But I think most people will have had some contacts prior, because it's unusual that there's this explosion of behaviour that ends you up in the justice system for the very first time you come in contact with the law. It does happen—sometimes something outrageous will occur in someone who's had no prior problems, but mostly there will have been points where intervention may have been possible before incarceration.

LEIGH HAYSOM: There's usually many, many points. Those young people have probably been suspended or expelled from school dozens and dozens of times, they've had numerous contacts with police, and all of these different agencies are doing what they can.

The Hon. STEPHEN LAWRENCE: The problem of a lack of funded programs in the area where these children live, is that the essence of it?

LEIGH HAYSOM: I think that's one of the issues. Certainly, culturally appropriate programs that are Aboriginal designed and led, there's not enough of those, and hopefully we're going to see more of those going forward. I know there's funding through Justice Reinvestment and other programs to do that for young people in contact with the criminal justice system. Certainly, all first responding agencies need to have that trauma-informed training to be able to identify young people and families at risk, and have places where they can refer young people to try and avoid that intersection with the law and with police.

Speaking to the issues around families, certainly you need to get families and young people help from the very earliest time—from before birth onwards. I don't think we're doing enough screening in the space around prenatal alcohol exposure, either. That's something that we need to do. As we know from the studies, a lot of those young people are much—it's 10 to 15 to 20 times higher risk of coming into contact with the criminal justice system if you do have fetal alcohol syndrome disorder. By the time the young people of the age that we're looking after in custody are with us, their families have exploded. They're often in out-of-home care, they're in kinship care and their parents are not there. Some 80 per cent of the young people have one or other or both parents in custody. That kind of family approach is very difficult to do. We have to think outside of that square.

JAMES LAWLER: Maybe to try and give a little bit of context as well, like I said, a common place that children who are having problems with behaviour early on are identified is primary school. Often the response from the primary school is to ask a parent to take the child to, say, a paediatrician or a psychologist, and those things are generally mostly privately funded now. There are some Medicare rebates, but it's hard for families to access that. If families can't, the early intervention piece falls away.

ANDREW ELLIS: And if you're in a rural area with less access to those kinds of services, it's harder again. Often the staff may not be as familiar with populations like this and it's more difficult to engage. I think one of the things is having staff that are willing to engage with the complexity. It can be quite confronting if you've just been trained in ordinary mental health care or ordinary paediatrics. It can be, possibly, out of your experience a bit. Having the ability to have staff who are familiar with the difficult issues that arise is important.

The CHAIR: We have many more questions, but we've run out of time. Thank you for your evidence today. There were some questions taken on notice, so the secretariat will be in contact with you about that. Supplementary questions probably will come as well. Thank you so much.

(The witnesses withdrew.)

(Short adjournment)

Ms LORETTA WEATHERALL, Wellbeing Lead, Dharriwaa Elders Group, affirmed and examined

Ms ANDREA HADAWAY, Program Manager, Yuwaya Ngarra-Li Partnership between the University of New South Wales and Dharriwaa Elders Group, affirmed and examined

The CHAIR: We have an apology from Ms Sharlene McKenzie. Welcome today, and thank you for the evidence that you will provide and for the time that you're giving today to give evidence. Would you like to start by making an opening statement?

LORETTA WEATHERALL: Yes. First, I would like to acknowledge the traditional owners of the land we are meeting on today, the Gadigal people. I would also like to acknowledge the traditional owners of the land where I'm from, the Gamilaraay people. I pay my respect to Elders past, present and future, and thank my ancestors for paving the way and keeping our culture alive. Thank you for inviting us to appear today. The Dharriwaa Elders Group is a longstanding Aboriginal community controlled organisation in Walgett in north-west New South Wales. The DEG is an association of Aboriginal Elders that provides leadership on a range of community development and cultural activities in Walgett.

We were established in 2000 as a project of the Walgett Aboriginal Medical Service, led by founding chairperson George Rose, OAM. DEG operates for the benefit of the Walgett Aboriginal community, bringing deep understanding of and connection to local community priorities. DEG is led by the Elders Council and supported by the DEG leadership team. I am a member of the DEG leadership team and the lead of the Youth Wellbeing Service. I'm a local Aboriginal woman with experience as a community researcher and a community health worker in New South Wales and Queensland. I have strong, trusted relationships with children, young people and their families in Walgett.

We currently employ 15 local Aboriginal people, working on programs and services designed through listening to what children, young people and families want and guided by the words and the ways of working of our old people, carrying on their hopes for the future generations. Working closely with the Walgett Aboriginal Medical Service, DEG has been actively engaged in advocacy and research over the past two decades. Local solutions for Aboriginal kids must be led by ACCOs like DEG and WAMS. I'll pass to Andrea to introduce the Yuwaya Ngarra-Li Partnership.

ANDREA HADAWAY: The Yuwaya Ngarra-Li Partnership is a long-term community-led partnership between the Dharriwaa Elders Group and the University of New South Wales. This partnership was forged in 2016 with an invitation from the Dharriwaa Elders Group to researchers at UNSW to work with them longer term on their vision for positive change and community-led development in Walgett. This invitation came after collaboration on research which was documenting the criminalisation of Aboriginal and Torres Strait Islander people with mental and cognitive disability. This research found that many were being managed in criminal justice systems rather than supported in the community.

Since 2016, the partnership has grown to encompass multidisciplinary projects involving staff and students across UNSW. We work together on projects led by the Dharriwaa Elders Group that aim to reduce the criminalisation of Aboriginal children and young people, to reduce fines debt, to improve food and water security and care for country, and to build the Aboriginal community capabilities and control. The partnership has been funded by the Paul Ramsay Foundation since 2018, and all aspects of the partnership are guided by the principles and protocols of the Dharriwaa Elders Group. The Yuwaya Ngarra-Li Partnership is a model of university and ACCO collaboration. I work with Loretta daily in our partnership. I bring to this work 15 years of experience as a children's lawyer and I also worked in the youth and community services sector, where I was leading programs and services supporting children, young people and families. Loretta, I'll pass back to you just to briefly highlight what we think are the priorities for this inquiry.

LORETTA WEATHERALL: First Nations leaders have been calling for decades for community-led solutions to address the structural drivers of disadvantage and incarceration of Aboriginal and Torres Strait Islander people. Community care should be the first and frontline response to supporting children and young people and families in crisis, not police or other government agencies. Our caring and holistic approach to support for Aboriginal children and their families, based on trust and relationships from within an ACCO of 25 years standing, is enabling our work.

We have built an alternative community care model for our young people and it is not being respected, acknowledged or invested in by the New South Wales Government. This lack of action leads to us asking these questions: Why is it so hard for ACCOs to get government funding to work holistically with our children to close the gap? Why is it hard for ACCOs to obtain government data to support evidence-based decision-making, despite government commitments? We'd be happy to answer any questions you have today to assist the inquiry.

Ms SUE HIGGINSON: I've had the real privilege and benefit of coming out to Walgett and meeting up with the Dharriwaa Elders Group for a number of different issues. What's going on there is seriously a hub of brilliance. What happens there is incredible. Loretta, I'm interested in picking up on what you said about what you're meant to do to obtain and maintain government funding. It seems like, if programs like what the Dharriwaa Elders Group is doing doesn't obtain funding, then what does and who can? What would be your message to the Government to improve or make those funding processes work, or at least have equitable application to them?

ANDREA HADAWAY: We will answer that but maybe, before we start, it'll make more sense if I pass to Loretta to describe a little bit about the work that they do in Walgett in some detail, just to give that context.

LORETTA WEATHERALL: Galuma-li means "care for" in Gamilaraay language. It is part of the DEG. It's a community hub where we have our community-led programs, our youth wellbeing service and community response team. They look after the electricity, housing and education. They do men's and women's groups. We have Dealing with Fines, Food and Water for Life and River Rangers. We have 11 staff—all Aboriginal local people who live in Walgett. That's why our model works: because of local Aboriginal people. Our youth wellbeing service is the cohort of nine to 17 years. At the moment, we have myself and Thomas, who is a male youth worker. I want to tell you a bit about our first week of the school holidays. We had our first excursion to Goodooga, which is an hour and a half away, with 15 young boys ranging from 10 to 13.

We had them all day—12 hours. The kids were well behaved—made it to the grand final, drove home, asked if they can attend more gala days. I just said, "Let me just recover from this one first." They were very well behaved, respected the staff. I had to pull staff from other programs—the other programs that I mentioned—like I said, because I only have two staff. Then last Thursday we had the carp muster, which was run by the River Rangers. That was a fantastic day. We had 38 children. When we finished at 2.00 p.m., the kids didn't want to go home; they wanted to come back to Galuma-li. We just did more activities—found activities for them to do. Then last Friday night we had the haircuts, where Yellowbelly from Bourke came over and did some music, cut hair and did some mentoring. Two kids didn't want to go home—wanted to stay. I know it's important for me to be here today, but it meant that I had to cancel my youth groups this week due to no staff. Staff in other programs had their work they had to do. That's life at Galuma-li with our youth service and wellbeing.

Ms SUE HIGGINSON: Can I just ask on that, Loretta, are there people around you that would love to be employed in your program and your team? Can you see mob around that would just love to be part of what you're doing right now?

LORETTA WEATHERALL: Yes, there is, but due to funding—

Ms SUE HIGGINSON: You just can't do it.

LORETTA WEATHERALL: We don't have funding to do it. People have asked me if I have jobs to help with the youth wellbeing service.

ANDREA HADAWAY: You've heard some of the detail of the youth activities that are happening every week out there in Walgett. To give you some of those ideas about the numbers and the impact of the work, from December 2024 to 2025 at these group recreational and educational activities for kids in Walgett they had 382 attendances over that year by young people, 26 attendances by adults and 36 attendances by children under nine accompanying those other family members. They've had 10 community education sessions for Elders, parents and carers in the community, with 179 attendances, including health workshops, cooking workshops, legal workshops—a range of activities there. They've had 16 women's group sessions, 12 men's group sessions—both of which have just started in the last year—and provided 909 meals to community members over that time. Maybe going back to the question of funding, in the last 18 months we've applied for 12 grants, and the only success that we've had—

LORETTA WEATHERALL: It was for an IT grant for \$10,000 to buy some computers for the community to use.

ANDREA HADAWAY: It's Commonwealth grants, State grants, philanthropic—a mix of all of the above to try and develop the youth wellbeing service and other Galuma-li services to employ more staff and to run more programs and actually implement the model that has been designed by the community there.

The Hon. Dr SARAH KAINE: While we're on that, can I ask about the funding model? That sort of other funding obviously would be really good to get. What are the baseline funding circumstances?

ANDREA HADAWAY: In terms of how it's funded now?

The Hon. Dr SARAH KAINE: Yes.

LORETTA WEATHERALL: We are funded through the Paul Ramsay Foundation.

Ms SUE HIGGINSON: Private philanthropy. It's unbelievable.

The Hon. Dr SARAH KAINE: So philanthropic funding?

LORETTA WEATHERALL: Yes.

ANDREA HADAWAY: Since 2018.

The CHAIR: Is the Government risk averse? What do you put that down to?

ANDREA HADAWAY: You tell us.

LORETTA WEATHERALL: We don't know. We would like to know so we can be more successful.

ANDREA HADAWAY: So many hours are spent by Loretta and others, people in the leadership team and Elders in the Elders council, with the support of our partnership as well, to put together the funding applications. They're all different. Even though we might be applying for the same program, you can't use the same application because the questions are different. They're all trying to pigeonhole you into a certain box. We've got to fit into the NSW Women's Strategy or into a community safety lens. That's just not what the work is. It's holistic work.

Ms SUE HIGGINSON: Out of curiosity, have you had any of the current Ministers of the Minns Government come and visit the Dharriwaa Elders Group and the centre and the place out at Walgett in recent times or any time in the past couple of years? Has Minister Rose Jackson been out to visit?

LORETTA WEATHERALL: Yes, she has.

Ms SUE HIGGINSON: Great. Has Premier Chris Minns been out at all to visit?

LORETTA WEATHERALL: I don't think so. The police Minister came last year.

Ms SUE HIGGINSON: Thank you. I was just curious. In your submission, you pointed out, in relation to priority reform 4 of the national Closing the Gap agreement, where there's been data share commitments. But you have, as I understand it, faced some institutional failures in being able to obtain community data to help your programs and your projects and to assist with your community. In this experience, what does that look like? Is there anything that we can be doing to make recommendations on what we should be looking at because, ideally, it seems unbelievable that you would not be fully assisted in terms of even that capacity of providing data to the Dharriwaa Elders Group and to the program so that you can better leverage your services and support for community in the way that you see best?

ANDREA HADAWAY: Data is really important in the work that we do, and getting that data for the Elders group and for the community to inform their work—I think our early analysis within the partnership used publicly available data. Then, in 2022, we had some data from BOCSAR, which was de-identified unit record data to measure changes, over time, before and after the Two River Pathway to Change diversion model. But it was clear from that that Justice is such a small piece of the puzzle, and I think you've heard repeatedly today that that can't tell the full story of what is happening. So we knew that we needed health, child protection, housing and education data as well.

The partnership has a data linkage protocol based on the core Yuwaya Ngarra-Li values, and we did look at accessing the human services dataset, which is linked administrative data, but the level at which we could get the data didn't match what the Elders council wanted. They wanted data about their community, which is not their whole LGA, which includes another community, Lightning Ridge. It wasn't suited to what they wanted to know. So we're currently working on creating a linked dataset of government data, administrative data, from all of those agencies—out-of-home care, child protection, health, housing, education, fines and criminal justice data—for children and young people in Walgett and their immediate family members to inform locally led responses and for the Elders group to use that to inform their own solutions.

That's been the work of four years, and we're close to having that linked dataset. But there have definitely been real challenges in getting the data to be made available to do that linking. We've written quite a bit about that. We can share that—about what those challenges are—but it's been more than four years now.

Ms SUE HIGGINSON: Finally, I wanted to know whether you have any insights and firsthand experience with the changes that the Government did make to bail laws in relation to young people. We heard a lot about Moree. That was the focus or that was a big target area of making it harder for young people to access bail and easier for prosecutions and courts to put young people into prisons on remand. Has that had an immediate impact on your communities of Walgett—those changes to the laws?

LORETTA WEATHERALL: I'm not up to date with changes to the law because, at the moment, I'm just focusing on keeping our young people out of the system. I just deal with the youth groups.

ANDREA HADAWAY: The team there is focused on the community care—on the alternative to these systems. We know that that's what works.

Ms SUE HIGGINSON: Just on that, is the relationship with the police on the ground—do you have a direct relationship with them, as the youth service provider there?

LORETTA WEATHERALL: No, I don't. Our space is our young people's space. They're there to feel safe from the police. We do have PCYC, and the police control that and monitor that. At Galuma-Li, I don't invite the police in. I just make it safe for our young people.

The Hon. STEPHEN LAWRENCE: Thanks so much for coming along and giving your evidence, and thanks for the work you do. In the previous session, I don't know if you guys were here watching it, but there were some witnesses talking about lack of availability of intervention programs for youth with certain behavioural issues, and lack of availability of things like psychiatrists and psychologists. In Walgett, are there particular services—I'm not talking about your service, but are there particular other services that your young people might be in need of referral to that you're noticing are not available in Walgett? For example, psychiatrists, psychologists, any other medical services, legal services—any other things like that?

LORETTA WEATHERALL: We do have a psychiatrist at the AMS, but not a children or young person one. Our closest one would be Dubbo, and it's a long waiting list to get in for our young people. But in saying that, I work with the Walgett Aboriginal Medical Service, and the mental health and the drug and alcohol counsellor comes in and they do wellbeing talks, just so we can keep on track and see which child is slipping through the gaps. That way we can refer them on to headspace.

ANDREA HADAWAY: What's the travel distance to Dubbo?

LORETTA WEATHERALL: The travel distance is 3½ hours. Most families don't have cars and they do have other children, so it's hard for families to leave Walgett.

The Hon. STEPHEN LAWRENCE: What about drug and alcohol treatment services for young people, particularly? I know there's Mac River in Dubbo. Is that accessed by kids from Walgett, or is that too far away?

LORETTA WEATHERALL: Too far away, I guess.

The Hon. STEPHEN LAWRENCE: Is that a service that you think Walgett's in need of?

LORETTA WEATHERALL: Yes, very much.

The Hon. SCOTT BARRETT: Ms Weatherall, I wonder if you'd like to comment, or can comment, on what you feel the attitude is towards your program from outside the Aboriginal community, and why that attitude has got to where it is—whatever it is.

LORETTA WEATHERALL: We do have a lot of support with other organisations. We work with the school through SistaSpeak, BroSpeak and MC class. Some kids that only attend school partially, they come to Galuma-li for the rest of the day and work with our youth worker. We work with the shire council, WAMS, high school.

The Hon. SCOTT BARRETT: Back to the funding issue—sorry to drag you back there. As well as talking about the amount of funding that you get, I wonder if you could touch on the difficulties that might come with short-term funding, which I'm assuming is a part of what makes up your income—those short-term, six-month and 12-month grants, as opposed to longer term investments.

LORETTA WEATHERALL: Yes. Currently we've been on a three-year funding agreement, and then every three years we have to apply. But if the Government gave us funding for a longer time, that would really help our community. I can employ more people; we can open on weekends. The kids have asked if they can stay longer on weekends, all through the holidays, because we only have time to do it two days a week.

The Hon. SCOTT BARRETT: How important to Walgett are things like the local footy club, as far as giving young men, in particular—and young women now as well, increasingly—something to do on weekends and a bit of motivation?

LORETTA WEATHERALL: Yes, it is really important. Like I said previously, the kids were asking, straight after playing three games when the next gala day is. Sport is very important for our little ones in Walgett.

ANDREA HADAWAY: Maybe just adding to that, members were asking and talking before about the funding. As well as long-term funding, there needs to be flexibility, which we've had from our philanthropic

partner, to change and adapt to what the community needs at that time. The group has been able to adapt the programs, and the Dealing with Fines service is an example of that. That was established in 2022 after Walgett was one of the places that had the highest level of COVID fines issued. The burden of fines in the community was over \$1 million. The group adapted to set up a service that provides specialist legal advice from the Aboriginal Legal Service to do outreach to help get documents to support write-offs, and actually became a Work and Development Order provider so that people in the community can work down their fines debt.

That has meant that the amount of money going out through Centrepay, directly from Centrelink, has reduced and people are able to work off their fines instead and have more money in their bank account. It's really important that the funding is flexible enough to be responsive to changing circumstances and what the community needs at that time, and that they're trusted to be able to determine how to spend it, rather than now when we have a long list of things that you can spend it on and things that you can't spend it on. I know you heard earlier that it needs to be a new program or it needs to fit into all of these boxes. The measures of success need to be determined by the communities themselves. We would say, for Aboriginal children and young people, by the ACCOs that are leading this community care work, they need to be sufficiently funded and trusted and choose what success looks like.

The Hon. SCOTT BARRETT: I have one more slightly trickier question. If you were to bottle a couple of things that have led to your success that we could spread around the State, what would that be?

LORETTA WEATHERALL: Relationships with our young people. Communication. Having a good relationship with our young people leads to trust, and then kids will trust us and access our service. For example, I had a little young person ring me up on Friday night at 10.30 and asked if I could pick him up and take him from his grandparents to his mother's and father's house, which I did because I didn't want him to walk home. It's building that kind of trust that they can ring me any time of the night and I'll be there to pick them up.

The Hon. SCOTT BARRETT: Well done. Thank you for what you're doing.

The CHAIR: Thank you for coming today, knowing that the young people and children are missing out. I really appreciate that you've come down today to give us evidence. You talked about stresses and punitive responses and that children and young people in Walgett are overpoliced and underserved, and then you've also got your four goals of what you would like it to be. But I sense that it's already, with you at the helm as that change maker, leading the charge to change in Walgett—is that happening? You spoke about the punitive responses and what was happening before—and with little funding too, I might add.

LORETTA WEATHERALL: I see young girls are changing and being more open and not being shy and stepping out of their zone. I see the changing in the young girls, but not so much with boys because I don't do activities with the boys; that's Thomas's part. But, in saying that, the young people—Galuma-li is their space. They designed it how they want the space to be, and also they made their own rules up. Sadly, last year in December our Galuma-li building burnt down, so we're currently in a temp—like, a temporary space—thanks to the Walgett Aboriginal Medical Service. But, yes, the kids—we work with Sam Rich, a Wiradjuri woman. She's an architect and she came up to help to design the new space once we get some funding to build our new space. The kids were involved in that as well. They wanted to have an input. They wanted a basketball court here. We make it their space, so they own it and they feel comfortable.

The CHAIR: That, to me, seems like you're creating that sense of belonging. How important is belonging for young people?

LORETTA WEATHERALL: It's very important because, when they belong to something, I don't know just—

The CHAIR: They feel part of it?

LORETTA WEATHERALL: Yes, they feel part of it. Like, they'll walk into Galuma-li, "I want to cook today. I want to cook dinner." They just own it. When it burnt down, the kids were there. It was really sad. They were crying. "What are we going to do now? Where are we going to go?" One of the little girls said, "Oh, this is my favourite place in Walgett that I like to go to." Within that 12 months, we made a very big impact on our kids in Walgett. They felt safe. Not only that, we grew up with their mum and dad. I guess they trust us. They call us Auntie and Uncle, which is special. It feels special that other kids not related to me are calling me that. It just shows that our young people have respect and I'm teaching them to be role models because they're our next generation. They've got to look after me because I'm going to get old. I want to make sure I model them so they can look after me.

The Hon. EMMA HURST: Thank you so much for your time today. Thank you for all the amazing work you do as well. I'm sorry I missed the beginning of this session, so I hope I'm not being repetitive. But, if I am,

please let me know. I've got some more questions about the funding. Looking at the submission, it talks here about how there's been several applications for funding that have been unsuccessful, and the amount of time and the amount of resources that have to be put into it, and then multiple times those applications are being rejected. Is there a better way that governments should be working and engaging with communities to make sure that these programs are funded rather than putting that time and resource pressure on organisations trying to do the work, trying to get money, and then losing that time and resources through a lengthy grant application process?

LORETTA WEATHERALL: I personally think they should come to Walgett and see us in action, I guess—seeing what we do—and not just read a submission because, like you said, we do spend so many hours and then getting an unsuccessful outcome is a knockback. It's really sad because kids are putting trust in us. We've only got funding for the next three years. What are we going to do after the next three years? These kids, they're growing with us, so we want to make sure that we have funding for the kids to continue to come. As they get older, that's when they need more help and support.

The Hon. EMMA HURST: We've talked about the problem of fragmented government funding. You also talked about the fact that there's no flexibility in adaptation, which is obviously required to run these programs. I'm interested in the very last part of that paragraph, where it says:

When the DEG has engaged in discussions with mainstream agencies about a transition of programs to community control, they have learnt that the kinds of contracts that government provides for youth-focused programs would not enable the community-led, holistic and collaborative work that is needed, due to their focus on specific outputs often disconnected from young peoples' real needs.

Is there some kind of disconnect between the Government's priorities in regard to this funding and what community-led groups are successfully trying to achieve? Does the Government need to review the structure of where it's looking at putting some of that funding so that community groups that are getting major changes and support for these young people don't continue to be overlooked?

ANDREA HADAWAY: Yes, I think there is a mismatch between those things, and we've touched on a number of those different points. But I think, as we mentioned earlier, it's trying to fit this holistic service that's around social-emotional wellbeing in place, led by an ACCO, into all of these different fragmented funding streams. We have to try to figure out how to fit it in. Why does it have to fit within that box when we know that ACCOs work best for Aboriginal communities and kids? Why aren't they being invested in and seen as that real asset that they are? We have written, in the partnership, two papers that are referenced in our submission about government contracting and making government budgets work better for communities, highlighting some of those issues—using the example from Walgett but also looking at the more systemic issues as well. We can provide those to you as well.

The Hon. EMMA HURST: I'm sure you're not the only ones who have had unsuccessful applications for really important programs. I wonder if you've heard of a sense of anybody feeling like giving up on trying to get those government grants because it's so time consuming and resource costly, with a chance of being refused a grant anyway? Have you heard examples of anyone giving up on the whole process?

LORETTA WEATHERALL: We haven't given up; we keep applying. Actually, I got an email today to say that there's a grant we should apply for, so we'll have a look at that. The youth wellbeing service is working. It's in our community. I'll just keep applying for grants to keep it going because we still have lots of kids in our community who will use the service.

The Hon. STEPHEN LAWRENCE: We've got a submission from Allawaw Aboriginal Corporation. The lady who was going to come to give evidence alongside you was unavailable. I want to get your thoughts on something in her submission. She said that existing programs to address offending are not adequately recognising a series of factors, including thrillseeking and adrenaline-driven behaviour. She says:

Many young people seek excitement, belonging, and identity reinforcement through risk-taking. Current models ignore the need for safe, culturally grounded ways for young people to experience challenge, adventure, and positive identity.

I'm curious whether that's part of your program at all, or something that you see a lack of in Walgett, in terms of opportunities for young people to experience some of the things that some kids will experience through offending. For example, you might have kids in different communities stealing cars and joy-riding, getting adrenaline and thrill from that, and forming close associations with a circle of friends through that. Is there a way that programs can address that to provide similar positive experiences?

ANDREA HADAWAY: Do you have anything you want to say on that?

LORETTA WEATHERALL: What should I say?

ANDREA HADAWAY: If you want to answer it later, you can take it on notice.

LORETTA WEATHERALL: Yes, I'll take it on notice.

The Hon. STEPHEN LAWRENCE: Yes, if you wouldn't mind. Thanks so much.

The CHAIR: Thank you for your evidence today. I believe there were some questions taken on notice, so the secretariat will be in contact with you. Thank you so much for travelling. I know how far away Walgett is. We really appreciate that you've made that extra effort to come. I don't know how far you've travelled today, Ms Hadaway.

ANDREA HADAWAY: Not too far.

The CHAIR: Thank you for coming.

LORETTA WEATHERALL: Thank you for inviting me.

(The witnesses withdrew.)

Mr GEOFFREY SCOTT, Chief Executive Officer, Just Reinvest NSW, affirmed and examined

Ms KATHRYN FARRAR, Assistant Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, affirmed and examined

Ms ELISE WINDON, Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, affirmed and examined

The CHAIR: We're on the home stretch now. I welcome our next witnesses. Thank you for making the time to give evidence this afternoon. Would you like to start by making a short statement?

GEOFFREY SCOTT: I'd first like to acknowledge we're on Gadigal land today and acknowledge the Gadigal people and their Elders, and thank them for allowing us to gather on their land. Justice reinvestment in New South Wales has been going for probably 10 years now. It's an organisation which is really focused on looking what the causes are of especially young people's contact with the justice system. It's really trying to encourage a paradigm shift in thinking. It's looking at actually addressing the causes of contact with the justice system, not just the justice system itself. It's linked very much back to, as others have spoken about, the social determinants of incarceration or the drivers of incarceration. It's looking at those issues. Part of our work is looking at that.

We're very concerned that the higher levels of especially youth contact with the justice system have now been normalised. It's seen as acceptable. It doesn't cause outrage. These are our children. They are our future. Part of our job is twofold. We manage grants on behalf of organisations around the State. We support 10 justice reinvestment sites in New South Wales. That ranges from managing their grants to actually looking at their data and providing support for their activities. Just going through them all—I can go through the key stats, but I don't want to take up too much time today. They're extraordinarily high and this is being sustained. Remand should be upsetting people. It's running at 75 per cent, and it seems to be acceptable. We have closed the gap. We have other issues around. Then we have government policies which actually go against the Closing the Gap provisions—starkly against it—and politicians take great credit for that.

I'd like to go through a few areas here in which we think there's a few low-hanging fruit, but the real issue is in front of us. A few people have mentioned, if you like, the shortage of funding. That's a major issue. Just Reinvest has always been funded by the philanthropic sector. We manage government funds on behalf of organisations but, in terms of our core activities, it's funded by the philanthropic organisations. A major issue here is actually proving the model and trying to develop a justice reinvestment mechanism so it can be, if you like, moving away from the business as normal, as it is now, which I think is essentially penal populism—is what we'd like to call it. The Government's ongoing process is that they want to police their way out of a crime system.

We need serious people to address these issues. We'd like to talk to people and be serious about it. We've mapped out all of those different provisions and what the indicators are. But from the Commonwealth and State point of view, the State funds six organisations in New South Wales for justice reinvestment. I think in the last round there were 85 applications. There was a great need and a great thirst for people out in the community to actually get funding for these types of programs, and most of the speakers I've heard today are in the same area. The Commonwealth is funding 27. I think that they got over 100 applications for the similar issues. We support two Commonwealth programs in New South Wales—that's at Cowra and Kinchela. That's where they are, but they're funded for data projects and not for actually doing justice reinvestment projects themselves. We have two Stronger Places, Stronger People organisations.

I'm trying to give you a look at what the area is like in terms of funding and how difficult it is to try to bring the funding streams together. Most of these organisations are funded for a maximum of three years, and most of these organisations are greenfield. It takes them three years to get up and operating, and then they're gone. We have the same issues, and it's also having government readiness for this. Most parts of government don't know we exist, so it's actually trying to make those available and getting grants off them. The other communities we fund are Mount Druitt, but that's now commonly known as Mounty Yarns. That's our Mount Druitt office. There's one down at Nowra, which is Waminda—an amazing organisation working down there. There's Kempsey, which has Learning the Macleay. We work in Moree, in Bourke, in Toomelah and in Malabugilmah, and they're in various states of play.

But we've really got a crunch issue now where we're trying to expand the scope of funding for those grants themselves. DCJ has a myriad of funding opportunities, but finding your way through that mire of procurement paralysis is a difficult task to get through. I might be flippant by calling it that, but it's what it is at the moment. They have a monumental job in front of them in looking after our youth and looking after our children. Out-of-home care is problematic. That's one that will cross over kids, and it feeds the youth justice program. That's just the ones we know about, and getting access to that.

One of the other bigger points here is data. It's very difficult to get the data on board, if you get it out of government. The government won't share data with itself, let alone share it with the community. There's a major issue—I think the New South Wales Government just allocated \$32 million to Closing the Gap for data. Out of that, we only get three reports and two committees. That's a great outcome! But the other, bigger ones from our funding sources is that we've got to actually start working on the funding mechanism for this, providing a stream of funds which communities can rely upon to actually implement these programs on the ground.

Part of the data strategy underpinning that and supporting it is that we've mapped out all of the circuit breakers, if you like—what each of those 10 communities are doing on the ground to provide services to those youth and adults every day. We've mapped that out. We've mapped it back to the social determinants and back to the causes. In that, we've got to then be able to link that data back with the targets. How many kids are incarcerated? How many adults are incarcerated as well? But the youth is the focus today. That's briefly what our focus is. We've got a few ideas about that, but there's some low-hanging fruit.

We note that fare evasion is a real issue in New South Wales. Do you know how many people are arrested every year for that? It's a phenomenal amount of people, and it's a lot of youth—I'm talking thousands and thousands of kids. Their path to the youth justice system is fare evasion. We have to think about these things in terms of why not stop it. Why not drop it? Other States have thought about that. I'm sure New South Wales is just as intelligent as those States. But they're the sorts of things we need to talk about and find a place and a space to do that.

The other part we're looking at here at the moment is, for each of those communities—I think the previous speakers talked about voice. There's a perfect example in Walgett, where they've been given a voice by virtue of a 10-year grant from the Paul Ramsay Foundation. The benefits of that are showing themselves out in the community. The Mouny Yarns, which is our Mount Druitt office, is creating a youth voice, where kids are finally able to have the space and the room to actually put their own views forward and create their own solutions. That's a big part of this program as well, because a fundamental part of justice reinvestment is providing that voice, being community led, data driven and having a systems focus.

The other thing I'd like to end on—that systems focus is on two grounds. We're looking at the drivers, which are not the justice system. The justice system doesn't drive people into the justice system itself; poverty does. Lack of schooling does. And then, in the rural communities—rural communities are struggling badly. The school system does—there's a recent report about school detention, and in that, I think it's 90 per cent of the people who are in the justice system were on school detention or they were excluded from school. The out-of-home care system identifies the kids. We know who the kids are at risk, and it can't be too big a job to actually focus on them and target programs to them. The Government's done a bit of that. The Family Preservation program—you put \$900 million into that this year. I think it's a great idea, but we have no idea where the money's going to, nor what the outcomes are. A bit of working with community groups who are on the ground trying to help their families and their kids would be a great benefit. That's probably enough from me.

The only other one is the funding sources from both governments—none of them focus on systems reform at all. I call it two parts of the system—there's the justice system, which needs reform in terms of bail, in terms of laws, in terms of therapeutic programs and the rest of it, but there's also the causes where the system change has to happen, and that's the drivers. I'm talking about education; I'm talking about health; I'm talking about the out-of-home care system. Those kids have got a target on their back from when they're two years old. There's a recent report about how many ROSH reports go uninvestigated every year. I wonder why we have a problem. Kids just need to know we care. The only other point is both Commonwealth and State at the moment are not funding any systems reform; they're just funding activity. That's not going to get us reform on this; it's actually giving us a quantum of information about what programs could work and what couldn't, and then putting structures in place. As I said, we're funding 27 on the Commonwealth basis and six on the State basis, and the demand is in the hundreds.

ELISE WINDON: I'd also like to acknowledge the Gadigal people, whose lands we meet on today. Wirringa Baiya is an Aboriginal community controlled organisation. We are a trauma-informed practice and our focus is on women who are victim-survivors of domestic and sexual violence. Our submissions are guided by our Aboriginal board, chief executive officer and colleagues, and are informed by our clients. Aboriginal and Torres Strait Islander children are grossly over-represented in custody. While the population of children in custody has decreased by 19.6 per cent in the last decade, between 2015 and 2025, the population of Aboriginal children in youth detention has increased by 2.5 per cent. Our primary position is that children do not belong in custody. We don't do a lot of work with young people who are currently incarcerated. Our work is informed by our adult clients who were previously in youth detention and our clients who have children in youth detention.

Many of our clients who have been in juvenile detention report child sexual abuse by officers in youth detention. Some of those clients were later incarcerated as adults. Sadly, some of those clients were also sexually assaulted by correctional officers, including Wayne Astill. Many of our clients who have been in custody and juvenile detention already have long histories of domestic and sexual violence. For most of those women, some of the violence has happened before they went into juvenile detention. When women talk to us about their childhood experiences before they went into youth detention, many of them tell us that they were also in out-of-home care. Initiatives that address the high rates of Aboriginal and Torres Strait Islander children in custody must also address the high rates of Aboriginal child removal.

Our clients are seeing the cycle of incarceration play out in youth detention. We have clients who are in custody with their mothers and aunties, while their children are in youth detention. We hear stories from our clients that suggest that systemic racism and discrimination exist at every stage of the report and investigation, prosecution, conviction and sentencing of an Aboriginal or Torres Strait Islander child. Our recommendations focus on the reform of the out-of-home care system, providing stable housing, lifting Aboriginal and Torres Strait Islander families out of poverty, and programs and supports that address trauma rather than their offending.

Locking up kids does not make them better. It doesn't heal their trauma or link them out of poverty. Children don't commit offences in a vacuum. Their incarceration is a result of the impact of abuse, colonisation and its continued structures. The criminal legal system, the policing system, the out-of-home care system and the youth detention system have continued to have a disproportionate effect on Aboriginal and Torres Strait Islander children, youth and their families.

The CHAIR: I might start with the questions. Mr Scott, you spoke about fare evasion. What would free transport do to reduce youth justice contact and how would that meaningfully reduce reoffending?

GEOFFREY SCOTT: The issue there is that it's very focused on the fact that New South Wales is by far the highest in terms of offences for fare evasion. The great majority of those are youth and a lot of those are in the city itself. Mount Druitt identifies it as one of the major, if you like, conflict points between the police and the kids, and police shouldn't go to the station but they do. But we only mention that because I think there has got to be some discussion here about what actually causes the interactions between policing and the justice system and youth on the street. They're out there. They're doing these things.

We have to be a bit more open, I think, and be sensible about identifying what causes those contacts and what the scope of it is. That's one of the bigger ones. Other States have been playing with this. Both Queensland and Victoria have been making adjustments to those for that reason. I think we should do it here. We're trying to look, from our own research, at what it actually costs to put in place the youth fares process with the different cards and the rest of it. We'll come back with that. There's low-hanging fruit here that we should be looking for. That's why we highlighted that.

The CHAIR: You also proposed that there should be a formal justice reinvestment mechanism. What would that look like?

GEOFFREY SCOTT: There have been various measures to do this. JRI, the Justice Reform Initiative, has a proposal to put in—they wanted a half a billion fund established to actually fund proposals so people know they can get resources from us. It has been highlighted in a few of the discussions we've been observing this afternoon about how difficult it is to get funding, but also how it is to get sustained funding. These organisations take a while to set up and get going and get their programs operating. I think we're deserting children, in some way. There's nothing for them to do, especially those who are in positions where family life is sometimes not good. They've got many other issues going on in their lives and they need support. There are programs out there to do it but, in terms of someone trying to coordinate that, it's very difficult.

Justice reinvestment programs, if you like, are there to do that. That's their whole idea—bring the community together, asking the community themselves, "What do you think the solutions are?", and having to run it by those. That's what the funding issues are at the moment, and that's what the justice reinvestment mechanism is supposed to put in place. We've put a paper out. There's also some research out at the moment. We should have a paper out in June or July. It's about trying to suggest a formal process to start having discussions with government about what's possible—talking to Treasury, talking to those in the central agencies who control the money. At the moment, finding money is very, very difficult.

The CHAIR: I don't want to hold the floor, so do members have questions?

The Hon. Dr SARAH KAINE: Mr Scott, in your opening statement you talk about a paradigm shift. I think part of the discussion that we're having today is, I guess, the climate in which we have discussions about justice and youth justice. While we might require a paradigm shift, it may be beyond the scope of this Committee.

Ms SUE HIGGINSON: That's what we're here for.

The Hon. Dr SARAH KAINE: Sorry, I'm not ambitious enough. I just wondered what you see as being the catalysts for that.

GEOFFREY SCOTT: We've been going on this current round of grant funding. We've identified all of the circuit breakers—that is, the activities each of the communities have put together to assist kids to get out of their criminal pipeline, what they're doing to actually support them at school, assistance with housing, just activities on the ground and then trying to map those up with the drivers so we can demonstrate just what these issues are, and have that conversation about what the issues are. But it's trying to get to the point that has some balance in funding. There's no sustained funding to actually focus, if you like, on those drivers of crime or incarceration. It's hard to get them.

The Dharriwaa Elders made the point: They're worried about their future. They're doing a good job, but they may not exist next year. We're worried about the 10 projects we support. They have a three-year life cycle. At the moment, they're on a year now. We have an election coming up next year. I think your budget cycle's going to run right in the middle of it, which will make it more difficult. We'll be making submissions about that, but that's what we're talking about.

The Hon. Dr SARAH KAINE: That report that you're talking about, did you say that it is finished, or that it's going to be finished.

GEOFFREY SCOTT: There's one that's been finished and there's another one that's been put in place by—it's funded by the APPI, the Australian policy institute, and that's coming out quite soon as well. We're trying to develop mechanisms and they present them to government about how we can go about funding these programs long term.

The Hon. Dr SARAH KAINE: Could we get those reports?

GEOFFREY SCOTT: Yes.

The Hon. Dr SARAH KAINE: That would be great.

GEOFFREY SCOTT: Most assuredly. That's what it's for. We'll get those to you.

The Hon. Dr SARAH KAINE: Thank you.

The CHAIR: I'm sure Ms Higginson has some questions.

Ms SUE HIGGINSON: I just want to ask Wirringa Baiya, Ms Farrar or Ms Windon, obviously you're providing services to women, so do you get a lens or a focus into the children of the women that you are dealing with and whether you are seeing, through your women clients, the concerns that they hold for their own children, given the position they most likely are in when dealing with you in terms of their client and whether it's the violence, or the threats, or the harms that they're experiencing or requiring your services for. I am just wondering if you get that picture of the concern for Aboriginal children of women who are accessing your services?

KATHRYN FARRAR: Absolutely women are concerned for their kids. They see things that have happened to them playing out and happening to their children as well. So their experience is domestic violence. They might start watching their child go through something similar as well when they're a teenager, or a young adult, or even older. We've got women clients who have experienced child sexual assault from family members. A recent client was talking about how her own daughter now has disclosed to her that she's experienced child sexual assault. There's a real fear of "Well, I've followed this trajectory of self-medicating, using drugs, criminal activity and now I'm in custody. I don't want that for my daughter." Women really want to stop that cycle for their children.

Ms SUE HIGGINSON: Are you in a position where you're asked, "How do I help my kids?", or are you part of a network where you can connect or provide referrals or advice? If so, what does that look like? Is there a lack of those places where you can refer to?

KATHRYN FARRAR: I think it depends on what the issue is. Obviously, as a legal centre, we're bound by confidentiality, but also conflict of interest issues. If we've got a mum with a child in out-of-home care, it can be a bit of a balance trying to work out whether or not we'd have a conflict to advise her daughter. But certainly we've referred lots of daughters who are in the out-of-home care system where we're advising mum on issues about where they can go to get legal advice about their own circumstances.

Ms SUE HIGGINSON: Regarding the funding for your service, do you have any form of security of funding, or are you chasing legal centre funding each year? How does it work for your services?

KATHRYN FARRAR: I should probably take it on notice and give that to the CEO so she can come back and talk about it. But certainly there have been periods where we're chasing funding and lack of funding certainly becomes a problem, particularly in trying to retain and recruit staff when you've only got a three-year—I mean, three years is still quite long in the sector, and the amount of training and funding that you could provide somebody.

Ms SUE HIGGINSON: Mr Scott, I got a very strong impression that you were concerned about—you called it penal populism. In the last couple of years we have seen some very serious changes to youth justice laws in New South Wales—ones that I think shocked quite a few people, to say it short. We changed bail laws in a way that it's now harder for a young person to obtain bail than it is for an adult. We heard that earlier from the legal services that were here, which is a really shocking reminder and revelation. We've seen changes to the doli incapax presumption that makes it somewhat easier for police to rebut that presumption—therefore, for a person from the age of 10 to 14 to be more easily placed into incarceration. From where you sit with Justice Reinvest and the efforts over 10 years of showing that there are ways that we should do things differently, what impact have those two or three years of this kind of law and order populism had in terms of what you see on the ground with young people, and also the people who you're working with who are trying to turn this system around to make it fairer, better and more effective?

GEOFFREY SCOTT: I raised the issue of penal populism because it has been around for 30 or 40 years. Governments win elections on law and order policies. That's just reality; that's society. That's what happens. People get scared so the government's forced to put in measures to make them feel safe, and that puts people in jail. That goes on. When they happen, we just hope people will sit back sometimes and consider the impacts of these. It's easy enough to go out and put people in jail. In the youth area, you can't police your way out of it. What you'll do is you'll just put more people into the—I used to call it the university of crime. Once they're in, it's hard to get out. You talk about recidivism; you talk about those figures. It actually undermines a lot of people's confidence in the system itself.

They know what's going on. People know it. It's one pleasing issue that, even though they know that, people stay there because they care about kids and they care about the future—care about our society. The numbers—despite what's in the press, because the press are very good at dramatising and making a mountain out of a molehill, but the crime figures aren't as bad as they used to be. We're also similarly watching doli incapax and the impact of that law reinforcing 10 being the minimum age of criminal responsibility. They have now legislated how we're going to handle those issues themselves. On the other side, the Young Offenders Act has been altered as well, so maybe there's something in there that will come out. We're monitoring what that is. They're getting us looking at what the impact on kids are. On doli incapax, it's gone down, what, 50 per cent in the last 10 years, in terms of conviction rates?

The terms of that inquiry—we want to get them back. That language is worrying. But, at the same time, what do we do? What's the answer? We're trying to work with people to do that. One of those is working with police. We're trying to actually do that. Police are caught between the various different pressure points. They're supposed to actually police the issues, but they're not all bad people. There are lots of good police out there trying to do a good job. We've got to work out how we can work with them. I think the evidence of Maranguka at Bourke, having an excellent police superintendent there—a country cop who actually went out and cared and worked with the community, with the help of a Minister who actually went to every meeting—made Maranguka work. It was a good case study, but trying to replicate that is going to be difficult. But, at the same time, their lessons can be learned.

Ms SUE HIGGINSON: Why is it so difficult?

GEOFFREY SCOTT: To have a Minister attend every community forum and take his director-general with him—

Ms SUE HIGGINSON: Every meeting, yes.

The Hon. STEPHEN LAWRENCE: Hazzard.

GEOFFREY SCOTT: Yes, Brad Hazzard did it. He was, I think, a man who cared.

The Hon. EMMA HURST: Thank you all for coming here today, and thank you for all the amazing work you do. I have a couple of questions for the Aboriginal Women's Legal Centre in regard to parts of your submission where you talk about the stripsearching. I was quite horrified to read that the clients you've had report that it's being used as a way to punish and control. I want to ask if you could, for the benefit of the Committee, explain the trauma of the lived experience of some of your clients who have experienced this when they were children, potentially, and then now they come to your service. Why is it so important that we see a change in that space,

particularly given there doesn't even seem to be any evidence or reasons why this continues and there's no data to back up the necessity for it?

KATHRYN FARRAR: New South Wales doesn't collect data on how regularly they're stripsearching people in custody and if they're finding anything and, if they are finding it, where they're finding it. I think it's incredibly problematic if we're continuing to do this to women regularly when they're in custody without anything to show what we're finding in those circumstances. The women who we work with who are in custody—and quite a lot of our clients are in custody. That's a growing number. I don't know if it was a child inquiry, but 44 per cent of the female prison population is Aboriginal at the moment. That number, every time I say it, goes up from the data that comes out of BOCSAR.

The women that we work with have all experienced some level of domestic and/or sexual and/or child sexual abuse. This includes sexual abuse from a very, very young age. I've had women talking to us about how they don't remember when they first started being sexually abused. Sometimes they find out in records that they can see that at three they were being sexually abused. It can be perpetrated by family members. Those children can then be—these women can be removed from their family and then continue to be sexually abused within whatever placements they're put in through DCJ and out-of-home care and then that pipeline, as they go into Yasmar or other youth detention centres, of being sexually abused within those facilities as well. They come in and out with all the trauma that people have experienced. There's self-medication through illicit drug use, which then lends itself to more positions where you can be physically and sexually abused.

These are the in and out of custody and in and out of violence, sexual violence and domestic violence. These are incredibly vulnerable women who are then being made to stripsearch before they have a visit with the child, or before or after they have a visit with a legal, or just because they're moving them from one centre to the next. There's no way to do a strip search that is with dignity. You can't do that with dignity. Sure, you can do half your body at one time, but there is no dignity in that. It's incredibly traumatic for women to have to go through that process when they've already been so grossly violated by individuals. Now they're being violated by the State.

The Hon. EMMA HURST: One of the recommendations we heard this morning was that this Committee should consider making a recommendation to specifically legislate a ban on these strip searches. Is that something that you would advocate for as well and would like to see as a recommendation from this Committee? Can you talk a little bit about the introduction of body scanners and alternatives, which could back up the need for that legislation?

KATHRYN FARRAR: We speak in relation to women, and, yes, we would support banning stripsearching. In relation to the body scanners, my understanding is there are scanners in the centres, but sometimes the COs—the correctional officers—don't have the expertise to read them and understand them, or they see something not knowing what it is and say, "Well, I don't know. We're going to do a strip search anyway."

It's about the power that they have over women to make that decision to do the strip search and to do it with other people around them. We've requested a video for our client of her strip search, and she's walked out of the room in her underwear, and men are just told to turn around in the area. That's so undignified.

The CHAIR: Mr Barrett, do you have questions?

The Hon. SCOTT BARRETT: I might just get on the record, if we can—I don't think we've spoken in this session about the idea of raising the age from 10 to 14. I just wondered if someone could touch on what would need to come with that. I'm guessing that raising the age on its own isn't enough. There would need to be something in its place as a way of diversion for those kids in that bracket. We need to have something in place for them, and I just wonder, for the sake of getting it on the record, if someone could touch on that for us.

GEOFFREY SCOTT: I suppose it's me. Raising the age, by itself, is not going to actually—it'll just make people feel more unsafe, itself. It's been a whole—especially from the media, from other public players and some politicians, there's been an issue here about that being one of the solutions they want. But raising the age to 14 is the right thing to do. It's there, but you've got to complement that with having alternatives. That can't be just done without having—even the Young Offenders Act now changes some definitions about how they've got to actually admit to incidents before they can get access to programs. That may be positive; we don't know yet. We haven't seen it in place. But the common refrain we get from people is that there aren't the alternatives for magistrates, or even for prosecutors or police, about what happens with kids.

We know that there are crimes committed, but what do we do about those and how do we handle them? Putting kids into jail and convicting them for those is not going to resolve it. It's kicking the can down the road, and the next generation of people will have to deal with it. I'd have to say, I think it's having those alternatives to what you do with people who commit crime who are between 10 and 13. There's not a lot of data I've seen or research done about what's happened in the past six years in terms of that dramatic drop in convictions for kids

between 10 and 13, in terms of what it is. Most people see it and they say, "They commit crime and get away with it." That immediately causes people to have concerns. Without having something to back that up, we're not having a debate with the information in front of us.

The Hon. SCOTT BARRETT: We were talking earlier in this session about how, yes, these women want to provide better for their kids as they're coming forward, and we're talking about the generational nature of some of these issues. Are there enough programs available for young mothers to help them with their own diversionary tactics?

KATHRYN FARRAR: In short, no, there's not enough programs available for women. You just asked about raising the age, and we support raising the age and the alternatives. Those alternatives have to start not when these people are 10; they need to start before, generations ago, so that women are brought up out of poverty so that they're not having to be stuck in cycles of domestic violence where they don't have a choice, or their choice is "I've got my five kids. I can sleep in the car with my kids, or I can stay in the house with a violent perpetrator. Or maybe I don't even have a car, and so what am I going to do with all my kids? I can't go and say, 'I'm homeless; I'm experiencing all this violence,' because then there's that real risk of mandatory reporting." DCJ are going to come along and, rather than support mum, find housing for mum—housing is crucial and there's not enough housing—these women are then at risk of their children being removed, taken into that system and then moved across into the youth detention system. The supports that need to come in need to come in way before a child is 10 and committing offences. It needs to be in education, in housing, in NDIS, outside the remit and really fixing up the out-of-home care system, which is causing so many more problems.

GEOFFREY SCOTT: Can I make one comment? It's not a dual inquiry going on, but the community safety inquiry has reported, and the Government's got a few months to make its response. The findings of that inquiry, I think, are very pertinent to what's on today. The findings there, they're really saying that youth offending is complex and can't be policed away. It's going to take long-term, coordinated investment in prevention, early intervention and diversion to make it work. It's that long-term commitment that's required to fix this problem. But it has to start. The longer we hesitate or we don't do it, the bigger the problem gets. We have a train wreck, but it's getting bigger.

The CHAIR: Thank you for your evidence today. The secretariat will contact you with regard to any questions on notice. I think we may have some supplementary questions for you to go with them. Thank you for coming. We appreciate that you were able to attend and give evidence today.

(The witnesses withdrew.)

The Committee adjourned at 17:20.