REPORT OF PROCEEDINGS BEFORE

JOINT SELECT COMMITTEE ON SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS

INQUIRY INTO SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS

At Sydney on Wednesday 30 April 2014

The Committee met at 9.50 a.m.

PRESENT

The Hon. Mr T. Grant (Chair)

Legislative Council	**Legislative Assembly**
Reverend the Hon. F. J. Nile	Ms M. R. Gibbons
The Hon. M. J. Pavey (Deputy Chair)	Mr P. G. Lynch
The Hon. H. Westwood	

CHRISTOPHER JOHN LENNINGS, Clinical and Forensic Psychologist, Level 5, 154 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Good morning and thank you for attending this second public hearing of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. The public hearings held today and last Monday are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday the Committee heard from a range of expert witnesses who primarily provided technical information and advice concerning the administration and implementation of the law.

Today's hearing provides an opportunity to take evidence from witnesses representing the therapeutic community and those who advocate and speak on behalf of the victims of child sexual assault. The hearings will be followed by further private deliberations of the Committee before preparing its report to Parliament. I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment. I welcome Dr Chris Lennings. I thank you for appearing and for the briefing prior to the public hearings. The information you provided was of great assistance to the Committee.

I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I should also point out that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today the Committee may wish to send you some additional questions in writing the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Dr LENNINGS: Yes, of course.

CHAIR: I would like to invite you to make any opening remarks before we go to questions?

Dr LENNINGS: My opening remarks would be contained basically in the executive summary of the submission that was put in by the Australian Psychological Society, that is, that this is an area of particular tragedy in our society, that we need to be guided by a risk principle in considering the disposition of offenders, that there is a need to coordinate and to expand therapeutic services, particularly in the community where resources are highly competitive for such services and that there is a need to consider the use of something like a Child Sex Offender Counsellor Accreditation Scheme or some kind of accreditation scheme to ensure that the people who are working in this field are indeed capable of responding appropriately to both victims and offenders.

CHAIR: In your opinion how effective are the current sentencing options for child sexual assault in New South Wales?

Dr LENNINGS: The current dispositions appear to be reasonable. New South Wales has the option where there is a very high risk with a serious offender of using the extended supervision orders to further manage that person. I think there remains within the system sufficient clout, for want of a better word, to deal with the serious and high risk offender. The concerns obviously that we have are at the diversionary end. The closure of Cedar Cottage was unfortunate and the concern that a large number, indeed the greatest number of sex offenders, are in fact low risk offenders and there needs to be a proportionality involved in the way in which these people are dealt with.

CHAIR: Your submission states that the generalised public notion of deviant predatory perpetrator is unfounded and the result of public hysteria and sensationalised media reporting. Can you outline the nature of child sexual assault offending and the range of behaviours that you have just referred to—the two ends of the scale—and how they are dealt with by psychology practitioners?

Dr LENNINGS: For a start, we distinguish between contact and non-contact offenders. Non-contact offenders are primarily child pornography offenders but may include people who get on the internet, into chat rooms, and attempt to try to establish relationships with young people through chat rooms or put the hard word on them or whatever. Contact offenders are people who actually commit some form of sexual act upon a child. The majority of contact offenders are people who are known to the family, such as family members, older children—sometimes younger children—within the family, so there is a need to recognise the complexity of the family involved and the impact upon the victim of not only the betrayal, which is by someone who is trusted,

but also the aftermath; what actually happens to that person and whether the victim feels included or excluded from the disposition process.

That is why for many offenders an intervention that is based around diversion or rehabilitation is of greater advantage because it does not leave the victim feeling doubly guilty about what is going on. With serious offenders we really need to be aware that treatment has a limited usefulness. Treatment is an important part of the package that goes into serious offenders but we need to be really thoughtful about things like monitoring, supervision and the coordination between services so that if a serious offender is to be released into the community at some point there is a capacity to provide for the safety of the community but at the same time a capacity to ensure that the behaviour does not reappear. There are certain kinds of serious reoffenders for whom such things as extended supervision orders are probably going to be necessary because they are so predatory that it is very difficult to see how you might contain their behaviour otherwise. However, they represent an extremely small part of the sex offender population.

CHAIR: Should it not then be absolute that they just stay behind bars if they are risk assessed at that level?

Dr LENNINGS: I think there is the issue about civil rights and all those kinds of things that need to be considered that are probably beyond my scope.

CHAIR: Civil rights over victims' rights?

Dr LENNINGS: Well, there are civil rights and there are victims' rights but both need to be considered. We simply do not have the kind of interventions that other countries have developed but there is evidence from New Zealand, for instance, that you can actually successfully intervene even with the highly deviant, highly psychopathic offender and have some reasonable impact upon their behaviour but the kind of intensity intervention that is involved there is something that governments would have to make commitment to in terms of funding.

The Hon. MELINDA PAVEY: Does that treatment at that high end or that deviant end include anti-androgen libido type treatment? Do you support that style of treatment?

Dr LENNINGS: The treatment that I am talking about so far has been in-jail treatment and would not normally use anti-androgens because at that stage they are not out in the community but if you were to have a high-risk offender who is to be released into the community, it would be a reasonably sensible precaution to at least assess for the use of anti-androgenic medication and certainly if a person had ruminations and preoccupations with sexual themes, the best outcome would be a mix of both psychosocial and chemical interventions.

The Hon. MELINDA PAVEY: What do you regard as a paedophile?

Dr LENNINGS: I use the Diagnostic and Statistical Manual of Mental Disorders—Fifth Edition [DSM5] definition—a paedophile is a person who has a consistent preoccupation with sexual behaviour with a prepubescent child where there has to be a consistent preoccupation lasting more than six months but certainly you would need to see a consistency in their behaviour and a preoccupation, not just a person who has made a mistake but somebody who really genuinely thinks about and has sexual desires for and finds it difficult to oppose or to talk themselves out of that kind of thinking.

The Hon. MELINDA PAVEY: So for the 90 per cent of child sexual assaults that happen within the structure of the family network, a friend network, or people they know, would you suggest that those crimes happen with a paedophile?

Dr LENNINGS: No, the majority of offending behaviour, as far as we get to see it anyway, is not associated with a consistent sexual deviance or preoccupation. Indeed, many of the people we get to see are as perplexed by their behaviour as everybody else is. They do not show that consistency of deviant rumination that would be necessary before you could diagnose them with paedophilia. Bear in mind that a large number of people we get to see offend against adolescents, that is post-pubescent children not pre-pubescent children. The profession has tried to distinguish between the two by proposing the term hebephilia to reflect people who offend against adolescents or young people, people who have developed sexual characteristics. People use it in common talking but it is not an accepted term because there are always problems associated with determining

what is the upper age of someone who was "hebephilic". It differs in different countries as to what is the age in which a child can engage in sexual behaviour.

The Hon. MELINDA PAVEY: From your perspective, and it is clear in your submission and the Australian Psychological Society, this is an important distinction that the public must make in terms of dealing with child sexual assault within the community to stop the over sensationalisation?

Dr LENNINGS: I think there does need to be public education with regard to what genuine sexual deviance is and what is behaviour that is correctible. Genuine sexual deviance, particularly when it is associated with psychopathy such as lack of remorse and unconcern for the impacts of their behaviour, is a totally different kettle of fish to somebody who has through loneliness or through failure of impulse control engaged in behaviour that is heinous but at the same time is correctable.

Reverend the Hon. FRED NILE: I will follow up the same point. You seem critical of the media and talk of desensationalising stories about sex offending, but the media should report those cases as there is widespread community concern about child sexual assaults. How do you suggest the media report it?

Dr LENNINGS: There are a couple of issues that need to be considered. For instance, where I live on the Central Coast about two years ago now there was a series of local media reports about a girl who had been approached by men in a white van and for three months after that there were a lot of reports about seeing white vans around and kids feeling scared and those kinds of things. It turned out that girl had never been approached; it was a statement that she made in order to obtain attention. What took place was a media frenzy and all those sightings reported by the media of people in white vans approaching children, and none of it was true.

There is an element in the media where there is a fine distinction between public interest and sensationalism. I have no objection to the media being involved in public interest issues but there needs to be some awareness that there is a sensationalist element to this behaviour, a fearmongering element to the behaviour, which is not helpful to trying to work with people who may need to come forward and admit to having impulses. In Germany, for instance, a person can come forward to a specified agency, admit to inappropriate sexual behaviour, inappropriate sexual thoughts and receive treatment for that and confidentiality and privacy can be guaranteed. It is difficult to get people to admit to and be prepared to engage in treatment and supervision and monitoring if they are also scared they are going to be plastered all over the newspapers.

Reverend the Hon. FRED NILE: How do you recommend the media deal with the story if there is an actual event, not the white van business but an actual abuse or murder of a child?

Dr LENNINGS: There are two elements to it. Where there is a proven case and a genuine basis the media need to report the material. It is appropriate for the media to report the human dimension of that material as well. The media need to be restrained from making stories up or embellishing stories which have very little factual content to them. There is a need to generate information to the public. Some of these things are really terrible and horrible and they are things that the public are interested in and need to know about but at the same time you also need to provide the alternate information as well. For instance, most people who would read the media would believe that sex offenders are high-risk offenders with a likelihood to reoffend and yet of the criminal groups they are amongst the least likely to reoffend. That kind of information is not available publicly.

The Hon. HELEN WESTWOOD: Dr Lennings, I am interested in the information that is being disclosed as part of the Royal Commission into Institutional Responses to Child Sexual Abuse. It is fair to say that most of the public are shocked at the frequency of those historic incidents, that children were sexually assaulted at such high rates in institutions without any supervision or actions to prevent it. What do you think we can learn from these historic cases with regard to opportunistic crime versus crime as a result of paedophilia? Is there such prevalence today? It seems to me there is not. Is that because there are not the opportunities and we are not institutionalising children without appropriate supervision the way we have in the past or are there other reasons for it?

Dr LENNINGS: Obviously my answer is going to be a bit speculative because I do not know the full detail of the information coming out of the inquiry. I have been aware of other commissions of inquiry into similar behaviours over time. First, in historical matters we take the belief that a number of people who are paedophilic or have strong hebephilic desires gravitate to those positions. They seek out the opportunity to have contact in an unsupervised way with young people. Historically organisations tended to appear to not have the supervisory and risk assessment processes that are now mandated for most organisations to have. My practice is

involved in undertaking part of the risk assessments for the Big Brothers Big Sisters program. Voluntary organisations are now much more focused on risk assessment and trying to ensure that they are limiting the opportunity for people who may be deviant to have access to children. It is impossible to be completely effective in that, but at least they try. Those structures and procedures were not around in the past.

Secondly, organisations tended to try and minimise any scrutiny of their behaviour. They were secret in the way in which they did things and they were concerned to protect their reputation rather than the children or the people they had responsibility for. Through agencies, for instance, such as the child protection Ombudsman that New South Wales did have—I am not sure what has happened in recent years—scrutiny of organisations and scrutiny of the accountability systems and internal decision making takes place. That acts as a further disincentive for organisations to sweep issues under the carpet and hide inappropriate behaviour.

Also, I think there is a greater tendency for people to state that they have been abused. It was a shocking thing. I remember the first time analysis of sexual abuse occurred in Australia in any genuine way. It was when Ita Buttrose published a letter in the 1970s in the *Women's Weekly* about that and asked women to write in. The Henderson royal commission was going on around the same time. It was the flood of letters that came into *Women's Weekly* that was particularly important in raising, for the first time, that we have a real problem out there. Until then there had been a silent secret shame that people bore these atrocious acts and did not complain about them. To a certain extent that has been broken down.

Mr PAUL LYNCH: You spoke earlier about the level of intensity of intervention in other jurisdictions in other places. I am wondering what that means exactly, what is the level of intervention and how much was required, what happened?

Dr LENNINGS: First, in jail they set up therapeutic communities, they provide for cultural consultant psychologists, psychiatrists and therapists to be involved in running programs. There is a similar kind of intervention that has been established in New South Wales called the custody-based intensive treatment [CUBIT] program, but that has nowhere near the capacity to deal with the number of offenders who are currently in jail. I know it has been rolled out to various other prisons, which is a necessary thing. I am also aware that they have difficulties in finding staff for that and difficulties in their liaison with the prison officers about the best way to conduct running those programs.

I am sure you have spoken to other people who know more about that than I do; I just get the scuttlebutt from being around the traps. We need to have coordinated and committed senior management who are prepared to put their weight behind developing in-house intervention programs. Once we have those programs—they are pretty long programs—we need to articulate with a community agency. A high-risk person, when they are released from prison, needs to be able to engage in treatment. Currently, the forensic psychology services do not take high-risk offenders. There is a great deal of difficulty in being able to put them into the maintenance programs that exist.

We end up getting a lot of referrals for high-risk offenders. We have 19 people in our practice, of which seven or eight work almost exclusively in the sex offender area now, and we cannot deal with the referral rates. We have waiting lists, which is totally unsatisfactory when you are dealing with sex offenders who are released into the community. There needs to be articulation between the inpatient treatment, for want of a better word, and what happens when they go into the community. There needs to be articulation between the treatment agencies and the supervision and monitoring agencies. Currently that happens within the Corrective Services model but it does not happen when you are looking at private practitioners who get involved in the treatment of these offenders.

We need to have a more flexible system and a greater level of trust between the private and public sectors since the reality is at the moment we are servicing a number of our sex offenders, including high-risk offenders, through the private sector, for want of a better word. There needs to be some breaking down of the barriers that currently exist particularly between the supervision and monitoring agencies and the psychologists and psychiatrists who are working in the private sector.

Mr PAUL LYNCH: Are there enough psychologists around to do the things you think should be done?

Dr LENNINGS: No, there is almost none around. My firm alone accounts for one-third of all psychologists registered for working in the private sector in Sydney. We employ more than one-third of all

available private psychologists working in this sector. Once you get outside of Sydney it is slim pickings indeed. There are a couple in Wollongong, I do not do not think there are any in Newcastle and there is one in Coffs Harbour. We are looking at a limited pool of available experts. Not a lot of people want to do this work. It is really hard work and the accountabilities are really high.

If you have someone who gets depressed and they have a relapse, providing they do not kill themselves, it is not the end of the world but if you have someone who is a sex offender and they relapse all kinds of things fall down on top of your head. It is a terrible, terrible business and most people do not want to get involved in it. If there was, I think, greater support for it, because there are a lot of people who go through the Corrective Services and Juvenile Justice domain who go into the private practice and they are capable of doing the work, but there is no incentive or they do not want to have the grief of doing that work.

Mr PAUL LYNCH: What are the economics of it in terms of who pays for what? Presumably people coming out of jail being treated in the private sector are not going to have a lot of money.

Dr LENNINGS: No. Part of the difficulty is structural. For instance, the allied health initiative through Medicare does not extend to dealing with forensic work. People cannot access Medicare. Even if they find a general practitioner who is prepared to put down that a person has depression they only get 10 sessions. The average treatment that a moderate- to high-risk offender would need would be maybe a year or 18 months. I have had some of my own clientele for three years. We are talking about very extensive treatments for which there is no funding. The result is, not only for my own group but also for the other people I know who work in this field, that we carry a certain number of clients for free because the alternative is not acceptable.

In my own group, for instance, we run one of the two group programs that are available in New South Wales from the private sector and we subsidise that. We pay $1,000 per month to split between two people because we feel it is unfair that they should work for such little money. As a small private business we nonetheless subsidise the people who run that group because there is no financial incentive whatsoever. To be perfectly honest, if you are in the private sector you have to make a living. So there is no financial incentive for being involved in this work because you are doing a lot of free work, you are doing a lot of work that people do not think highly of you for doing, and if something goes wrong you feel wretched.

Mr PAUL LYNCH: Is there any part of the public system that does this sort of work?

Dr LENNINGS: Yes. Forensic Psychological Services [FPS] from Corrective Services does this kind of work as well. As far as I am aware—and you would probably have Jayson Ware or someone else like that who could tell you more about it than me—they have very long waiting lists and they don't take high-risk offenders.

Mr PAUL LYNCH: Why do they not take high-risk offenders?

Dr LENNINGS: I don't know. It is a perplexing issue but that is the case. Literally from my own experience many a time I have been rung up by a probation officer who has said, "This person has been released into the community. They are a high-risk offender. They have no treatment. We are going to have to breach them if they cannot be seen. They have got no money. Will you see them for nothing?" It is as bold as that.

Mr PAUL LYNCH: Honesty has its attractions, does it not?

Dr LENNINGS: Yes.

Ms MELANIE GIBBONS: When you spoke earlier about relapsing and recidivism you said that the rate of recidivism has decreased in the last 20 years.

Dr LENNINGS: We are not quite sure why but it has.

Ms MELANIE GIBBONS: Does that include New South Wales?

Dr LENNINGS: This is a worldwide phenomenon. You would need to talk to the people who do the statistics in New South Wales. It is very hard to get those figures if you are outside of the system. We know that the crime rate is generally reducing. The material that has been provided by BOCSAR and people like that show that crime rates are reducing for adults but broken down into specific characteristics of crime I don't know, I

cannot answer that. Certainly worldwide there is a phenomenon that recidivism rates have just about halved in sex offending over the last 25 years.

Ms MELANIE GIBBONS: Do you know what that is put down to?

Dr LENNINGS: No. I think there are probably a number of factors. Firstly, there are more intervention programs around. Secondly—this might sound a bit odd—there is a belief that for at least contact offenders the capacity to meet their needs online has led to a reduction in their offending. Whilst the internet poses a real risk in that it can lead to people increasing in deviancy and therefore becoming inured and more likely to offend because they seek further and further arousal, there is also a small percentage—I will say small percentage because we don't actually know—of contact offenders who have been able to manage to remain free of a contact offence through the use of fantasy and the internet.

Reverend the Hon. FRED NILE: In your submission you talked about the Throughcare model. How would you define that?

Dr LENNINGS: That is what I am talking about. You have got your in-house, in prison, and in prison you make a disposition, you put the person into intensive treatment, you then link them in with a supervising officer and you then release them into the community. You ensure that they have got a linkage with a therapeutic manager who has probably visited them several times in jail before they go into the community. Currently we cannot do that but certainly FPS can do that. Then you maintain a link between the accommodation the person will get into, the supervisory person who is involved with them and a therapeutic person who is involved with them.

So there are case conferences and a means to be able to gauge: for example, "Joe Bloggs has lost his job. He is starting to drink more. That is a risk factor. You need to do intensive treatment." You need to have that kind of information coming through so that you can moderate what you are going to be doing with a client. You might have to move from seeing the person once a week or once a fortnight to seeing them twice a week once they go into a high-risk situation.

Reverend the Hon. FRED NILE: Is there somebody identified to monitor that person through all those stages?

Dr LENNINGS: You normally have a case manager. When I am working with a person who is an offender I keep an eye on all those factors, I will try to keep an eye on what is going on. We have a risk assessment protocol and we review that every now and then with a client. You have got to review it at least annually but if I am talking to a client and a client tells me that they have lost their job or that their relationship has broken down then I am going to be more intense in the way in which I work with that client because they are entering into a period of instability. Now if I had a good relationship—because of privacy issues there are rules about this—with a supervising person, that supervising person might have let me know before I even see the client so that I have got advance knowledge of what is going on. I may only be seeing the client once every fortnight and a lot can happen in a fortnight—in fact, a lot has happened in a fortnight.

Ms MELANIE GIBBONS: If they are not getting support from someone like you, who is managing these people in the public sector?

Dr LENNINGS: They would have a supervision officer, they would have a probation and parole officer and they might also have somebody from the monitoring system that exists—I keep forgetting its initials. Typically it would be their probation and parole officer who would be having the case management responsibility if the person was in the public system.

Ms MELANIE GIBBONS: Does the threat of being incarcerated again come into play?

Dr LENNINGS: For some offenders it does but for others not. There is a real difference between the way normal people see jail and the way people who spend a lot of time in jail see jail. For a lot of people who are in jail it is par for the course, it is not a particularly major disincentive for their behaviour. Indeed, we know that large numbers of criminals continue to run their business and continue to offend whilst they are in jail. The disincentive that we imagine jail contains is not the same for everybody. But for a lot of sex offenders it is because it is a particularly onerous kind of jail they have to do. If they are a child offender they have to go onto protection, they cannot be engaged in the mainstream jail activities, they have much greater restriction on what

they can do in jail, they have much more lockdown time and they are prevented from engaging in a number of programs. So jail can be a particularly aversive experience for a child molester.

Ms MELANIE GIBBONS: Would you say that incarceration is the right sentencing option for someone who is a young offender or an intrafamilial offender or someone with mental health concerns?

Dr LENNINGS: To deal with that individually, I think that young offenders often offend out of anger and that incarceration may be necessary to send a message to them but it would not necessarily be for a long period of time. We know that recidivism rates are less for adolescents than they are for adults. We would imagine that rehabilitative options would have more grunt with young offenders than they would with older offenders and that needs to be considered. But one of the difficulties about the system is for the majority of intrafamilial offenders if they plead not guilty they will not go to jail.

That was the reason why we put in diversionary programs in the first place—to increase the net, to widen the net so we would be able to catch a number of these people. For those intrafamilial offenders who do plead guilty or are found guilty and go to jail, many of them are quite low risk and jail is a fairly brutal system and it has the opportunity to worsen rather than better their behaviour. You do need to consider that certain crimes have to be punished. It is an unfortunate part of life perhaps but certain crimes have to be punished. There has to be a balance between the punishment and community protection and the rehabilitation arm. That is what we pay our judges for, namely, to reach that balance.

The Hon. MELINDA PAVEY: I turn to your suggestion about the government and private sector partnership approach and your belief that a better relationship between the two sectors will provide a better outcome. How do you think we could develop such an approach and can you provide the Committee with some examples from other jurisdictions?

Dr LENNINGS: Firstly, let me say I am not saying this is necessarily a better outcome, I am saying it is a necessary outcome in the current resource system. I think there are difficulties with a private-public partnership but I think that is the reality of what we have currently got in New South Wales. I think that the way to do that is to recognise the poor funding currently in the market for people who have forensic issues—we are not now just talking about sex offenders because violent offenders are in the same boat. We would need to provide some kind of, preferably, pressure on the Federal Government to increase the Medicare net to include long-term therapy.

The Hon. MELINDA PAVEY: Let us just pretend that society does not want to pay any more tax, which is probably where we are at.

Dr LENNINGS: I know that.

The Hon. MELINDA PAVEY: Let us just work with what we have got.

Dr LENNINGS: All I can do is to go on my own thing. We put up a proposal to the Attorney General's department a little while ago in which we sought a grant. What we would be doing would be expanding our services. We have in fact gone to a second group even though we have got no money for it. We have gone to a second group because the demand is so high that we simply cannot leave these people on a waiting list. We have now got a second group for lower-risk people so that we can focus on high-risk people in the main group that we run. It would be some kind of grant system so that people would apply for funding and there would be oversight of what was actually going on.

There would need to be some accreditation of programs because I would be concerned that a number of people if there was money available would apply for the money simply on the basis that all money is good money even if they cannot actually deliver the service, and that would worry me. I think there would need to be some kind of recognition of a grant system and that there would also need to be some means, perhaps through conferencing or something else like that, so that supervision and treatment providers got together and were able to not only share experiences but also got to know each other's face and got more familiar with each other.

There would need to be a change in the law so that for high-risk offenders in particular it should be possible for me as a treating expert to pick up the phone and talk to a supervision officer without having to get permission to do that from my client. Automatically when every client comes into treatment we actually get them to sign a document that gives us the right to do that. We actually get a consent form from them. They

cannot access treatment from us unless they agree that we can talk to their probation officer and their lawyer and whoever else we might consider to be important. But there are issues around privacy and the exchange of information that would probably need to be considered in any such arrangement.

CHAIR: Thank you for appearing before the Committee. Once again you have been extraordinarily helpful. As I indicated at the beginning of your evidence, would you be happy to oblige us with any further questions from the Committee?

Dr LENNINGS: I am more than happy to do that.

(The witnesses withdrew)

(Short adjournment)

JOHN KASINATHAN, Consultant Forensic Psychiatrist, Level 8, 235 Macquarie Street, Sydney, sworn and examined, and

JEREMY FRANCIS O'DEA, Consultant Forensic Psychiatrist, Level 8, 235 Macquarie Street, Sydney, and

ANDREW KENNETH ELLIS, Forensic Psychiatrist, 185 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: Welcome Dr Ellis, Dr Kasinathan and Dr O'Dea. Thank you for appearing before the Committee today. Today's hearing follows on from Monday. We are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday we heard from a range of expert witnesses who primarily provided technical information and advice regarding the administration and implementation of the law. Today's hearing is providing an opportunity to take evidence from witnesses representing the therapeutic community as well as those advocating and speaking on behalf of victims. The hearings will be followed by further private deliberations of the Committee before it prepares its report for Parliament.

I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I point out also that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today, the Committee may wish to send some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Dr O'DEA: Yes.

Dr KASINATHAN: Yes.

Dr ELLIS: Yes I would.

CHAIR: Before we proceed to questions, are there any opening statements you would like to make individually or collectively?

Dr KASINATHAN: Maybe a comment. The original submission given to the Committee had some errors in it. I have been working with the policy officer of our college to remedy those errors. I was hoping that an approved and amended submission could be submitted to the Committee. Unfortunately, it is still awaiting sign-off. I was speaking to the Committee secretariat earlier and advised that the policy officer will send it to the Committee as soon as it is available**.**

CHAIR: Are those errors substantive to the submission?

Dr KASINATHAN: They are annoying from our point of view because, as a medical specialist college, we would expect a greater standard of writing. We certainly can work with what is available to the Committee as it is. If there are issues arising out of those errors, we can correct them now. But the final approved submission will be sent to the Committee, hopefully, in the next few days.

CHAIR: Thank you. We appreciate that. Can you provide a brief overview of the range of child sexual offenders referred to in your submission? Does this diversity pose problems for the purposes of appropriate sentencing?

Dr KASINATHAN: I will refer to the submission if that is okay?

CHAIR: Yes.

Dr KASINATHAN: That is partly referred to in point one of the submission. Not all child sexual assault offenders have a sexual deviant disorder, however, a significant proportion do have paedophilic disorder. The submission outlines the diagnostic criteria for that. Thus, for a significant proportion, our recommendations are rational and sensible.

CHAIR: My question in more simplistic terms is that as a number of definitions apply to "offender" should sentencing be appropriate to the different types of offender? Should a paedophile receive more than an opportunistic offender?

Dr O'DEA: I guess the issue in terms of the different diverse types of people who commit child sex offences broadly—of course we are generalising—fall into two main groups: those who offend against children outside their family and those who offend against children inside the family. Of course, there is some overlap but, broadly, they are the two different groups. Broadly, the risks and the treatment needs often are different and one might argue, therefore, the therapeutic components of the sentencing options would also be different. I guess we are talking in more layman's terms that those who offend against children within their family would fall into the incest abuse group. They will often offend—again, generalising—against one or two of their children over an extended period of some years. Those offences often may be seen as opportunistic rather than generated out of a specific sexual preference orientation.

Then those who offend outside the family will fall into the men—of course, we almost always are looking at men—who offend against male children. Again as a generalisation, many of them have a specific and strong, if not exclusive, sexual interest in male children and often will offend against a number of different male children and have a high risk of reoffending with much more specific and global treatment needs. Then there is that other small group, which probably is similar to the men who offend against male children outside the family—the homosexual paedophilia—the men who offend against female children outside the family. Again, they often do so out of a specific sexual deviation. They would also have specific treatment needs. So those two latter groups are ones that may have more therapeutic treatment needs as part of their sentencing options.

CHAIR: Should there be a difference in punishments?

Dr O'DEA: The issue of punishment is something I think would not be within our remit. My focus would be in terms of treatment needs. I reiterate that the treatment needs of the people who offend outside the family are often greater. I guess history tells us that whilst punishment is an important component of sentencing for the community, it is not always an effective component of the sentencing in doing what we all want to do in this area, which is to reduce recidivism and reduce the number and extent of victims that are produced by this behaviour.

CHAIR: We heard evidence from Dr Lennings that for some crimes offenders have to be punished, some have to be treated and some have to be rehabilitated. Do you have a view about that and how any of the punishments impact on the potential for treatment and rehabilitation after the punishment or sentence?

Dr O'DEA: Yes. I would really still take the view that whether or not people require punishment is really not a matter for psychiatry and not an area that I would—

CHAIR: If someone gets a custodial sentence, what are their chances of rehabilitation and treatment following that punishment?

Dr O'DEA: I think that is a very clear thing from my involvement in that area: being sent to prison as punishment does not in any way impact upon the risk of reoffending. I have been involved for many years in the treatment of these individuals both in custody and in the community. There is no effective treatment in custody for those individuals. The most effective and appropriate treatment is in the community and that is the one that is likely to have the most impact on recidivism rates.

Ms MELANIE GIBBONS: May I just pick up on that point for a moment.

CHAIR: Yes, by all means.

Ms MELANIE GIBBONS: You just mentioned that there is no effective form of treatment in custody.

Dr O'DEA: Yes.

Ms MELANIE GIBBONS: Is that because it is not necessarily offered, able to be utilised or obtained, or is it that it is there but it does not work?

Dr O'DEA: The short answer is that it is there but it does not work. The long answer is also some qualification that really the treatments broadly fall into two groups: one is the biological treatment with medications and the other is the psychotherapeutic or psychological treatments. There is no good evidence, despite many years of research and clinical practice in this area, that psychological treatments alone have a significant impact, if any, on recidivism rates. I am aware that the psychological treatments are the treatments that are offered in custody, but there is no good evidence to date that they are effective. In fact there is evidence, and the best evidence to date is that they are not effective. The biological treatments—with medication, which would always be provided within a psychotherapeutic framework—are the ones that have been shown to be the most effective. There is an argument that they could be commenced in custody leading up to the person's release. As a clinical practitioner in this area, that is something we are frequently managing. It can be commenced either in the community or in the weeks leading up to release.

The Hon. HELEN WESTWOOD: Along the same lines, is that the same for the groups within the child sexual assault offender cohort? You talked about there being offenders from inside the family or from outside the family and there being those with paedophilia versus those who commit their crimes opportunistically. Is there a different rate of effectiveness for these programs amongst those groups?

Dr KASINATHAN: The way one measures effectiveness in this area is by reoffending rates.

The Hon. HELEN WESTWOOD: Yes, that is what I meant—the risk of reoffending.

Dr KASINATHAN: As Dr O'Dea pointed out, the reoffending rate for extrafamilial paedophiles who offend against male children is much higher than that for intra-familial child sexual offenders.

The Hon. HELEN WESTWOOD: And what about for those who offend against children of the opposite sex?

Dr KASINATHAN: Extra-familial offenders against female children, because we are talking mostly about male offenders, have an intermediate reoffence rate. It is not as high as that for the male-oriented extra-familial offenders.

Dr O'DEA: I might add on one of the things you are asking about that whilst incest offenders have a much lower risk and rate of reoffending, and there may be some practical reasons for that, for the treatments I am making reference to, in particular the psychological treatments in custody, the evidence shows they are, unfortunately, equally ineffective for both incest offenders and offenders from outside the family.

The Hon. HELEN WESTWOOD: Thank you, that was my question.

Dr ELLIS: I would like to add that the punishment in terms of incarceration will obviously, by incapacitation, reduce offending for that period of time. But what the research over many years shows is that once the person is released the length of that sentence has no statistical bearing on the rate of reoffending later.

CHAIR: That was part of my original questions, so thank you.

Dr ELLIS: In terms of treatment, punishment is something that has to be just factored into what kind of treatment you deliver and when. I think it is not simply a matter of saying that you have treatment or punishment but rather that the punishment ought fit the crime as per the law and then rehabilitation needs to be delivered around that.

CHAIR: On that point, what are the risks involved in providing incentives to accused offenders to plead guilty, in relation to reducing the potential incarceration punishment side of things, and what incentives would you consider to be appropriate?

Dr KASINATHAN: Sorry, could you restate the question?

CHAIR: In your submission you talked about recommendations for incentives for alternative models of justice in order to provide helpful outcomes for victims. What are the risks involved in providing those incentives? You deal with the offenders, so, firstly, what are the risks involved in providing incentives to accused offenders to plead guilty? Secondly, if incentives are to be given, what incentives would you consider to be appropriate?

Dr KASINATHAN: I think anything that improves the opportunity for appropriate treatment of sexual deviance is going to reduce risks, and that is, I suppose, the bottom line of our submission.

CHAIR: In the briefings, Dr Ellis took us through the anti-androgenic and the limited capacity at length. We talked about having the right dosages and regularity. Can you be more specific as to what, if it is not that type of thing, are the other options?

Dr O'DEA: I think the issue of incentives is that, from a therapeutic point of view, the incentive is for people to engage in treatment and to engage in it within the community rather than in custody. The treatment that we would want people to have an incentive to engage in, I guess, is the biological treatment. Again, those treatments are most appropriately provided in the community. Therefore, in a roundabout fashion, if people are given a reduced prison sentence by virtue of pleading guilty early then that might enable them to have more community treatment. If the sentences involve shorter prison terms and longer community supervision then those treatment modalities, particularly the medication ones, can be explored; and the issues of informed consent and engagement and compliance can be built up in the community so that, hopefully, treatment will continue after the expiration of the sentence. I do appreciate that that is somewhat optimistic.

CHAIR: It goes to something else that you have mentioned in your submission: that there needs to be leadership in the community to de-sensationalise stories about sex offending. So it is about going back into the community and having treatment options. We have a community that has heard sensationalised stories about sex offending.

The Hon. MELINDA PAVEY: That point was made by Dr Lennings in the Australian Psychological Society submission.

Dr KASINATHAN: We cannot pretend to comment on the submission of Dr Lennings.

CHAIR: Sorry, I flipped to the wrong page. So you were talking about having more options in the community. But we have a community that is hypersensitive to this matter at the moment.

Dr O'DEA: Yes.

CHAIR: How do we deal with that? How do we release offenders into the community, and get the community to accept that, when the community are asking why and saying that these offenders should be locked up forever?

Dr O'DEA: I would focus on whether those who are coming out into the community are in fact getting positive treatment that is considered effective, which is medical management with medications. We baulk at the term "chemical castration". But the idea that people are getting specific treatment may, I hope, with education, alleviate some of the concerns that people in the community have. I would argue, at least at a psychological level, that people in the community might feel some encouragement knowing that people are involved in that kind of treatment. So the community would know there was a specific and effective response for the treatment of these sex offenders.

Dr ELLIS: From what we know from the research, people engaged in that type of treatment are much less likely to offend than people who have simply gone to prison, served their time and then walk out and have no supervision. Perhaps that is part of the message here.

Reverend the Hon. FRED NILE: I have a general question. Are you happy with the amount of expert advice that you are able to give in these sexual assault cases? Is it normal practice for the judge to have expert evidence? I got the impression from another witness that it needs to be improved.

Dr O'DEA: I guess there are a lot of cases in which the judge, or the magistrate for that matter, do seek psychological or psychiatric assessments. On the question of whether expert opinions in court proceedings are requested as often as we think is appropriate, the answer is that it is clearly ad hoc at the present time. Although there are quite a few times when either psychiatrists or psychologists are asked to provide reports, these are often generated by the defence without the Crown seeking an independent assessment. My view, and I think the view of others, is that there is an argument that there should be mandated assessment for people who are in front of the courts for sexual crimes and child sexual crimes at some level—for example, at the level of the District Court. They should have recognised psychiatric reports so that the issues we have canvassed in our submission could be available to the courts.

Reverend the Hon. FRED NILE: Following up on that question, in your submission you have given a very detailed description of a person who has a paedophilic disorder. I was interested to see in the definition that it states "must have at least six months of sexual fantasies, must be at least five years younger, et cetera" rather than "should". The definition seemed very legalistic for a person who has those paedophile tendencies. Is that definition from your organisation?

Dr KASINATHAN: No, that is from American Psychiatric Association. It publishes the diagnostic statistical manual of mental disorders, which is used internationally as standard diagnostic criteria. It is internationally recognised and has been shown to be useful in both the international and the Australian contexts. It is precise because it is a diagnostic tool. Of course, that does not stop a psychiatrist from diagnosing a paedophilic or paraphilic disorder if one strongly suspects that it is present even if one does not meet those criteria. But you can understand that any scientific endeavour should have some rigour about it and that is why those precise definitions are there to balance bringing rigour to clinical practice.

Dr ELLIS: The primary purpose of those diagnoses is for research. They have very clear cut-off points. They have been established by field trials looking at the statistics of presentations to clinical services since the 1980s when this kind of psycho-diagnostic data has been collected. Diagnosis in psychiatry is always fraught with some element of vagueness on the edges at the core of those disorders and that is what the diagnostic criteria are looking for. The majority of people with a paedophilic disorder before the courts will quite squarely fall within those diagnostic parameters.

Dr O'DEA: If I could reinforce what they said, that particular definition is the DSM 5 definition which was arrived at in May last year within the publication of the new DSM—Diagnostic and Statistical Manual of Mental Disorders—by the American Psychiatric Association after many years of debate for the revision. I think the point is well taken that it is legalistic. Of course, that is because of the climate in which the Americans work from a psychiatric, at least, point of view. The European definition of paedophilia through ICD—International Classification of Diseases—is much broader, more general and less definite than that one. But as the others have said, really the diagnoses are often for different reasons. In the DSM it is for research and clinical bases, as in the ICD. Psychiatrists are able to use their clinical judgement in making these diagnoses because we are not bound by any of the classificatory systems.

Mr PAUL LYNCH: As I understand the position of the college, it is that it does not support mandatory or compulsory biological treatments and there needs to be a valid consent. I am interested in exploring what you mean by "valid consent". In particular, I am thinking of a circumstance of someone who is incarcerated and is coming to the end of their period of imprisonment and may be subject to an application for an extended supervision order and they give consent for biological treatment because the practical alternative is to remain in jail because of continuing the detention order. Likewise, and I am not sure this has happened but it is theoretically possible, someone comes to the end of a non-parole period and they might have the option of giving consent to the treatment then or stay in for the rest of their head sentence. Do you regard consent in those circumstances as valid consent?

Dr KASINATHAN: It is informed, is it not? A person is given the options. These are the treatments that are available to you. These are the potential side effects from these treatments. One of the benefits of your treatment is that the Parole Board may look more favourably upon your application but that is not really up to the treating doctor's influence.

Dr O'DEA: The analogy of that could apply to many other things, like not drinking alcohol while you are on parole or having to report to a parole officer. There is some level of coercion clearly but the person is informed of that and makes a decision about it. If they have the mental capacity to do that, then I think they should be able to choose that.

Dr KASINATHAN: CUBIT is a good example. The psychological treatment is offered in custody. You just heard that it is not overly effective. For the Committee's benefit, our submission outlines some research that does actually give some hard facts about that, which is point number 23. But CUBIT is a very good example. The Parole Board often will not grant parole until an individual has done CUBIT. Now it is up to the individual's choice whether they do CUBIT but often times they will delay their parole until they have done CUBIT. Was consent for CUBIT permissive or was it valid?

Dr O'DEA: In terms of what you say, this happens very frequently, I might add, that people are offered parole or offered an extended supervision order as opposed to a continuing detention order on the basis that they accept the treatment that is advised to them by their treating psychiatrist which will usually involve medication such as Androcur. The position we have is that the person is able to give informed consent as to whether they take that medication. It is not mandated that they take it. The concern we have about mandating these kinds of treatments as part of a sentence is the devil is in the detail of the mandating as the assumption is that the person is ordered to have it.

One of the issues is what impetus that puts on the doctor. We take the view that a psychiatrist should only provide any form of treatment, including this, if they think it is clinically indicated, unless, of course, they are under the Mental Health Act or the patient gives informed consent. As I said at the beginning, this issue of people coming out on parole or an extended supervision order on the condition that they take the treatment that is advised to them by their treating psychiatrist is a very common practice.

The Hon. HELEN WESTWOOD: Can I explore why the college does not support mandating treatment? We are not talking about a treatment that is about the offender's wellbeing, it is about preventing victims or children becoming victims. What is unethical about that?

Dr KASINATHAN: It might be easier to talk about a specific case perhaps that is hypothetical but practical. Say a male who has offended against children has osteoporosis, weak bones, because they are 50-years-old. If they have mandated anti-androgen treatment their osteoporosis will worsen significantly.

The Hon. MELINDA PAVEY: What if they take calcium and do exercise?

Dr KASINATHAN: It will not make a difference. It will worsen significantly. They will get a fracture and potentially could die because they have an embolus from the fracture, it goes to their lungs and they drop dead. So you have a mandated treatment. If you have no provisions for having appropriate medically informed consent that is the risk you run, and that is something that the college is not willing to support. We are willing to support mandated forensic psychiatric assessment to guide the court as to what might be the most efficacious treatment program for this person. That is fine, and it is really up to the court to decide what the appropriate length of sentence will be and what the treatment options should be.

The Hon. HELEN WESTWOOD: Apart from the example you have given that places the health of the offender at risk, would you then also consider a case where there is no such risk but you are reducing the risk of the high-risk offender then offending against children? Would you consider that as effective treatment? I understand there are offenders for whom this treatment would be detrimental to their health.

Dr KASINATHAN: The key is who makes that decision?

The Hon. HELEN WESTWOOD: Is that scientific? Osteoporosis can be diagnosed.

Dr KASINATHAN: But it could also result a year or two later after the initial assessment.

The Hon. HELEN WESTWOOD: Would that be part of ongoing monitoring?

Dr KASINATHAN: Yes, it would.

Dr O'DEA: If I could focus on what you are specifically asking, that is, what do we have against mandating this kind of treatment, I guess because it falls into a number of different categories, depending on what mandating is. For argument's sake, psychiatrists under the Mental Health Act mandate, if you like, an enforced treatment regularly on the basis of their clinical assessment and judgement. The issue in this case is, first of all, the understanding would be that the court would mandate the treatment and that would have a concern for psychiatrists because then if they were going to provide that treatment they would be doing it on the basis of courts mandating it rather than necessarily on their own clinical judgement. That is our concern.

The Hon. HELEN WESTWOOD: Thank you; that explains it.

Mr PAUL LYNCH: The Committee heard evidence of treatments being a condition of an extended supervision order. Do you have experience of it being a condition of parole?

Dr O'DEA: Yes, regularly.

Mr PAUL LYNCH: That is good because I do not think the Committee has had that evidence before and it is useful. What is the mechanism to report if an offender stops taking the treatment or refuses to take the treatment? Does the psychiatrist talk to Probation and Parole?

Dr KASINATHAN: If they have given consent to the probation officer to contact the psychiatrist who is treating them and if they have given consent for that information to be transferred then that information could be given.

Dr ELLIS: Extended supervision orders have a provision that the person agrees to have open communication between the psychiatrist. In the case of parole, the person usually agrees to waive their usual confidentiality and if the person stops coming to appointments or stops taking medication—

Mr PAUL LYNCH: There is a practical way to deal with all of that?

Dr O'DEA: There is, and usually as part of their parole conditions they are required to agree that the parole officer can contact their psychiatrist. Of course, because the psychiatrist is working within the medical framework they have confidentiality and privacy issues. From a practical point of view, if the parole officer rings and says, "I would like to speak to you about your patient" and you say, "I am sorry, they have not given me consent to do so", that will presumably raise alarm bells. I might add, this often happens and then the parole officer will take action as they see appropriate. In a practical way this is a functional thing and it happens on a regular basis.

Reverend the Hon. FRED NILE: Do you have any reservations about the treatment as such? As far as you know it is successful?

Dr O'DEA: The medication?

Dr KASINATHAN: Biological treatments?

The Hon. MELINDA PAVEY: Yes.

Dr KASINATHAN: Within the submission there is some data that outlines the effectiveness of biological treatment. By and large it is effective and more effective than psychological treatment.

The Hon. MELINDA PAVEY: Did you read the testimony of Andrew Tink, a former member of Parliament, given to the Committee last Monday?

Dr ELLIS: No.

CHAIR: It is not publicly available yet.

The Hon. HELEN WESTWOOD: His submission is available in which there is the same detail.

The Hon. MELINDA PAVEY: Have you read his submission?

Dr ELLIS: No, we have not.

The Hon. MELINDA PAVEY: His submission and his testimony, which will be up on the website later, talked about the treatment program in Oregon and its impressive statistics.

Dr ELLIS: That is the Maletzky's study of Depo-Provera in Oregon?

The Hon. MELINDA PAVEY: Yes.

Dr O'DEA: Yes, I am aware of that study. They had no reoffending.

CHAIR: Can you talk to that?

Dr ELLIS: They had a program of an injectable form of anti-libidinal medication. I am remembering off the top of my head. Jeremy, you might be able to correct me if I am wrong. I think they had no offences over the study period of about five years. They ensured that everybody had the medication because it was given by injection.

Dr KASINATHAN: The availability of certain types of medications in injectable and oral forms is one issue. Cyproterone is probably the most widely studied agent. It is in our submission at points 10 and 11. Unfortunately, one of the problems with the submission was that the brand name was used there. We prefer to use generic names. Cyproterone is the generic name; Androcur is the brand name.

The Hon. HELEN WESTWOOD: Is that Zoladex?

Dr KASINATHAN: No, Zoladex is a newer agent.

The Hon. HELEN WESTWOOD: That is the one that Mr Tink has been treated with.

Dr KASINATHAN: That is a very recent study. When you look at absolute numbers the evidence for cyproterone is much greater than the evidence for this newer agent. That new agent is extremely expensive. It costs about $3,000 for three months, so it is about a grand a month for Zoladex.

The Hon. MELINDA PAVEY: I think it was about $6,000 annually.

Dr KASINATHAN: Yes, approximately. The issue with Zoladex, or goserelin, which I think is the generic name, we are trying to stick to generics, is it is only subsidised in Australia for severe prostate cancer that has metastasised everywhere. It also causes complete chemical castration for the time it is given.

The Hon. MELINDA PAVEY: For the time it is given. It is reversible.

Dr KASINATHAN: It is reversible but the shortest duration you can give it for is a month. With someone with a paraphilic disorder you probably want to titrate the treatment. You are trying to give them something that they might agree to take longer term because it takes away their deviant sexual arousal but leaves normal sexual arousal that they can actually have sustainable relationships with. That is one of the goals of treatment. Of course, if the risks are extremely high then one would go to full anti-libidinal treatment, of which Zoladex is one.

CHAIR: Is there anything in the Oregon study relating to that point?

Dr KASINATHAN: They used quite an old-fashioned medication called Depo-Provera, which is essentially a female hormone. It is not a preferred treatment of choice in our minds because it causes a lot of feminising side effects, such as breast enlargement, whereas cyproterone has greater efficacy for lower side effect burden.

Ms MELANIE GIBBONS: Zoladex is an injectable. What are the other ones you are talking about?

Dr KASINATHAN: Cyproterone is available as an oral medication in Australia but in Europe and other parts internationally—

Dr ELLIS: In the United Kingdom when I worked there it was available as an injection.

Dr KASINATHAN: That can be given every two weeks. If one is concerned about risk then giving a medication like that would be preferable to an oral medication.

Ms MELANIE GIBBONS: How would you ensure that the oral medication is taken?

Dr KASINATHAN: One of the advantages we have is that we can check hormone levels. We do baseline testosterone levels. We do a full range. This is why a psychologist really cannot advise about this. They have no medical training. They cannot give a proper assessment of someone who has paraphilic disorder. We would do a full hormonal range of tests and look at a baseline before starting someone on anti-libidinal treatment.

CHAIR: Would you like to say anything in conclusion?

Dr KASINATHAN: Only that the amended submission will be sent by email to your Committee and I apologise for its tardiness.

CHAIR: That is fine. We appreciate not only your appearance today but also your assistance in the earlier briefings. On behalf of the Committee I thank you for coming today and for your evidence and assistance.

(The witnesses withdrew)

DR DAVID PHILLIPS, National President, FamilyVoice Australia, and

GRAEME MITCHELL, New South Wales State Officer, FamilyVoice Australia, sworn and examined:

CHAIR: Welcome to the second public hearing of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. The public hearings held today and on Monday just gone are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday the Committee heard from a range of expert witnesses who primarily provided technical information and advice concerning the administration and implementation of the law. Today's hearing provides an opportunity to take evidence from witnesses representing the therapeutic community and from those who advocate for and speak on behalf of the victims of child sexual assault. The hearings will be followed by further private deliberations of the Committee before it prepares its report to Parliament.

I welcome our witnesses from FamilyVoice Australia. I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I also point out that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today, if we are unable to get through all of our questions are you prepared to accept questions from the Committee that would be considered and used as part of your evidence?

Dr PHILLIPS: Certainly. We are happy to take questions on notice.

CHAIR: Thank you. Would you like to make an opening statement?

Dr PHILLIPS: A brief one. FamilyVoice Australia is a community organisation. We seek to advance policies that we believe would be in the best interests of the whole community. We are a Christian organisation receiving support from all mainstream denominations. We are a non-political organisation. We have no links with any political party and we endeavour to relate to all parties and Independents in Parliament. We are a national organisation with a spokesman in all six States of Australia.

Our concern in this submission is to address it from an ethical or moral perspective. We want to consider the importance of the effect on victims, the effect on offenders and the interests of the general public in seeing that appropriate justice is being done. We have addressed those particular things in our submission. Mandatory sentencing we oppose. We believe that guideline sentencing and standard non-parole periods which still allow some flexibility to the judge are a good idea. To the question of anti-androgenic medication or any kind of medicalisation, we think that this can be elaborated but we see the essence of it as being a moral

responsibility rather than medicalising the problem. We believe that informed consent is an important element of that.

One of the other things that is sometimes ignored is the question of restitution to victims. We would argue that the restitution to victims should not be purely a matter of civil law but the State should take a responsibility to oversee adequate restitution to victims and ensure that compensation of whatever kind is enforced. I think that is a sufficient general outline of our submission.

CHAIR: I will go first to guideline sentencing. You indicated that the development of guideline judgements for one or more child sexual assault offences would be helpful in ensuring more consistent sentencing. Can you expand on why you say that?

Dr PHILLIPS: First of all, it is important to recognise, as some of your other witnesses have said, that this is a complex area. The offences range from inappropriate touching of a clothed child, for example, through to genital penetration. It ranges from relatively minor to very severe cases. There is the question of the age of the victim, the age of the perpetrator and difference in ages. There is the severity of the offence. It is a very complex field. To tie a judge down to some arbitrary mandated minimum or minimum parole period is, we believe, overly restrictive.

It is better to provide for sentencing guidelines, which provide the trial judge with guidelines on what is considered to be appropriate for a particular kind of offence and whole situation so that the sentencing can be tailored to the individual circumstance. There is no end to the individual circumstances of individual cases but the provision of sentencing guidelines means that the judge can be held accountable. Any departure from the sentencing guidelines must be argued by the judge and if the argument is not strong enough then he or she can be called to account for that.

Furthermore, the court can issue sentencing guidelines and the same goes for standard parole periods. But if the Parliament is of the view that the court guidelines are too lenient, for example, then it is within the power of Parliament to mandate guidelines and overrule court guidelines. With that general framework, we believe adequate guidance to judges can be given with flexibility for judges to apply appropriate sentencing in individual cases and to be held accountable for the decision or the judgement made by the judge.

CHAIR: You referred to the continued use of standard non-parole periods as a good idea given that it gives them flexibility.

Dr PHILLIPS: Yes.

CHAIR: What if I was to inform you that the standard non-parole punishment for the offence of section 66A, which is child sexual assault under 10, carries a standard non-parole period of 15 years and a maximum of 25 years but the median sentence after the case of Muldrock is at best eight years? It only gets halfway. Do you still consider it a good idea and is the standard non-parole period still relevant and effective?

Dr PHILLIPS: I am not familiar with the Muldrock case. I would need to take that as a question on notice if you want further information on that.

CHAIR: It was a High Court decision to give some guidance to judges as to how they should sentence.

Dr PHILLIPS: My understanding is that the High Court has upheld the right of Parliament to determine what is appropriate. If courts are applying something that the Parliament considers to be too lenient my understanding is the High Court has upheld the right of Parliament as the appropriate vehicle to determine policy in relation to criminal proceedings against offenders.

CHAIR: My point is more that Muldrock is how we got to eight years; there was a lesser figure prior to that High Court judgement. My question relates to the fact that continued application of standard non-parole periods for these offences are a good idea in your words because of the flexibility, yet since Muldrock they are only reaching half of the standard non-parole period. How are they a good idea if they are not meeting the standard non-parole period and, hence, the community expectation?

Dr PHILLIPS: If that is not meeting community expectations I would presume the Parliament can override that and legislate to increase the standard non-parole period.

CHAIR: I understand our role and our opportunities but your evidence was that it was a good idea to maintain them because they give flexibility.

Dr PHILLIPS: Yes.

CHAIR: Can you explain why they are a good idea given the information I have just provided to you? Is there more to it than that?

Dr PHILLIPS: I will take that question on notice.

Mr MITCHELL: It should be said that on face value the medium of eight years does seem low for the gravity of the offence—I take your point. We would like to think more about that but on the face of what you have said, yes, that seems low for the gravity of the offence.

Reverend the Hon. FRED NILE: The whole debate about mandatory minimum sentences has only arisen because of the perception that the penalties have been so low, using the phrase "a slap on the wrist", and as a result of community demand. Do you feel that community demand should be met for at least a trial period?

Dr PHILLIPS: We believe there are three important factors to be taken into account. The victim needs to feel that justice has been done so there needs to be an adequate penalty. We believe the role of the criminal justice system does involve punishment, not purely medical treatment or care. Punishment must be an element of the system. It must be seen publicly to be an adequate punishment for the kind of offence and child sexual abuse is a very serious offence. I think the public views it as a serious offence but it has been sensationalised and the term "child sex abuse" is used to cover the full gamut, from inappropriate touching of a clothed child through to genital penetration. There needs to be greater clarity in individual cases in explaining the individual nature of the offence. Justice must be seen to be done but that should be done in the context of still retaining judicial flexibility in determining the individual sentences in a particular case.

Reverend the Hon. FRED NILE: But you can understand where the demand has arisen in the community for minimum mandatory sentences? It is not a politician's idea; it is really public demand.

Dr PHILLIPS: I think the answer is to consider the sentencing guidelines and if, in the view of Parliament, the sentencing guidelines are currently too lenient Parliament needs to intervene in response to the public. The public needs to know what the sentencing guidelines are and if the sentencing guidelines are currently too lenient then Parliament should intervene, but we maintain the judicial flexibility in determining the actual sentence in an individual case should be retained.

Mr MITCHELL: You are right, society views offences against children as very, very serious and I can understand why there might be a call within the community for minimum mandatory sentences and a reasonable response in the circumstances. Perhaps that is something that should be looked at further.

CHAIR: I think "abhorrent" more than "very serious".

Mr MITCHELL: Yes, indeed.

Mr PAUL LYNCH: You make some interesting comments about wanting to avoid medicalisation of these issues and regard them as a moral issue and then you tied that to informed consent. Just so that I understand what you are saying, your argument is that if there is informed consent there is some personal recognition or personal acceptance of responsibility by the offender?

Dr PHILLIPS: Yes, that is right.

Mr PAUL LYNCH: The other thing I was interested in exploring is that you talked about compensation for victims. Do you have a sense of whether the compensation structure in New South Wales is adequate or do you have other alternative structures of compensation?

Dr PHILLIPS: I am not familiar with the details of the New South Wales arrangements. We are saying that the idea of restitution is a good idea and it may well be that this could be developed further. The idea

of restitution has not historically been a strong element of the Australian criminal system and it is something that needs more careful attention.

Mr MITCHELL: Our recommendation 4 covers that. We are interested in the Victims Rights and Support Act 2013 and how that will actually play out. This could be a good remedy.

CHAIR: The Australian and New Zealand Association for the Treatment of Sexual Abuse in its submission indicated that it was important to educate the public about child sexual offenders. Do you think the public is sufficiently informed of the range of factors that are taken into account when sentencing decisions are made in relation to child sexual assault cases?

Dr PHILLIPS: The difficulty with the media is sensationalising and, in almost everything, in order to sell newspapers they have to escalate the situation, whatever it is. The danger is that this will be sensationalised, so somehow within that there needs to be an endeavour to communicate accurate information as to the different kinds of abuse. We heard from the previous witnesses the difference between intrafamilial abuse and predatory extrafamilial abuse and the prognoses for offenders is very different. There needs to be conveyed to the public the different kinds of perpetrators and the different kinds of abuse. It does involve conveying a degree of detail and subtlety which the media is not always good at but that is the political role to convey adequate, accurate information.

CHAIR: Is a victim of either of those categories any different? Should they be treated any differently? If you are a child under five and an offender has sexual intercourse with you, whether they be a family member, a non-family member, a paedophile or whatever scientific category, does it change for the victim?

Dr PHILLIPS: The submission from the Director of Public Prosecutions indicates that there are a wide range of factors to be taken into account to determine the severity of the crime—the age of the victim, the degree of coercion. A number of factors will determine the severity of the crime. All of those need to be taken into account because crimes vary in their severity and the degree of impact on the victim varies; that all needs to be considered and considered in the sentencing.

Mr MITCHELL: The short answer, Mr Chairman, is plainly no. There should be no difference from the point of view of the victim. I think that is just common sense.

CHAIR: Is there less difference if the child is younger—the younger the victim the less difference or does it change as they get older?

Mr MITCHELL: There may be degrees of difference but I do not think they are significant. You rightly put the focus on the victim. It makes little difference to the victim. Age is a factor but principally the victim is the victim.

The Hon. MELINDA PAVEY: The Australian and New Zealand Association for the Treatment of Sexual Abuse in its submission and evidence is very much of the view that offenders should be encouraged to plead guilty at an early stage through the use of incentives. Do you think that is an appropriate process?

Dr PHILLIPS: The evidence seems to be that it is less traumatic for the victim to not have to go through interrogation of a trial so a plea of guilty is actually in the victim's interests and that can be negotiated in terms of different sentencing options. The option is often between a custodial sentence and a community supervision sentence. If the community supervision is sufficiently rigorous and sufficiently long, a question is: Can that be seen to meet public expectation? The public would need to see that a community supervision sentence is sufficiently constrained to meet public expectations. It may be a combination of a custodial sentence of a shorter duration plus supervision in the community.

The idea of a negotiated sentence option for a guilty plea in the interests of the victim may be an option that the perpetrator wishes to take up and it also puts moral responsibility on the perpetrator to acknowledge that they have committed an offence which is a grievous offence and that they are endeavouring not to repeat that. Handled correctly, I think a negotiated plea of guilty is a good way forward.

Reverend the Hon. FRED NILE: We have heard some evidence that suggests that the victims themselves are very unhappy with that suggestion and often they are never consulted about reduction in sentences. Are you aware of that?

Dr PHILLIPS: It is important that victims are taken into consideration because the victim will want to feel that justice is done. So that needs to be taken into consideration. How that is done is a question of court procedure, I suppose, but it certainly does need to be taken into consideration. The victim must feel that justice has been done.

Reverend the Hon. FRED NILE: Is the victim involved, though, in that decision?

Dr PHILLIPS: I am not sure what the current arrangement is but it would seem to me to be appropriate.

Reverend the Hon. FRED NILE: I am asking you what you think should happen because it is not happening all the time now?

Dr PHILLIPS: I will take that as another question on notice.

Reverend the Hon. FRED NILE: You mentioned in your submission that the Cedar Cottage program has been phased out. Do you have any views on whether that should have been retained?

Dr PHILLIPS: The evidence tendered in one of the submissions—I think from Charles Sturt University—suggested that it was effective in reducing recidivism rates. I am not sure what the cost of that to the community is and I am not sure the reasons it was closed down but something which reduces recidivism rates seems, in principle, to be a good thing. Although the number of perpetrators who were accepted into that program, I think, was only 2.5 per cent of the total number of offenders, which is a very small number and they only accepted those who were assessed as low risk of recidivism. So it seems good in principle but whether it is justified in practice is a judgement that I think Parliament needs to make.

The Hon. HELEN WESTWOOD: Does your organisation have any role or experience in working with victims of child sexual assault or working with offenders?

Dr PHILLIPS: Our role is not a counselling role. We address things more at the policy level, the level of ethics, and we take expert advice from people who are involved in relevant fields in putting together our submission and in general terms. So, no, we are not involved hands on but we do consult with relevant experts.

The Hon. HELEN WESTWOOD: You talked about coming at this from an ethical perspective. In child sexual assault cases where there have been breaches of trust—particularly with what is coming out of the royal commission and the many incidents of members of the clergy who not only have pastoral care roles but are in a trusted position similar to that of fathers who sexually assault their daughters and sons as well—do you have a view about whether that should be taken into consideration in sentencing? Should that be reflected in the sentences these offenders receive?

Dr PHILLIPS: Can I clarify one element of the question, what in particular are you asking should be taken into account in the sentence?

The Hon. HELEN WESTWOOD: That they were in a position of trust and responsible for pastoral care.

Dr PHILLIPS: Yes.

The Hon. HELEN WESTWOOD: If so, how should that be reflected in sentencing?

Dr PHILLIPS: The Department of Public Prosecutions in their sentencing guidelines—I am not sure whether it is in the criminal code—states that the question of trust is an important matter in determining the grievousness of the offence and the moral culpability of the offender. One expects a higher level of responsibility from people in positions of trust and if they breach that trust then their culpability is greater and the offence is a more severe offence. A victim who has been abused by a person in a position of trust may result in the victim feeling a sense of betrayal that may be different to a situation where the perpetrator is not in a position of oversight. Those factors are important in determining the severity of the offence and sentence.

CHAIR: You are a Christian organisation?

Dr PHILLIPS: Yes.

CHAIR: Following on from the faith-based questions—I am not asking this in an adversarial way—are you familiar with the Gospel according to Matthew chapter 18?

Mr MITCHELL: Yes.

CHAIR: How do your policy settings as a faith-based organisation line up with that?

Dr PHILLIPS: Can you remind me?

CHAIR: I cannot quote it, but it states that anyone who offends against a child should have a stone wrapped around their neck and cast into the depths of the sea.

Mr PAUL LYNCH: Is that a sentencing option you are proposing?

CHAIR: No. I am asking a question because it is a faith-based organisation and they talk about policy settings. I am wondering how their faith-based policy settings line up with the Gospels.

Dr PHILLIPS: I will give an answer and then I will ask my colleague to comment. I see that statement as saying that offences against children are particularly serious and should be viewed as serious. I think they are in legislation. As a Christian organisation we would want to see that children who are in a more vulnerable position because of their reduced capacity to defend themselves verbally, or in other ways, deserve greater protection than adults. A sexual offence against an adult is a serious offence but a sexual offence against a child is breaching that level of vulnerability and I would see that as lining up with the greater care implied by the scripture you have quoted.

CHAIR: On that evidence you have given, are the current length and consistency of sentences reflective of the scripture?

Mr MITCHELL: Can I say as a Christian organisation we would not be advocating anything in a submission that we considered to be contrary to the Bible. That underpins what we do. When it comes to the particular passage you have referred to it depends on interpretation, as a lot of things do in the Bible. Our position would be that in those particular teachings there is exaggeration used for impact on the audience at the time. They are not necessarily to be taken literally: the lesson is there but not literalness. A similar teaching would be hate your mother and your father. Are we really expected to hate our family? No. It is a point that we should not let family relations impact on our religious beliefs to the point that we abandon our beliefs. It is a matter of exaggeration for impact. The truth is there in Matthew 18.

Ms MELANIE GIBBONS: One of the things that this Committee is looking at is whether or not the sentences are too lenient or whether it is that perceived leniency from the community. You have mentioned earlier that it is up to Parliament to better communicate the sentences and to inform the community on how they are formed. Do you have any other recommendations on how best to explain to the community how sentences are formed or why those sentences are handed down? It is a pretty open question but it is an easy one to say the politicians should have the answers and that is why the Committee is here, to find the answers. Do you have any suggestions from your organisation?

Dr PHILLIPS: That is a hard question. We are addressing it at an ethical or moral level of what are the right principles to be applied and whether those principles are understood by the community or conveyed by ministers responsible is a separate question entirely. Given the Reverend the Hon. Fred Nile's comment that there is angst in the community that the current sentences are too lenient there are two answers: Either they are too lenient and need to be tightened and Parliament needs to act in that way; or the appropriateness of the current sentencing is being inadequately conveyed to the public and in that case the Minister responsible has a responsibility to get out and talk to the media and convey the message that we have talked about earlier.

Mr MITCHELL: You are completely right in saying that it is a hard thing to communicate and it is almost unavoidable that it will be communicated through the media. People get most of their information from the media, very few will go and do an internet search to find out how sentencing works. The only suggestion I can make is to, as best we can within the confines of law—we know the law is complex—have very plain and

simple sentencing and very clear penalties so that the community has confidence that the Government, courts and law take the matter seriously and there are penalties that will apply. Those children will be protected, in other words. Children will be protected.

Dr PHILLIPS: I will make an additional comment on the role of the media. If one goes back roughly 40 years to the 1970s, I remember a colleague giving me a copy of a book titled *Incest*, written by a German and translated, presenting a view of toleration of incest as a victimless crime and society should be more open to tolerating incestuous relationships. On the ABC there was a *Lateline* program in the 1970s where toleration of pederasty was promulgated by your ABC tolerating homosexual interaction with underage boys. The media 40 years ago was conveying toleration of that kind of sexual abuse. Now the media has swung in the opposite direction and is portraying sexual abuse as a horrendous crime, which it is.

The other thing is that we live in a very complex society. Melinda Tankard Reist has pointed out the sexualisation of girls through dolls and clothing portraying pubescent girls in their early teens as being sexually available. Anyone who takes up what the media is conveying and abuses a child that is being portrayed as sexually available has committed a serious offence. Likewise, we have almost unmitigated pornography available through the internet. It provides a message to the community. Promiscuity, homosexuality and child pornography is available on the internet.

We have made submissions to the Federal Government for internet service provider [ISP] filtering to limit the availability of child pornography on the internet. It fell on deaf ears with the previous Labor Government and with the current Government. There are a lot of messages conveyed by the media which are enormously unhelpful conveying sexual behaviour. We have sexualised our culture. There are increasing reports of schoolchildren abusing other schoolchildren because they have seen pornography and they want to do what adults do. Given the overwhelming sexualisation of our culture the difficulty for parliamentarians to convey the message we have been talking about is doubly difficult. Outside the terms of reference of this Committee it raises the question: Should not parliaments be doing something about the overall sexualisation of society? I think there are steps that parliaments can take in order to address that problem.

Reverend the Hon. FRED NILE: You commented earlier about the need for trust. What is your reaction to the revelations from the royal commission into child sexual abuse dealing with a number of religious institutions, such as the Salvation Army and Catholic Church, where child abuse has been going on to a large extent?

Dr PHILLIPS: That is completely unacceptable and the royal commission should expose the abuse by Christian agencies in the past. The messages promulgated in the 1970s that some of this stuff was acceptable, some of the leaders in the church were swallowing it in the 1970s and acting it out in the 1980s, but that does not make it justifiable. The other question is the degree of sexual abuse that has occurred in State institutions and the question of the degree of abuse that is occurring right now today. We have more children in residential care—I cannot think of the term.

CHAIR: Emergency care?

Dr PHILLIPS: Foster care. The number of children in foster care today has doubled or trebled; it has hugely increased. There are anecdotal reports of high levels of abuse occurring today in foster care. Will that be addressed by the royal commission? I am not sure if it will. I think it is very important that we see that the behaviour of society today needs to be held to account just as strongly as the behaviour of institutions in the past.

CHAIR: Thank you for your time. Is there anything you would like to say in conclusion?

Dr PHILLIPS: I will summarise by saying that we see child sex abuse as being a serious crime. It does vary enormously in severity and we think that there should be judicial discretion, but within guidelines of sentencing and nonparole periods that are set by courts or if necessary imposed by parliaments. Alternative modes of treatment can be considered with the consent of the offender and we would hope that Parliament would address some of the deficiencies of the present situation and ensure that justice is seen to be done.

CHAIR: On behalf of the Committee I thank you both for your evidence today and assistance to the Committee.

(The witnesses withdrew)

ADAM WASHBOURNE, President, Fighters Against Child Abuse Australia, sworn and examined:

CHAIR: Thank you for attending this second public hearing of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. These public hearings are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday the Committee heard from a range of experts who primarily provided technical information and advice concerning the administration and implementation of the law. Today's hearing provides an opportunity to take evidence from witnesses representing the therapeutic community and from those who advocate and speak on behalf of the victims of child sexual assault. The hearings will be followed by further private deliberations of the Committee before a report is prepared for the Parliament.

Mr Washbourne, I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I should also point out that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today the Committee may wish to ask you additional questions in writing. Are you prepared to provide answers to those questions to be considered and contained within your evidence to the Committee?

Mr WASHBOURNE: Yes, I am.

CHAIR: Before we commence questions would you like to make any opening remarks?

Mr WASHBOURNE: I would like to tell the Committee a bit about who Fighters Against Child Abuse Australia are. We are a relatively young organisation—we are not even four years old. We have a number of campaigns but we have one simple goal: to end child abuse in Australia. Our main campaign is our social media awareness campaign—namely, we take to social media, Facebook, Twitter and the like to raise awareness of a subject that we feel is too often swept under the rug. We get the regular views of more than one-quarter of a million people a week on those campaigns. That is our main campaign and that was actually the main method of collection of our information. We just asked survivors to come forward so that we could make our submission and the main three points that they came forward with are in our submission.

Survivors out there really feel that justice is not being done. I don't know if the Committee knows this but as little as one in 10 people who are actually abused will seek justice. With that statistic in mind, we believe that if justice was perceived as being done, as in sentences were matching the crimes, we believe that number would rise quite significantly; we would see a lot more people coming forward and actually seeking justice. The main thing that survivors really got angry with was this constant guilty plea that child abusers were taking and getting a 25 per cent reduction in their sentences. We understand that guilty pleas are needed in a legal system; however, we do not believe they should apply to child sexual assault.

The impact of the breach of trust on the child and the actual process to seek justice is quite traumatic enough but then to be rung up—most people are rung by the Director of Public Prosecutions [DPP] and told, "They have just pleaded guilty and they are going to get a 25 per cent reduction" in what amounts to not much anyway. They considered that to be a slap in the fact almost. A lot of people were saying, "Don't bother seeking justice because they will just plead guilty and walk anyway." That is if it gets to that stage in the beginning because a lot of cases were not being accepted. A lot of people were being told, "Look, it is your word against their word, there is no way this is going to go through." That is also quite debilitating for the children and for the survivors as a whole.

Fighters Against Child Abuse Australia [FACCA] mainly speaks for the survivors, we do not really speak to medical possibilities for sentencing. We are the voice of the survivors that have come to us. The other thing that they really quite strongly wanted was a Megan's law-style campaign where there is a child sex offender register. We do not want it publicly searchable—for example, we do not want me to be able to search child sex offenders in Ipswich because we do not really see what benefit that has. Why would I be searching for that? However, if my son was to go to a new martial arts school, for example, and there were a couple of people there who did not have Working With Children Checks—it is not actually legally mandated that they do so—I would like to be able to search their names and say, "They are in Liverpool, I am in Liverpool. Can I search their names? This person is on the sex offender register. I am not taking my son to that particular gym." Those are the main recommendations that the survivors of child abuse that we spoke to came up with.

CHAIR: In your submission you highlight what you consider to be shortcomings and you also spoke to them in your opening remarks. You also spoke about the strengthening of sentencing options as a deterrent to discourage offenders. In what way do you think stricter sentences act as a deterrent?

Mr WASHBOURNE: We did a bit of study into the law and we found some really strange facts. One of them was the fact that if I walked into a store and stole $200 worth of goods I would get a much harsher sentence than I would if I walked in and sexually assaulted a child in that store. That is unfathomable to us; we could not work out why that was happening. A lot of the survivors of child sexual assault were saying that when they did seek justice and they got it then the sentences would be something like a suspended sentence most of the time. I do not know if the average is a suspended sentence but honestly I cannot see how anyone could think that if they got caught abusing a child they were not going to go to prison and if they were going to go to prison it would not be for a long time.

We recommend that that should be quite strengthened and made harsher mainly because of the fact that the sentencing guidelines—not the guidelines, the way that judges are handing down sentences is almost considered a joke amongst the community. I know for a fact that a lot of the survivors consider it a joke so I cannot imagine that the criminals committing the crime could see it as anything but. If they were made significantly harsher or strengthened then hopefully it would act as a deterrent because they would think, "Hang on, I am not looking at a slap on the wrist; I am not looking at a suspended sentence here. I might actually be behind bars for 15 years", which is probably the recommendation.

I do not like to speak as a criminal but if you were to think of it from the point of view of a criminal, would you want to commit a crime knowing full well that you were going to go behind bars for quite a significant term of incarceration if you were caught? They have strengthened a lot of crimes lately—for example, the Queensland VLAD laws or the anti-bike laws. I know a lot of bikers who have put down their patches because they just do not want to go to prison. It is just that simple. We believe that strengthening the sentences and making them harsher would act as a very big deterrent to someone who is going, "This seems like a good idea".

CHAIR: Do you know what the sentence for sexual intercourse with a child under 10 is?

Mr WASHBOURNE: I know that the average is about six to eight years.

CHAIR: It is 15 years standard non-parole and 25 years.

Mr WASHBOURNE: Yes.

CHAIR: We are not reaching that. Do you have any ideas about what we as a Committee can do to reach the expectation of what is already in the Parliament and which you obviously support?

Mr WASHBOURNE: Absolutely. When we did our research—no offence—we were quite shocked to find that the Parliament did its job. The average sentence is six to eight years. The Parliament has done its job and put in these guidelines that say minimum 15 years but it is not happening. So for us we would probably want the judges to be held accountable. Who is making these light sentences and not doing their job? At the end of the day the justice system is there to serve the people and, essentially, to implore people to not want to commit crimes. If the recommendation of 15 to 25 years is tendered and they are getting six to eight years someone is not doing their job, and as far as we are concerned it is the judges who are handing down the sentences.

People have been found guilty—we have had quite a few survivors come to us and tell us their stories. One of the survivors who came to us was a victim of what was called the worse child abuse case in Australian law history—it was up in Queensland and his abusers were found guilty and received suspended sentences. That does not make sense in our heads. When we found out that the State governments had done their jobs and put down pretty significant sentencing recommendations—I mean 15 to 25 years is a decent stint; very few prisoners will ever see that sort of sentence handed down—there is a failing in the system somewhere. We believe it is in the sentencing and we believe it is the ability to plead guilty and get a 25 per cent reduction. We feel that child sexual assault is not considered to be that harsh a crime in the eyes of the justice system. The sentences are good, 15 to 25 years is a harsh sentence, but perhaps it is in the minds of the judges. I do not really know where the fault lies but in sentencing it is just not coming down.

Mr PAUL LYNCH: You said your submission is based on internet responses from survivors around Australia.

Mr WASHBOURNE: Internet, voice, face-to-face interviews—we conducted more than 100 interviews.

Mr PAUL LYNCH: In very rough terms how many of those were from New South Wales and how many outside New South Wales?

Mr WASHBOURNE: Because we are in Sydney most of our face-to-face interviews were conducted in New South Wales. About 80 per cent were in New South Wales and the remaining 20 per cent I did over Skype and over the phone with some of—I guess you could call them—the more shocking cases from the other States. About 6 per cent to 10 per cent were from Tasmania and the remainder were from Queensland.

Mr PAUL LYNCH: I turn now to your point about getting a discount for pleading guilty. Were the survivors you talked to relaxed about giving evidence in open court? Did they see a benefit in not having to describe in open court what they had gone through?

Mr WASHBOURNE: The court process can be traumatic but you have to understand for a survivor to seek justice they have to get to a point in their healing where they have overcome the trauma and the pain and they want justice. A lot of people can perceive this as an angry person who is out for vengeance but it is not that: they are out for justice. The main reason for survivors to seek justice, especially knowing the court system as it stands, is to stop other kids from being hurt as they were by their abuser.

It is well known amongst survivors that abusers very rarely stop at one person, they have multiple victims. So their main goal is to seek justice and, hopefully, remove that person from society so they cannot harm another in the way they were hurt, if that makes sense. So in seeking that justice it is quite a difficult process for them to go through and they get almost toughened by the thought of getting justice. They will quite often go to the courtroom ready, knowing what they are going to face. Cross-examination can be a bit harsh. Cross-examination by the defence is quite another issue that came up. Often, especially for children, the way that a defence barrister can destroy a child on the stand is quite harsh, but I guess that is their job. They do not really mind going to court, particularly adult survivors, because they feel like it is an empowerment. Like they are doing their part to give back, I guess, is the best way to put it.

Mr PAUL LYNCH: By the sounds of it, the survivors you dealt with largely have been adults?

Mr WASHBOURNE: We run the gambit. Personally, I counsel people from the age of six, who is my youngest client, all the way through to a 54-year-old man I counsel pretty regularly. Essentially, you could say the ones that gave us part of the submission, made up the submission, were young teenagers to early adults.

The Hon. MELINDA PAVEY: Of the 100 or so people you have interviewed, your submission states that 70 per cent to 90 per cent of sexual assault is done by people known to the victim?

Mr WASHBOURNE: Yes.

The Hon. MELINDA PAVEY: Does that reflect the interviews?

Mr WASHBOURNE: Yes.

The Hon. MELINDA PAVEY: Around 70 per cent to 90 per cent?

Mr WASHBOURNE: Yes. The interviews we conducted reflected those stats quite accurately.

The Hon. MELINDA PAVEY: In talking about the 25 per cent cut in time served for a guilty plea, in any of those interviews was there any acknowledgement that it actually was a good process in the sense that they did not have to go to court and that there was a recognition by the assaulter that they had done wrong? Did that actually help in any of those cases you interviewed?

Mr WASHBOURNE: I will answer that in two parts. The younger ones did find it particularly easier. However, I got the impression that that was more of the parents that would have had to endure it again. The younger ones did find the guilty plea to be quite helpful. However, I cannot think of anyone off the top of my head who thought it was an admission of guilt. They all saw it as a way out of getting the maximum sentence because quite often the main problem we saw was not the fact that they were pleading guilty, but the fact they were pleading down their charges in exchange for a guilty plea. That kind of took away the whole ownership of their crime, if that makes sense.

In quite a few of the cases we heard child rape was pled down to assault, for example. Now, if I assaulted you, I could have slapped you on the face, but if I raped you, obviously there is a lot bigger connotation involved with that. They are not the same. They are not even slightly the same offence as far as we are concerned, yet the DPP is pleading people down from heinous rape charges all the way down to common assault. To us that is not really an admission of guilt or an ownership of their crime. That is more of "I'm done. How can I get out of this?", if that makes sense.

The Hon. MELINDA PAVEY: Did any of your interviews take place with victims where justice was provided through the Cedar Cottage program?

Mr WASHBOURNE: I have not heard those words mentioned, no.

The Hon. MELINDA PAVEY: Cedar Cottage?

Mr WASHBOURNE: No, sorry.

The Hon. MELINDA PAVEY: It was a different style of rehabilitation for family sexual assaults. I just wondered whether you had any interviews with those people?

Mr WASHBOURNE: No, I have not had any association with that.

Reverend the Hon. FRED NILE: I am interested in your recommendation for a publicly accessible and searchable child sexual assault register—Megan's law style. Could you explain that in more detail? Have you any research that can prove it would operate locally and that once set up would not be accessible across Australia through anyone's computer knowledge?

Mr WASHBOURNE: Yes. The technical point of it in terms of the local operation would be an ISP-based search. For example, if I was to log on to my phone now and search for Wilson car parks, the GPS in my phone would say that I am at State Parliament House and there is one 1.2 kilometres this way and there is one 1.8 kilometres that way, that sort of thing. They get that through the ISP telling them where I am, essentially. When I log on at home, it logs on from Liverpool. There are technologies everywhere. You can see it when you log on to Facebook and put a post on Facebook, it says from Casula. Our recommendations would just be an ISP-based search. Basically, you would say, "Okay, I'm in Liverpool local offenders" and it would have a radius limit on how far you could actually search. It definitely would not be able to cross State lines, for example. That is the technical component. The technology is there already. It is quite easy to utilise.

As I said, the main weapon of the child abuser that we found through our research is anonymity. Child abusers and predators are incredible manipulators. They can seem like the best person on the planet to the child and the parents. Parents themselves often end up being groomed by these predators in a very manipulative and deliberate way. We believe that the child sexual assault register would help stop that because, as I said, at the moment there are no safeguards in place for kids going into, say, martial arts programs, gymnastics programs, dance programs and that sort of thing. There was a big case mid last year where a dance instructor who had several arrests on his record for child sexual assault moved from one location to another, and it was literally a suburb away, opened up a new school and had in the vicinity of 60 kids almost instantly because dance schools are very popular at the moment and just went on abusing again and again. If he was on the child sexual assault register, one of the parents could go, "Okay" bring his name up, "Oh, wait, that's his face. Sorry, not going to send my child there." We believe it is just another weapon to help stop child abuse.

Reverend the Hon. FRED NILE: How would you handle the criticism that it could lead to vigilante action where somebody who is very angry about this whole issue goes after that person?

Mr WASHBOURNE: Vigilantism in Australia? I do not think it will happen. In the US they have campaigns going now. In some counties they even put signs, big red signs the size of for sale signs, out the front of houses, "This person is a registered child sex offender" and they have not had any issues with vigilante "justice". I like to think that Australia is a little more evolved than the US. We have much better gun control for starters; our murder rates are much, much lower than the US. To date I have not found anything that supports vigilantism in the Megan's law States. Certain States in America have taken away the Megan's law campaign, but I understand that was just because of costing. But the Australian version, the one we propose in conjunction with Bravehearts, was a very easy-to-run one. It relies on judges handing down—once again we are back to the judges—the appropriate sentence and making sure that it is mandated that that person submits to the database and things like that. We believe it would be a great weapon.

Reverend the Hon. FRED NILE: Have you had a chance to look at the WA system that has just been brought in?

Mr WASHBOURNE: I have had a chance.

Reverend the Hon. FRED NILE: Do you support that?

Mr WASHBOURNE: I find the WA system is fantastic. The Queensland system is similar. The Queensland system has a few more loopholes to allow them to get off the register, such as if they can prove that it is going to affect their financial status or their ability to earn an income, they can get off the register. That is quite concerning because I know that there are three martial arts instructors in Queensland who all have been found guilty of child sexual assault and who all have been taken off the register because they said their ability to make a living depends on that. I would probably want those loopholes closed. But the WA one is very good. There is picture recognition, last-known address and that sort of thing. It is not complete, having said that, because there is a big gap in those who actually report. I do not think it is mandatory for them to report to the database to be put on it. I think it is a bonus as part of their plea deal. I think that they can have the option to report, which the courts look well upon and then will give them a little reduction in their sentence. But having said that, it is a great start. Any weapon that helps end child sexual assault in our eyes is a great start.

The Hon. HELEN WESTWOOD: I find your submission and result of your survey of victims are not completely consistent with the evidence we have received today. I would like to know more about your survey. Could you tell me how you found respondents? How did you make contact with them or how they made contact with you? Could you tell me also the age range of those respondents and when you were interviewing them, perhaps in respect to the time of the abuse incident or incidents?

Mr WASHBOURNE: Okay, yes. As I said, we run a social media awareness campaign that has a quarter of a million hits every week. Basically, we just put up a post, as we do every single night, on our campaign and we just said, "We've been asked by the Committee to put a submission forward. If anyone wants their voice heard and to be part of the FACAA submission, please let us know. We've got a series of questions that we'll ask you." It was just that simple. We had a huge response. Basically, we said, "Okay, the ones we can get to we will", and those were the hundred I eventually ended up going through. Obviously, with time being a mitigating factor—the time to actually make the submission was running out—we could not really get to everyone who wanted to speak. But we asked them for their key points and what they would like to see. Then we did the interviews, which were much more in depth asking them about their abuse and their search for justice and that sort of thing.

The Hon. HELEN WESTWOOD: Is it possible for the Committee to have a copy of the questionnaire that was part of the survey?

Mr WASHBOURNE: I could get that to you, yes, absolutely.

The Hon. HELEN WESTWOOD: And the age profile, or even just the profile of your respondents, gender and age, would be wonderful.

Mr WASHBOURNE: We also have a few people counselling for us on Fighters Against Child Abuse. They do it online over Skype or chat, whichever the client prefers. The youngest respondent was six and the eldest respondent was 54, the guy I counsel.

The Hon. HELEN WESTWOOD: Can you give us a breakdown of the gender?

Mr WASHBOURNE: The gender breakdown was about 65:35 female to male.

The Hon. HELEN WESTWOOD: You had counsellors to refer those people to or do you have counsellors who work with these victims?

Mr WASHBOURNE: These were people who were already in our programs in one form or another. One of our programs is called our Phoenix Lotus program, which, essentially, takes survivors and helps them heal through various means. We have martial arts sponsorship, counselling, psychiatry, full mental health care on offer. Everyone who came to us and actually did the interview was already within FACAA's programs. So when they came to us, I guess we already had a pre-established relationship, you could say. They already knew who we were. We found that they were very much at ease with us and were quite free to talk because, as I said, we were already in a helping relationship.

The Hon. HELEN WESTWOOD: By the sounds of it, FACAA is also a service provider?

Mr WASHBOURNE: Yes, 100 per cent.

The Hon. HELEN WESTWOOD: Do you provide clinical services to victims of child sexual assault?

Mr WASHBOURNE: Essentially we provide anything that they need. We give them any help that we can. We have child psychologists, psychiatrists and several counsellors who work with us. We have mentors. We have professional athletes who take children under their wing and help to build up their confidence. We have a whole gamut of services available for survivors. We even have a drum and bass class in one area. Our services are based around pretty much whatever we can find locally available, because it is not a centralised problem obviously. So if we can find a way to help them in their local area then we do.

The Hon. HELEN WESTWOOD: How do you fund your services? Do people pay a fee?

Mr WASHBOURNE: A lot of it is volunteer-based. At least 90 per cent of our services are volunteer-based. Most of the martial arts instructors, psychologists, counsellors, teachers and mentors volunteer their services. It is fantastic. We do have private funding for the things that we have to fund. We have some great sponsors who have come on board and really help us out. We also fundraise by selling T-shirts, patches and that sort of thing.

The Hon. HELEN WESTWOOD: Do have clinical supervision of your clinicians?

Mr WASHBOURNE: All of our clinicians are members of the psychiatric board. For example, to be a Fighters Against Child Abuse Australia [FACAA] counsellor you have to be a registered practising counsellor; you cannot just be someone off the street. I supervise our mentors myself—that is, the athletes who take kids on. Everyone has to submit to a voluntary working with children check or blue card, depending on the State. Everyone has to submit to a voluntary background check. If they are not the right type of person then we do not take them on. We consider the kids and the adults we help to be the most vulnerable out there so we are very strict and stringent on who we accept to offer help. We have been able to build a great team of people who want to help out, mostly on a voluntary basis.

Ms MELANIE GIBBONS: Thank you for sharing the research you put together, particularly about the 25 cent discount for pleading guilty. That is something which has not come forward until now. With what you found, I do not know whether mitigating factors have been mentioned along the way. Do you think they should be taken into account—that is, whether somebody was a victim themselves as a child?

Mr WASHBOURNE: Essentially the opinion we formed, and the opinion of the survivors who we spoke to, is: knowing the hell this abuse is, how could you inflict that upon someone else? That was the main feedback we got, literally word for word, from the survivors. They said, "We know the hell that this abuse is so how could anyone want to inflict that upon anyone else". One of the questions which we asked, and I will submit a copy of those questions later, was: do you feel the fact that they were abused should be taken into account during sentencing? They just said no; it was a flat no.

People have their own healing journey. There is a case I am helping to deal with at the moment where the children were brought up in what can only be described as a hellishly incestuous environment. That is all

they knew. As I mentioned, one of our programs is martial arts. I teach martial arts and I get to actually see first-hand some of our kids. We have kids who manifest their abuse in their behaviours. They will do things in the change rooms, for example, because, essentially, it is the only thing they know. They are told it is wrong and they should not do that, et cetera. They get in trouble for it. To get to adulthood and then do it to someone else when you know it is wrong means that you are making a choice. That is what the survivors kept saying. No-one is forced to be an abuser; it is a choice they make. Whether or not the perpetrator had been abused did not matter to the survivors we spoke to.

CHAIR: Mr Washbourne, I thank you on behalf of the Committee for the evidence you have given here today. It has been very helpful. I congratulate your organisation on the work you are doing and thank you for the continued support you offer to all those who seek out your services. We look forward to receiving that additional information from you. The secretariat will be in contact with you. Thank you very much.

(The witnesses withdrew)

(Luncheon adjournment)

GRAHAM DAVID BARGWANNA, Chief Executive, Scout Association of Australia, New South Wales Branch, Scouts Australia NSW, Level 1, Pod 3, 102 Bennelong Parkway, Sydney Olympic Park, sworn and examined:

CHAIR: Mr Bargwanna, thank you for attending the second public hearing of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. The public hearings held today and last Monday are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday the Committee heard from a range of expert witnesses who primarily provided technical information and advice regarding the administration and implementation of the law. Today's hearing is providing an opportunity to take evidence from witnesses representing the therapeutic community as well as those advocating and speaking on behalf of victims of child sexual assault.

The hearings will be followed by further private deliberations of the Committee before it prepares its report for Parliament. I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I point out also that any deliberate misleading of the Committee may constitute contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today, the Committee may wish to send some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Mr BARGWANNA: Very happy.

CHAIR: Do you want to make an opening statement?

Mr BARGWANNA: Yes, we have prepared a statement if I could read it. On behalf of Scouts Australia NSW, I thank the New South Wales Government and Committee members for this opportunity to contribute to the New South Wales parliamentary inquiry into the sentencing of child sexual assault offenders. We note that members of the Committee represent diverse communities from western New South Wales to the coast and inner-city Sydney. I am sure Committee members will have seen many of the 15,000 New South Wales Scouts youth members active in their communities and many other parts of the State. We are a family-based organisation. Scout groups have almost as many girls as boys, led by mums and dads across New South Wales and people such as the chairperson of our board, Holly Playford, who has joined me here today as a sign of the importance that we take to this matter.

It is particularly poignant that I speak to the Committee today. Yesterday marked what we believe is a sad moment for the New South Wales justice system. Convicted child sexual assault offender Steven Larkins, former head of the Hunter Aboriginal Children's Service, who was involved in scouting in the 1990s, was released from Long Bay jail after serving only 15 months in a reduced custodial sentence. The list of his convictions includes the aggravated assault of two minors, possession and production of child pornography and falsifying and misuse of child protection documentation. His custodial sentence only related to the production of child pornography and falsifying documents. Larkins did not serve a single day in prison for the assault of two young boys. By any measure, this case clearly demonstrates the deficiencies in the current sentencing practices and underscores the failure of these practices in the eyes of the victims and the wider community.

If the Committee is to be seen as genuinely concerned with alleviating the impact of sexual assault and abuse of children, a serious review of sentencing laws relating to child abuse offenders must be made with a specific focus on the way in which the judiciary use these laws in practice. In addition, Scouts wishes to call on this Committee to undertake this task with the intention of increasing the penalties. We are here today to testify to the frustration and level of helplessness we feel towards the sentencing of child sexual assault offenders. As a key group within the community we cannot stand by and let the current system disappoint and re-traumatise survivors and erode the remaining trust the community needs to have in the justice system on these issues. Scouts, unfortunately, have borne witness to the failure of sentencing and the cumulative effect of community despondency in the justice system.

Scouts requested that the New South Wales Attorney General conduct a Crown case review in 2012 and appeal to the courts for custodial sentencing of Larkins in relation to his child assault convictions. We were gravely disappointed that no appeal was lodged by the New South Wales Crown and that a man who was convicted of aggravated sexual assault of children was not sentenced to a single day of prison time for those particular crimes. We believe penalties should reflect the severity of the crime and only a suitable examination of penalties for convicted child sexual assault offenders can ensure that this expectation is met. Scouts works closely with victims and have on a number of occasions been one of the first people the victim has reported their horrific experience to. This deep personal experience gives us real insight into how difficult it is for victims to make the report let alone commit to the process of following the report all the way through to the court system and sentencing.

Any case of child sexual assault is one too many. All Australian community groups must ensure that abusers are identified, prevented from having contact with children and immediately reported to the police. Imprisonment leaves no doubt that the crimes committed were serious. Imprisonment means that such a person must never be allowed to work with children again. Imprisonment also is an official recognition of the trauma caused to victims and the long-term impact on their lives. Scouts have worked hard to develop a culture of reporting and have procedures to report to authorities and provide support to any potential victims. We strive to be vigilant in identifying and eradicating child abuse. Scouts have zero tolerance for abuse of any kind—physical, verbal, emotional or sexual.

The safety and wellbeing of the 15,000 boys, girls, young women and men who are members of Scouts in New South Wales is our number one priority. If any such concerns or allegations are made we deal with them by directly reporting such allegations to the police and suspending any leaders in respect of whom such allegations are made. Scouts work closely with the NSW Office of Children's Guardian to ensure all requirements of the Working With Children Check are met. For decades, as far back as the 1950s, Scouts have required leaders to satisfy police checks. Leaders also undertake a suitability interview by a local community committee and referees must also be provided.

Scouts in our community expect a much stronger and clearer signal from the courts that child abuse is at the most serious end of criminal activity. The sentence should provide the survivor's confidence that their trauma and long-lasting impact has been taken into account by the court, most importantly for the survivors who have been so courageous in coming forward, and also for their families, friends, police and supporters whose tremendous efforts are involved during a case, and so we look to you for leadership on this issue.

The Hon. MELINDA PAVEY: In your submission you refer to the Larkins' case and about your disappointment that he received a non-custodial sentence?

Mr BARGWANNA: Correct, for the aggravated indecent assault charges.

The Hon. MELINDA PAVEY: That is one example that involved the Scouts movement. How many others have there been where you have had the same level of disappointment? I want to get an idea of the number of people within your organisation who have been affected by sexual assault and whether their experience with the justice system was appropriate? Was it all bad?

Mr BARGWANNA: We have had a handful of cases over the years. I have been with the Scouts for 11 years.

The Hon. MELINDA PAVEY: A handful? Five?

Mr BARGWANNA: Yes, maybe five.

The Hon. MELINDA PAVEY: Is the Larkins case the worst one in terms of a sense of justice?

Mr BARGWANNA: Yes, that is correct.

The Hon. MELINDA PAVEY: What about the other four?

Mr BARGWANNA: The other four? In some respects there is a feeling that the sentence is never enough but we were talking years for some of the other ones. We were not impacted by the victims or by our membership or ourselves in leadership to the degree that we were with the Larkins matter. It was a more recent and very much before-our-face account, especially given it was the focus of the first hearing in the royal commission as well for which they have just handed down their report. The Larkins example is the one that we wanted really to bring today and through our submission because it has been reviewed extensively by the royal commission and was just so alarming to the point that we felt we needed to seek a Crown case review with the Attorney General in September 2012, I think it was.

The Hon. MELINDA PAVEY: The Committee discussed post our last hearing this morning getting a sense from victims of their experience with the process. I would like an assessment from Scouts in relation to the four cases as to whether victims felt that justice had been served and they had been treated through the system in a way that was appropriate, given the horrifying nature of whatever happened. Can you help the Committee with that?

Mr BARGWANNA: Yes, I am happy to take that on notice and gather some information for the Committee. The thing that strikes us is the trauma involved in reporting and how long it can take victims to come forward. Following the Larkins case, that was a period of some 10 years for one of the victims. My predecessor went to a great deal of effort to encourage the person to go to the police and to accompany them to the police. It is evidently a very traumatic process to come to grips with, not only what has happened but also the idea of reporting and going through the process really of reliving it.

Really the guts of why we are here today is that if someone like Larkins gets a good behaviour bond for aggravated indecent assault of two boys it will not encourage victims of assault to come forward. That is the real message why we are here today. We have got a big job to constantly improve always child protection processes and this is one element of the jigsaw where we wanted to make a contribution and share our experience of the importance of sentencing that matches the crime or, at least, the comparative aspect of sentencing. Here we have Larkins imprisoned for 15 months for falsifying documents and possessing child pornography but he got a good behaviour bond for aggravated indecent assault.

CHAIR: Given that Scouts Australia is a national organisation with international affiliations, are you aware of any other jurisdiction either in this country or overseas that has a better sentencing regime or practices?

Mr BARGWANNA: We have not looked into that. We know that our South Australian branch of Scouts is a mandatory reporter under the child protection legislation there. So there are differences and we are aware of differences in sentencing laws. But that is something I can look into for you from our connections with Scouts branches around Australia and overseas.

Reverend the Hon. FRED NILE: A suggestion has come out of the royal commission that some individuals who have an interest in sexually abusing children deliberately join organisations such as the Scouts or become priests in the Catholic Church. Have you seen any evidence of that? In other words, people do not suddenly decide to abuse a child, there is something in their character?

Mr BARGWANNA: Yes, it is a very long-term process. It is a process that involves building the trust of young people and, typically, their families as well. We are aware of cases where men have befriended single mothers and abused the mothers' children. It is a process where trust is built through the position that the person holds in the community either as a Scout leader or someone in the surf life saving movement or in sports that carries with it a responsibility and a respect in the community. That is utilised by these people to build that network of trust.

Because it is so difficult for victims to come forward and report it, the abuse can be taking place over a long period of time. Often the people around that person are absolutely shocked. They had no idea. Some, in

fact, struggle to believe that the person has committed the crimes. I have seen a case of that. One of them pled guilty in court and there were people around that person who felt that he was forced to do that through the legal process. They just could not believe that he was guilty. That is how these people are able to manipulate those around them, the adults let alone the children themselves.

Reverend the Hon. FRED NILE: Because of the Larkins case, does your organisation support minimum mandatory penalties?

Mr BARGWANNA: For mandatory sentencing we would probably want to leave that to legal experts. What we would like to say is it has got to be comparative. It is about a message to the victims and a message to the community. If falsifying documents is worth a number of months in prison then the possession of child pornography must be much more than that and actual sexual assault must be much more than that again. That is the main point that we wanted to make. We are aware that sentencing is not necessarily something that changes behaviour. How long is a separate issue that needs to be considered? All we would want to say from a victim and community point of view is the importance of the comparative term.

The Hon. HELEN WESTWOOD: You raised a point about sentencing and what seems to be from Scouts Australia's perspective manifestly inadequate sentences for those crimes. We have heard in evidence today that some of that is because the crimes were committed when the maximum sentences were historically lower than they are today. Have you taken that into consideration when making your submission?

Mr BARGWANNA: Yes. We are also aware of the issue of the court or the jurisdiction that the matter is heard in, which was an issue with the Larkins matter as well. On both cases we would want to defer to longer sentencing for these types of crimes for the message that it sends to the victims that have come forward and other victims that are thinking about coming forward and, frankly, to keep these people away from children longer. A custodial sentence sends a very clear message that that person is not to be working with children again in the future. There are other systems, obviously, through the Working With Children Check and so forth but a sentence makes it very clear.

The Hon. HELEN WESTWOOD: We have received other evidence about sentence discounting on the basis of a plea of guilty. We have heard that a guilty plea alleviates the detrimental impact that going through a court process and retelling evidence in a court setting has on the victim. Has Scouts Australia considered that in reaching its position?

Mr BARGWANNA: Yes. There is some distastefulness about a reduced sentence for an administrative process but I agree with what you say about the impact that it can have on the victim to hear that the person has pled guilty. Again that is all well and good but if the end result is as we are getting, that is what is unsatisfactory. Perhaps reduced sentences have a place and we understand there are other factors of mental health and so forth. We are not aware in the Larkins case that there were any extenuating circumstances. We were surprised that not only was it a good behaviour bond, it was not even a higher sentence that could have been served concurrently. It did not even go that way. While he may have still spent the same amount of time in prison they could have sent a message to the victims that those two crimes of aggravated indecent assault carried a sentence that had weight. Reduced sentences have a place but at the end of the day we need longer sentences that reflect the severity of the crime and that are comparatively sensible.

The Hon. HELEN WESTWOOD: We have received evidence that in cases of familial child sexual assault the option of a non-custodial sentence for a perpetrator will limit the impact on the family because the offender does not have to leave the workforce and the family is not thrust into poverty or living on a much lower income. There are ramifications if the main breadwinner has to leave the family to serve a sentence and leave their job. You said you are a family-based organisation. I am assuming there probably are some families in your organisation that have been affected by familial sexual assault. Have you considered that in your submission?

Mr BARGWANNA: A case does not come to mind but our point would be that when dealing with the perpetrators the primary decision-making process must be from the point of view of the victim. I can understand if it is within the family and there is an impact on the victim then that may be a wise way forward.

Ms MELANIE GIBBONS: In your view are the Working With Children Check and police checks generally working well or should they be changed or improved in any way?

Mr BARGWANNA: For New South Wales we are going through quite a period of change, which looks really promising. We were disappointed that seemingly from a resourcing point of view the rollout of the new check was quite delayed. In fact, the schedule was for organisations like Scouts to have their volunteer leaders go through the Working With Children Check from April 2015 from an introduction in July 2013. But I am pleased to report that we are working closely with the Office of the Children's Guardian and have commenced an earlier rollout of that process just in the last few weeks. We are meeting with them in May. It is a huge administration task for them and for us but if we can roll that out sooner rather than later—we do like the system and what we have seen of it so far in terms of communicating back a yes or no answer for this person to work with children.

The police check process is separate and something that Scouts has been doing as early as the 1950s. You read the old policy books and there is comment about it being important for the reputation of the Scout movement. I think it was before the term "child protection" was ever thought of. That has been a commitment right through those decades. Even if it is a problem with drink-driving or more serious issues like assault or things like theft, the Scouts have always been attentive to understanding who is coming in to take up a voluntary but incredibly important position in the community.

Ms MELANIE GIBBONS: You mentioned that the Larkins case was 10 years ago. What can we do to improve victims' experience with the legal system either with sentencing or giving evidence? Has that come up in those cases you have mentioned?

Mr BARGWANNA: We have certainly seen it get better. I have looked at past cases. As late as the 1990s there was an example I read where a young person, a child, had come forward to share that he was being abused and you can see through the correspondence that his parents just wanted to shut it down and not say anything. I can see they were acting to protect their son. We know now that that is not the way to handle that. As soon as there is a suspicion or any type of allegation in this area it is: suspend the leader and straight to the police. The pendulum is certainly swung and that can be very damaging for a leader if they are innocent but that is the commitment to child protection and the lessons that we have taken.

I think it is a continual improvement process to create a culture of support to victims. I think now there is much more of an acceptance that this thing does actually happen, that it does actually happen from trusted individuals and so we are not so surprised. I think that gives confidence and courage to young people to come and report abuse. We have seen that in recent years. We have got to maintain that momentum. One of the reasons we are here today and putting in a submission is that the sentencing angle of that will encourage that culture of early reporting and knowing that it is worthwhile to report, it is important to report not only for what has happened but for the protection of other kids and to properly deal with a person who may even just be crossing professional boundaries. That is enough of a flag now to act quickly and decisively.

CHAIR: Do you have any thoughts on the incorporation of anti-androgenic medication as a potential sentencing option?

Mr BARGWANNA: We do not have a view on that. We would probably leave that to the experts. I am not aware of the evidence of whether that is an effective mechanism to prevent reoffending or to encourage not offending.

CHAIR: You said in your opening address that the sentences need to be longer and tougher. The sentence for intercourse with a child under 10 carries a standard non-parole period of 15 years and a maximum of 25 years. Larkins was convicted of aggravated indecent assault, is that right?

Mr BARGWANNA: That is right. I believe through the Local Court in which it was heard there was a maximum of a two-year sentence. I am not totally sure on that. That raises the issue of the jurisdiction in which it is heard.

CHAIR: It is more a jurisdictional issue than the sentence pertaining to the offence?

Mr BARGWANNA: It is both in terms of what sentence was handed out. But even in that situation it was a good behaviour bond as opposed to a custodial sentence.

CHAIR: What sentence would you have given Larkins?

Mr BARGWANNA: Something that was comparative to the current penalties. Whether they are adequate is something we would leave to others to sort through but obviously it would have to be longer than the 19 months he was sentenced to for falsifying documents and possessing child pornography and more in line with what the District Court hands out in penalties and that is why we called for the Crown case review, to have it heard in that jurisdiction.

CHAIR: You have said, "Leave it to the experts" on a number of the issues. Do you have a view about being tried and convicted by a jury of peers and peer sentencing options? Have you given that any consideration?

Mr BARGWANNA: We have been involved in cases involving both and we would prefer a jury approach to this type of crime.

CHAIR: I am talking about whether there is a place for a jury to be involved in the sentencing component?

Mr BARGWANNA: Certainly, yes.

CHAIR: Would you favour that or not favour that?

Mr BARGWANNA: We would favour that.

Reverend the Hon. FRED NILE: Returning to the Larkins affairs and forging a document relating to the Working With Children Check, which is a special protection in place for children, did that reveal some loophole in the Working With Children Check?

Mr BARGWANNA: Yes.

Reverend the Hon. FRED NILE: And was that rectified?

Mr BARGWANNA: It has been rectified, to my understanding, and it was a very big focus in the royal commission's first hearing that the Working With Children Check process was followed but the results of the check were sent to Larkins himself as the chief executive of the Hunter Aboriginal Children's Services as opposed to the people he was responsible to, the board of directors, so he was able to get that and keep it to himself.

Reverend the Hon. FRED NILE: So he did his own check?

Mr BARGWANNA: Yes.

Reverend the Hon. FRED NILE: So there has to be some instruction now to make it clear that the authority completing the document is someone independent of that individual?

Mr BARGWANNA: Correct.

Reverend the Hon. FRED NILE: Do you think that is now clear in the procedures?

Mr BARGWANNA: I think it is and I think all organisations, particularly those involved with working with children are so familiar with the Working With Children Check process that every person at every level is getting the check done. There is an earlier rollout now with the Office of the Children's Guardian at the highest levels of our organisation.

Reverend the Hon. FRED NILE: I was a bit surprised the other day. I had to do my own check because I am listed as a minister and I had to go to Roads and Maritime Services to get the final document.

Mr BARGWANNA: That is right.

Reverend the Hon. FRED NILE: Do you think Roads and Maritime Services [RMS] is a suitable place to give the final authority?

Mr BARGWANNA: They are just part of the administrative process where you turn up in person and bring your identification with you. They are just checking that aspect of the process. The information that is considered to give a Working With Children Check clearance is the important thing and where that is held and that it is contributed to by organisations like ourselves through the relevant employment proceeding process. If we have a concern or an investigation process about one of our members satisfying certain criteria, we will let the Office of the Children's Guardian know what happened there and they will store all this information from all sources and organisations and they will make their assessment of whether or not that person is permitted to work with children.

Reverend the Hon. FRED NILE: You are such a big organisation that you may have one of the largest numbers of people going through the checking system compared to other organisations?

Mr BARGWANNA: I think we will. It is a check that covers both professional and volunteer organisations.

Reverend the Hon. FRED NILE: I was thinking of the volunteers, scoutmasters and so on?

Mr BARGWANNA: That is right. Every one of our volunteer members—and I am talking thousands of mums and dads who lead the kids in the Scout program—will at some point soon be going online, going through the process, visiting their RMS, showing their identification and getting a Working With Children Check number back and then giving that to us, so we will not let someone work with children unless we have that clearance. What we have to do is type it into the computer so the Children's Guardian knows that person is volunteering with kids in Scouts. They may also be volunteering at a church or working as a teacher.

CHAIR: Thank you, Mr Bargwanna. Is there anything else you would like to add?

Mr BARGWANNA: No. Thank you for having us here today. It is not a particular forum that we are used to engaging with in our own journey over many years of improving child protection. This was an area we really wanted to make a statement about and we appreciate the opportunity to do that.

CHAIR: On behalf of the Committee I thank you very much your attendance, your submission and your evidence today.

(The witness withdrew)

VICKI SOKIAS, Researcher, Police Association of New South Wales, 154 Elizabeth Street, Sydney,

SCOTT DAVID WEBER, President, Police Association of New South Wales, Level 4, 154 Elizabeth Street, Sydney, and

ANTHONY JAMES KING, Executive Member, Police Association of New South Wales, Northern Region Area 2, Grafton, New South Wales, sworn and examined:

CHAIR: Good afternoon and thank you for attending this second public hearing of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. The public hearings held today and Monday of this week are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday the Committee heard from a range of expert witnesses who primarily provided technical information and advice concerning the administration and implementation of the law. Today's hearing provides an opportunity to take evidence from witnesses representing the therapeutic community and those who advocate and speak on behalf of the victims of child sexual assault. The hearings will be followed by further private deliberations of the Committee before we prepare a report to Parliament. I remind everyone to switch off their mobile phones as they can interfere with the Hansard recording equipment.

I welcome members from the Police Association of New South Wales and thank them for appearing before the Committee. I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I should also point out that any deliberate misleading of the Committee may constitute a contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today the Committee may wish to send you some additional questions. If you are happy to oblige with a written

answer, that will be included as part of the evidence of the Police Association of New South Wales. Are you happy to receive any further questions if necessary?

Mr KING: Yes.

Mr WEBER: Yes.

CHAIR: Before we start would you like to make an opening statement?

Mr WEBER: Yes, please. On 27 February we put in a submission in regards to this because it is an extremely important issue for all police officers, not only as serving police officers but with respect to our oath of office, which is to protect the community. If we cannot protect the most vulnerable people in our community, we have failed in our job. What is occurring at the moment is that our hands are tied behind our backs in this battle against child abuse. Police officers across New South Wales, both past and present, have massive frustrations in dealing with what many people in this room have called a legal system not a justice system.

Time and time again we have gone out and put perpetrators before the court and our perceptions are that there has not been a fair hearing; there have not been representations of the victims' rights and needs and there has not been adequate sentencing. Time and time again we have seen poor sentencing or the matter not even going to court on technicalities because the law is worded in a very convoluted way, in a way that actually puts the rights in the offender's court and not in the victim's. I think this Committee needs to make sure that we get that balance right and we come back to an equilibrium where victims' rights are paramount.

This is the worst job that police officers have to do. It is a job we do not want to do and it is a job we want to prevent every single time. When we lock up these perpetrators, these offenders that commit the most heinous of offences, we want to make sure they go behind bars, that they do not just get a slap on the wrist and are not back out there again reoffending. Time and time again, as you will see from our submissions, there is emotive language from police officers who are usually extremely conservative. I am glad that we do have parliamentary privilege because the words that will come from us, especially my colleagues, will be extremely emotive because this is an emotive issue for us, but in saying that we do base it on fact and we do want to fix the problems.

We realise that the major focus of the Committee is making sure that these offences do not occur but if they do, there needs to be adequate sentencing that represents the community's needs and especially the victims' needs. A pertinent story would be from Detective Tony King, who is sitting to my left. He is a detective up at Grafton. He is a highly skilled investigator and negotiator who sits on the executive board of the Police Association of New South Wales. He has been dealing constantly with these issues firsthand over the last decade or so. The sheer frustration of Tony and the rest of the members of the Police Force have come to fruition in a survey by NSW Police Officers and the submission that we put forward on 27 February. It is pertinent for Tony King to give a personal account of those frustrations and explain how the procedures do not work in protecting our community.

Mr KING: For those who do not know, I have been a police officer for about 25 years and a local area command-based detective for about 19 years, all in regional areas. I have firsthand experience with these sorts of crimes. Even though we have the Joint Investigation Response Team [JIRT], the child abuse squad and other squads, we have dealt with these cases, especially years ago, and to a lesser extent we are still involved with them. Just leading into this, the Crimes (Sentencing Procedure) Act 1999 details the purposes of sentencing. Section 3A states:

3A Purposes of sentencing

…

(a) to ensure that the offender is adequately punished for the offence,

(b) to prevent crime by deterring the offender and other persons from committing similar offences,

(c) to protect the community from the offender—

which is pertinent in these matters—

(d) to promote the rehabilitation of the offender—

the statistics show otherwise—

> (e) to make the offender accountable for his or her actions,
>
> (f) to denounce the conduct of the offender,
>
> (g) to recognise the harm done to the victim of the crime and the community.

They are the purposes of sentencing under the Crimes (Sentencing Procedure) Act. In our submission at page 5 we touch on a common law case from the Northern Territory, paragraph 4, *R v Fisher*. The pertinent part states:

> This Court must serve notice upon judges who impose weakly merciful sentences in some cases of sexual assault upon children, that heavy custodial sentences are essential if the courts are to play their proper role in protecting young people from sexual attacks by adults…

If you look at the Bureau of Crime Statistics and Research [BOCSAR] statistics that we provided, it does not show that offenders for these types of crimes are receiving heavy custodial sentences. There are a number of examples of offending behaviour in there, one of which was a young 13-year-old girl who was raped by her biological mother and the mother's boyfriend. The mother performed oral sex on her boyfriend to get him hard so he could rape her daughter. The amount of betrayal in that offence cannot be understated. Those people are serving four years in jail with a top sentence of seven. Someone explain to me, I don't think they can, what you have to do to get 20 years.

The case law was that the sentencing starts at 12 years and they then get a few other discounts. If you look at that you want someone to explain it. The chair would know the police prosecutor of great standing, Neville Glover, he read the facts of this matter and when I saw him later in a social capacity he said to me, "Kingy, you should have seen this matter today", and described it. I said, "I know about it, I was involved in it." It is the worst he had seen come across his desk in 20 years of police prosecuting.

The Hon. MELINDA PAVEY: Was it appealed?

Mr KING: No, it is within range and they were operating on case law for that matter. Every police officer involved in it is affected by it. The family is horrified.

CHAIR: Do you think a sentencing guideline would have assisted in that case?

Mr KING: There is obviously not case law to commence the sentencing procedure but the base level, the starting point, is too low. I understand a need for a discount on pleas of guilty and it provides value, but that is a starting point of such a low value for that degree of criminality. There are other examples of horrific offences in the submission and I have seen other ones during my service that are horrific. The sentences handed out do not reflect the abhorrent nature of those crimes.

Ms SOKIAS: I will jump in.

The Hon. MELINDA PAVEY: It was a good submission.

Ms SOKIAS: Thank you. I have these figures from the New South Wales higher criminal courts and it touches on what Mr King was saying. It states:

> ...in 2010 show there were 19 persons sentenced to prison under section 66A of the Crimes Act for the crime of sexual intercourse with a child under 10. According to the Act, the maximum penalty for this crime is imprisonment for 25 years or imprisonment for life, that is, in circumstances of aggravation. The average penalty though given to offenders in 2010 was just four years and five months.
>
> For the same period, 18 persons were sentenced to prison under section 61J of the Crimes Act for the offence of aggravated sexual assault …
>
> The maximum penalty for this offence is imprisonment for 20 years. The average penalty received in 2010 was just 4 years and 1 month.
>
> Also in 2010 there were 10 persons sentenced to prison under section 66C of the Crimes Act involving sexual intercourse with a child between 10 and 16 years of age. The maximum penalty as noted in the Crimes Act is imprisonment for 20 years. The average penalty though handed down in 2010 was just 2 years 11 months.

That illustrates a massive disparity between the maximum penalties and the actual sentences handed down.

Mr WEBER: To answer the question whether sentencing guidelines would be suitable in this environment: One would think, yes, but time and time again we have been extremely disappointed with other offences and that is why we are happy with the Government introducing mandatory sentences to push down a path of making sure that these offenders and the judiciary realise what the community expect. The judiciary has brought this on themselves in regard to not biding by their own sentencing guidelines and not representing the community's wishes and protecting the community. Considering the sentence lengths we heard then, no, I do not think sentencing guidelines would work, I think a mandatory minimum sentence is definitely needed. We are dealing with the most horrendous and horrific crime of hurting the innocent. We need to protect the innocent. If that means taking away offenders' rights, so be it.

Reverend the Hon. FRED NILE: Do you have a suggestion as to what the average sentence should be? If the maximum is 25 years what would the minimum mandatory sentence be?

Mr WEBER: Most of my members and I would say that should be the minimum but we need to be realistic. In this current environment there are a lot of people against mandatory sentencing, but at the very least it should represent the crime that occurs and should be well into double figures. We are talking about committing offences against children, against the innocent that are traumatised.

Reverend the Hon. FRED NILE: You are talking 10 years?

Mr WEBER: Yes, as a starting point, when we are talking about these horrendous offences such as the matter that Mr King spoke about. That sentence is disgusting to the community, to police officers and then we start to question the system itself. I think that is why we this committee?

Mr PAUL LYNCH: Mr King, is it the case then that detectives at Local Area Command [LAC] level still investigate child sexual assaults, it is not all done by Joint Investigation Response Teams [JIRT]? How does that mechanism work?

Mr KING: With that particular matter it started with us. The more serious matters start with local area commands and then there is a referral process to the Joint Investigation Response Teams. In this instance the matter occurred on New Year's Eve and there were not a lot of resources available. So it was a case I was involved in fairly heavily. Throughout the years, depending on the availability of the Joint Investigation Response Teams and other resources, some of those matters are dealt with by local area detectives.

Mr PAUL LYNCH: It is not exclusively done by Joint Investigation Response Teams?

Mr KING: No. The reality is in regional areas the local area commands have a fair bit of dealing in the matters depending on the referral process and internal processes. It can become an issue.

Mr PAUL LYNCH: Are the Joint Investigation Response Teams a good model, a good way of proceeding?

Mr KING: The idea of State crime command being involved is a good model because it comes with that additional funding and resources, so to have them involved is a positive. There are other issues for the Joint Investigation Response Team officers that are placed in those regional areas without the greater support of the State crime command in the metropolitan areas; if that makes sense?

Mr PAUL LYNCH: I know exactly what you are saying.

Mr WEBER: Joint Investigation Response Teams have changed their name to the Child Abuse Squad [CAS] and in those satellite stations in regional areas they are under-resourced. We have had surveys with the Child Abuse Squad and their members are highly overworked. Again they are dealing with that upper echelon of investigations but also in regards to stress. What we would like to see is extra numbers there because, first, child sexual assaults are massively under-reported. We would like to do proactive work instead of just being reactive to these offences. We would like to go to schools, have those conversations, look at some of the warning signs and implement some preventive measures.

We also want rotation of staff because we do not want them to burn out. There was a classic case that is one of the few cases we have run civilly as the Police Association, it was the Seedsman case where the NSW

Police were sued by WorkCover because they did not put proper measures in place. What we are hearing from the Child Abuse Squad officers is they need more resources and assistance. We have committees like this and politicians that are now willing to stand up and take this head on and there are more people coming out of the woodwork.

The Federal royal commission will highlight that it is socially acceptable to put up your hand up and say, "I was abused". People are coming forward. We need to have the capability to deal with the historical matters and also to do the preventative work at the start. The regional officers are dealing with horrendous offences and traumatised victims and we do not want victims to jump from police officer to police officer while we are investigating it. The first point of contact must be a person that is extremely skilled, knows what they are doing and can build up a relationship over a period of time. We do get personally involved in these matters. It does not taint our judgement but we do have more of a customer focus and service because of the nature of the offence, the age of the victim and the traumatic incident that has occurred.

Mr PAUL LYNCH: In terms of professional and consistent approach we have heard evidence this week about the desirability of a special sexual assault court. Does the Police Association have a particular view about whether a specialist court might be of assistance in this field?

Mr KING: My take on it is not so much a specialist court but special legislation for these types of matters. In my view I think one of the biggest things that gets overlooked, especially in child sex matters, is the subject of tendency evidence, which is the accused's prior bad character. I can take the Committee to the statistics and point out how horrific they are. The principle in law is that you cannot use tendency evidence, but there are exceptions to it under section 97 of the Evidence Act. The problems with tendency evidence are touched upon in our submission. The most troubling aspect of it is that for any tendency evidence to be admissible in evidence the probative value, which is the benefit to the court, has to substantially outweigh the prejudicial effect on the accused.

When you look at matters of child sexual assault the worse the prior offending the greater are the protections to the offender. It seems absolutely ludicrous to me that that be the case. Page 13 of the submission outlines the research by Anna Salter in America. Her studies show that the control group for the course she runs in prisons—which sex offenders want to get on—was told they had to tell the truth. On average they said they had committed up to three separate offences. However, the next group to come through were told they had to pass a polygraph test and those men revealed an average of 175 victims each. If the figures quoted in there are correct these people are absolute monsters and our laws are protecting them.

Mr PAUL LYNCH: On Monday, on a similar point, the Director of the Department of Public Prosecutions suggested that we should move away from back-to-back trials where you have multiple offences and have just the one trial. He had a similar area of contention. I guess you would agree that there ought to be the one trial rather than a series of back-to-back trials if there are multiple offences?

Mr KING: Certainly. And if you clear up the tendency side of evidence, which on my understanding would be the problem in those matters, I think you would clear backlogs in these cases. You would show more compassion and support for the victims and their families for painting the true picture of these people. When you look at it, those statistics are absolutely compelling. Even if you look at the number of offences that are reported—if you take 2010 on those figures produced in our document, it is less than 10 per cent that actually proceed through to prosecution.

These are notoriously very difficult matters to prosecute. You are talking about young, vulnerable people, the evidence from them is difficult to obtain, for one, and it normally involves loved ones that are covering up, there are a multitude of reasons why. If you look at the flipside, at the accused, the victim is out there and totally exposed whereas the accused is over here and totally protected by the legislation and the Acts that we have got, to me the balance is just way off kilter.

CHAIR: The penalty under section 61J is 20 years, section 61A is 20 years with a standard non-parole of 15, and section 66C is 20 years. Is it the application of the Act?

Mr KING: Yes.

CHAIR: Is that more the process? The law is there but it is just the application of it?

Mr KING: It is the application by the judges who act on case law. I think you touched upon guideline sentencing—I cannot cite the name of the case but there is actually a case from the Court of Criminal Appeal which seeks to override a lot of that mandatory minimum non-parole sentencing—

Mr PAUL LYNCH: Muldrock.

Mr KING: Muldrock: Any sentence imposed must accurately reflect the criminality of the crime. We have got competing interests here. Especially with these matters, you have got vulnerable people being targeted, not just, in a lot of instances, random but targeted or groomed—they are actually targeting them. When you look at the reoffending rates, when you look at all the statistics and figures, we only get them for a small drop in the ocean for what the actual problem is and then when we actually catch one the law protects them. If I sound frustrated it's because I am. When you look through all the other examples that are in there, we deal with those victims and families for up to two years and hear their frustration and deal with the frustration. With experience I have to say to them, "If you are here for justice you are not going to find it; it is a legal system. If you are looking for common sense look elsewhere, you won't get it here." You have got to give them that realistic expectation so that they do not get their expectations too high and so that they are grounded when it comes to the court process. If you have never sat through a sentencing, seriously it is something you should do. It's a real eye-opener.

The Hon. MELINDA PAVEY: Do we ever get it right? Have you had cases where the family and you have been satisfied with the process?

Mr KING: Rarely.

Mr WEBER: I am struggling to think of one.

Mr KING: I am trying to think too.

The Hon. MELINDA PAVEY: You have been around for a while—for example, you have seen improvements in the way that police handle cases with JIRT and the sexual assault squad. Police systems are a lot better than they were 15 or 20 years ago. The Committee has heard evidence that suggests the court system is catching up with those changes. There have been a few improvements, have there not, with taped evidence in some cases?

Mr KING: The taping side of it being the prima facie evidence of the victim is pretty good but when you get to those District Court and Supreme Court matters everything is sanitised. It is difficult to explain but the evidence that we can actually give in court is sanitised so that we do not—

The Hon. MELINDA PAVEY: Breach the rules of evidence?

Mr KING: Yes and/or the judges and the two solicitors actually decide what the admissible evidence is. There is an example given in there of a CPR offender offending against a couple of boys. That was a circus, if I can say that.

CHAIR: The Committee heard evidence from a victim this morning who articulated very well about the struggle for them—namely, they are a normal person, they are a victim who is struggling with enormous difficulty even in having the courage to make the complaint in the first place and when they get to the court process they are faced with a forensic environment that is very difficult for them to participate in. We have heard evidence that many of the matters are heard in the Local Court and that causes problems because of the sentencing limits that can be imposed. We have also heard evidence that the Local Court may be a better environment for witnesses if there were to be an extension to its jurisdiction given that there are no wigs or the heavy procedural side of things. Do you have a view on the capability of the Local Court to give higher sentences?

Mr WEBER: I think it probably touches on the comments before on a special court. I think it needs to be a holistic approach. We have had problems with the legislation since 1994; it has been tacked on in order to try and rectify problems after they occur. Firstly, the protection of the victim is paramount—that would be our major concern—and also tendency evidence is a big concern in these offences, as Mr King highlighted. What you are talking about is obviously a safer environment, one that is more conducive to the needs of the victims.

We welcome that, but that needs to be matched with legislation where the rights of victims are paramount and where there is more of an onus on the offender to prove his innocence rather than on the Crown to prove his guilt. The Local Court is less formal in that way, and that is where you are talking about a special court. That would be a way in regards to having that protected environment and also you are dealing with people who are skilled in dealing with those matters. If that is logistically possible it would need a lot of resourcing, but in saying that it would probably be a better way to look after the victims and their families.

The thing for us is that although we may walk away and it scars us for the rest of our lives it gives us a memory; we are not living with it every day as the families of the victims are. I think the emotive language that comes up a lot of times from police officers in the community is that the victims are given a life sentence where the offenders are not, they are back out. The next thing we probably need to touch upon is the Child Protection Register, which is so antiquated and does not give police officers clear direction as to who we can discuss it with, how we can actually go about our business and prevent the offences again. Time and again, as Mr King has highlighted, people on the Child Protection Register are committing the same offences, if not worse, and when they are on that register they should be known to police officers across the board. It should be widely known that they need to be monitored, and that is not occurring. Probably Tony can touch more upon that.

The Hon. MELINDA PAVEY: Are you aware of any jurisdiction that is doing a child register well that we could look at in order to help fix the problem rather than reinvent the wheel?

Mr WEBER: No, not to my knowledge.

Mr KING: Just recently there was something at Newcastle where they had an action day or operation and they went around to the CPR homes and there are powers of entry—

Mr PAUL LYNCH: Yes, that is a recent change.

Mr KING: It is a recent change but it is not widely known.

The Hon. MELINDA PAVEY: Within the Police Force?

Mr KING: Yes, it is certainly not widely known. You go from command to command and there is confusion over who can know about these people. I certainly manage several cases but whether I am allowed to actually tell another police officer—there is so much grey area in it that it is not really clear to a lot of us.

The Hon. MELINDA PAVEY: That could be a good recommendation from this inquiry?

Mr KING: With the Child Protection Register. The other recommendation that could be a good one is to actually resource it, especially in regional areas. The LAC in regional areas, they come back to us to monitor. We have got other cases, large caseloads but we also have Child Protection Register offenders. There is no active targeting of them. It is more work for police; it is more onerous on police than I think it is on the crooks. If you rate them as high risk you have to update their case each month. But a lot of the actions that I have put on my cases—there are all targets on them so when anyone checks them on COPS, the police computer system, I get a notification that they have been checked. Basically once a month the action I put on the case is "nil adverse detected or recorded since last update".

The Hon. HELEN WESTWOOD: Are you actively monitoring them or is that because there have been no subsequent reports?

Mr KING: No subsequent reports; they just sit there. The example given in there—to have any bite in that Child Protection Register you need what is called a child protection prohibition order [CPPO], where you actually go to a court and provide evidence to get an order to stop that person from doing something. Probably the best way to explain it is that it is similar to a domestic violence order. The order is that they not be in the unsupervised company of a child under 16, that they not attend playgrounds and that they not attend swimming pools. There are other conditions you can get similar to that on a child protection prohibition order from a court but you have got to have sufficient evidence to get that and the amount of work involved in getting one of them is significant.

The Hon. HELEN WESTWOOD: In the case you cited earlier they had a child protection prohibition order, did they not?

Mr KING: In one of the cases, yes. In the case of the 76-year-old male that I had a CPPO on we detected him with a 12-year-old boy and we subsequently arrested him. He had breached his CPR, he had breached his CPPO but subsequent investigations detected that he had committed an offence of we said procure, although the court said differently, and indecent assaults on another boy. The difficulty with the court process, especially in a matter such as that, is that the offender pleaded guilty to breaching the CPPO and the CPR so those issues were not live issues at court and we could not lead evidence on those matters. We had to lead evidence on the indecent assaults upon the boys but the judge could not be told how the investigation started back over here because it was tendency and highly prejudicial. The evidence was completely sanitised and the judge had difficulty understanding where the complaint came from. In most sexual assault matters it kicks off with complaint; this matter kicked off with a bit of proactive policing. It rolled on and on.

The Hon. MELINDA PAVEY: What was the upshot?

Mr KING: There were some discrepancies in the evidence from a couple of boys and the mother on the indecent assaults so the judge discounted the evidence on that and acquitted him on those charges. With the charge of procuring a young person, the judge ruled that an offence had to have been committed upon the child, which was brought about to stop people from grooming and procuring children. The judge turned the whole thing around and we lost the lot.

CHAIR: Was it appealed?

Mr KING: Not at this stage.

Reverend the Hon. FRED NILE: Do you have any views as to whether that register should be more widely available, say, to mothers to know if a child abuser is living next door?

Mr KING: It is certainly an area that is difficult. I understand the complexities from both sides, but even if a person on the CPR strikes up a relationship with another woman and they declare the fact that they are in a relationship and that the other person has children I think they have satisfied their requirements. For us to then go round and have a chat to mum about whether she knows the history, we are actually getting into a grey area, I believe—as the Chair is nodding. It is a very difficult thing for police. If we could clarify that, but then you have got the vigilante side of it where we can have issues as well. I do not envy your position in that one. We really do need some clarification. It would be handy from a policing point of view to have clarification on that. With the CPR, it certainly would be very beneficial to the community and policing as a whole if it was properly resourced.

Mr PAUL LYNCH: When you say "properly resourced", what extra resources are you talking about?

Mr WEBER: There is a fine line between retribution and rehabilitation. What is occurring at the moment is that there is no rehabilitation at all and there is actually no retribution either and the victims' rights are being passed away. With the Child Protection Register those mandatory prohibition orders need to be mandatory at the start, as soon as they leave, and then they have to qualify to the court why they should not be on there, why they should go to a swimming pool, why they should go to a park. Obviously, there are a lot of privacy issues regarding telling their new partner that they have been in jail and issues like that. We would be quite happy to do that, but probably by law it would not be allowed at the present moment and there would not be an appetite for it.

But in saying that, if those prohibition orders were in place, and all of a sudden the partner realised, "Well, sorry, Scott can't go to school. He can't go to the swimming carnival. He can't be with my son at that period of time" and on top of that he needs to report to us that he is in a relationship, then we can start to have those conversations with him. It comes back, as Tony did say, to resourcing—having those proactive capabilities to go out there and have the conversation, a proper conversation, or do proper surveillance at the very least once a month to actually properly update the case when they are a high-risk offender.

When they are a high-risk offender, that prohibition order should remain in place. If they do breach it, that tendency evidence should be allowed to be heard by a court because they have already breached the order. They have already been put out there. They have been released early because, apparently, they are of good character. Apparently, they have done their time. They have repaid community. Well, if they have gone out

there, that is a privilege and if they break any laws they lose that privilege. Not only should the original sentence be put in there, additionals on top.

Reverend the Hon. FRED NILE: Do you have any recommendations on how we can improve the number of cases being finalised in local and higher courts? Your submission indicates that in 2010 there were 4,886 sexual offence incidents involving a victim aged under 15 years of age and only 603 were finalised in local or higher courts. Do you have any recommendations on how we can get that 603 up to 50 per cent or something better?

Mr WEBER: This is what we have been discussing. The Child Abuse Squad, especially in regional areas, would need to be properly resourced. We need to look at the Child Protection Register and how we deal with these offenders and victims in court; protect the victims' rights and also remove all tendency restrictions, which is a massive problem for us, and make sure that we can streamline the processes so it is not a daunting issue. The prime example is that the people who put up their hands, and that is a very limited amount that do put up their hands, as soon as they get involved in that system it is, as the Chair said, very forensic, extremely scary, and they go, "You know what, I'm just going to walk away from this" or they do not want to be involved or issues start to come up or they question themselves or there is that evidence where it clashes.

I think what this Committee is focusing on and doing is streamlining the process and that conviction rate will increase from that in regards to protecting victims and making sure we have adequate legislation not only to prevent but also to make sure they are convicted properly and get adequate sentences. But after that, when they are released—there are a lot of offenders that go out and reoffend—that we have adequate powers to actually be intrusive in regards to their life to protect them. We are taking away their rights, so be it. It does not worry me at all because we are protecting children.

Reverend the Hon. FRED NILE: Is the Police Prosecution Branch overloaded? Is it adequately staffed to handle these cases?

Mr WEBER: The more serious matters usually are dealt not by our branch but the DPP. Again, I suppose if we are looking at courts and specialised laws, there would need to be special lawyers in regards to both sides and also judges appropriately trained not only in regards to the legislation but also in looking after victims' rights and making it a fluid process and not damaging the victims anymore.

Ms SOKIAS: I want to give you an example of a member I was talking to, just to give you an idea of what they are dealing with out there. The offender was actually on the child register. I will quote it as the police officer told me and ask you to try to think how you could right this situation. It is just almost impossible. He said:

> I was an officer in charge of an investigation of an offender who had 37 charges relating to the sexual indecent assault of both of his children. The DPP elected to prosecute the offender with persistent sexual abuse of a child as well as drug possession and supply, which were also relevant to the abuse of his children. The offender systematically abused his daughter from the age of 3 until she was 15 at which time she came to the police for help. The offender committed hundreds of offences upon his daughter. However, I charged him with one count of sexual assault and indecent assault per year of abusing her as she could not provide specific details of each assault. The assaults happened every time the offender had the children stay with him, which was on a fortnightly basis with a number of assaults occurring some weekends.
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> The offender provided alcohol and cannabis to his children from the age of 9 often assaulting them after they were drunk or high. The offender also assaulted his son and made him assault his sister whilst the offender watched. As far as child sexual assault goes, I've never heard of more heinous offending. The assaults were clearly for no other reason than his personal gratification.
>
> The offender pleaded guilty to a total of 11 offences. He was sentenced by the judge to a maximum term of 10 years with a non-parole period of just 5 years. The offender was already on the Child Protection Register for offences committed when he was a teenager and was on the register whilst committing offences upon his daughter. There are a range of issues wrong with the sentencing in this matter. However, as one of the most heinous of offences I have ever dealt with, the sentencing handed down was manifestly inadequate.

The Hon. MELINDA PAVEY: What was his sentence again?

Ms SOKIAS: Ten years with a non-parole period of just five.

The Hon. HELEN WESTWOOD: You have given us some of the worst examples as justification for your recommendation of mandatory sentencing, yet some witnesses from the Child Abuse Squad said they did not support mandatory sentencing. Without verballing them, I think some of the reasons we talked about were cases where the perpetrator may have an intellectual disability or where the offender and victim are of a similar

age and perceived it as consensual sex when, in fact, it is child sexual assault, according to our laws. What do we do in those cases if we have mandatory sentencing?

Mr WEBER: I think you put that into the clauses. With all mandatory sentences in those we are seeing now, even regarding the legislation about killing a police officer in New South Wales, there are mitigating circumstances in regards to intellectual issues. Also, the Child Abuse Squad deals with a massive amount of those cases; that is a large proportion of their cases in regards to dealing with juvenile-juvenile, young person-young person or minor-minor having sex. They need to be judged on individual merit because sometimes that does need to proceed down a criminal path. Other times it is just young people in consensual sex.

Again, with mandatory sentencing, that would be some of the factors we would need to write in. It would not be blanket across the board. When we see mandatory sentencing even for the legislation that protects police officers, it is not just solely across the board. Mental illness is a massive issue in the community and, again, that is where police officers utilise their discretion and the law many times in making sure there is proper protection of their rights as well, even though they do not have the mens rea or the mental capabilities to actually formulate the offence.

CHAIR: Mr King, are there too many categories of child sexual assault?

Mr KING: That is an interesting one. I say it is a good question because I was only thinking about it today. Across the board there are so many different little offences that can be committed, which, in some ways, is a good thing, but in other ways it complicates the issue. It brings in plea bargaining and other ranges of issues as well that we have not touched upon yet. Plea bargaining in sexual assault matters works pretty well. Although you get a sentence for 11 rather than 300, if the judges were doing the right job and looking at the facts—if I can say that here; I suppose if they were doing the right job we would not be here now—looking at those matters it can work. But if the whole lot was simplified—this is sexual assault, your facts are this, we think it is in the high range, and no doubt the courts will have an opinion on it, this is where you are heading for sentence, let us get some standardised approach to it—it would probably make things a lot easier.

Ms MELANIE GIBBONS: Do you or your members have an opinion on the anti-androgenic medication once offenders are out of incarceration?

Mr WEBER: Is that on page 23?

Mr KING: Yes, it is right at the end.

Mr WEBER: Chemical castration and all that. Not enough research has been done. There have been small groups. It is a bit of a bandaid effect. Also, I think it is one of those things that puts maybe in the offender's mind that it is a bit of a placebo and also the community that "Oh, he's all right now, he can go out in the community he's had the chemical castration." There is not enough research done in regards to it. I do not think it is something that should be relied on. Probably more data and research needs to be done. From our point of view, I think we need to look at the sentencing in actually making sure these people are off the street before we go down that path. It probably is suitable in some cases but, again, that would need medical experts and proper checks. I do not think it is the silver bullet that we are looking for.

The Hon. HELEN WESTWOOD: We have had some discussion also around the reasons sentences are discounted, and usually it is about the guilty plea. Do you have a view about the impact or the diminution of the detrimental impact on a victim if there is a guilty plea and they are not put through that process before the courts of having to relive the assault?

Mr KING: It certainly is a great benefit. When you see people go through cross-examination, it is not pretty and it really is probably the most nervous time in their lives. I understand the need for a discount there, but there are probably improvements to be made. I am not entirely sure of the Legal Aid funding but in the time I have been a detective most of the pleas in the District Court for the more serious matters or the vast majority of them come about at the start of the District Court sittings. In country areas they come around two or three times a year. The District Court will turn up, you get the barristers turn up and I do not know whether it is in the funding but they all seem to turn up, have a chat, "Can you move here? Can you move there? Let's have a plea", and off we go. If you could do that a lot sooner, it would make life a lot easier. I do not know whether if Legal Aid could actually fund a plea more than a hearing it might encourage something a little different to occur, if you can catch my drift.

Mr PAUL LYNCH: It is called bribing the lawyers.

Mr KING: Not so much a bribe. Can we call it an incentive? It seems that most pleas come about at the start of a trial. Even though there is the nervousness in the lead-up to it for the victims and their families, it still is a benefit. It is a benefit to the prosecution and to the courts. It is not something I am anti to.

The Hon. HELEN WESTWOOD: But if we are not discounting sentences or offering some incentive to an offender to plead guilty then what can we do? Given the view of the Police Association of New South Wales that there should be no reduction of sentences, is there anything else that you think we could recommend that would address this?

Mr WEBER: The baseline needs to be increased for starters, because when you are discounting already at that lower level, as Tony raised before, it is a massive problem. The changes made under the disclosure act are starting to assist. But what we are seeing is, obviously, lawyers who want to protect their clients. It is also about making sure that their lawyers get what they perceive to be value for money. Again we are talking about a legal system, not a justice system. The longer a court case runs the more beneficial it is to most parties financially, bar the offender and the victim. We are proceeding down that path. If we could streamline the process so that there is no real benefit, either financially or in regards to law, of drawing out those processes then we can start to rectify that. Again we come back to the issue of sentencing guidelines.

The reason we discuss mandatory sentencing is that sentencing guidelines are not working. This is not our major focus and it never has been, but the judiciary is letting the community down. The judiciary do not represent the views of the community and they are not abiding by the law, as far as I am concerned, in regards to maximum and minimum sentences. We have seen that time and time again in regards to these pitiful sentences for people who commit horrible offences. If they are not going to abide by their own rulings and their own sentencing guidelines then they need to be dragged into the twenty-first century and told what the sentence will be. Is that the best solution? No, but it is the best solution at the present moment.

CHAIR: Thank you very much for your evidence here today, for your frankness and for your excellent submission. It is of great assistance to the Committee. I thank you for taking the time to appear before us today, particularly Tony for having to recollect some difficult experiences. I can understand your journey. The Committee is all the better for having heard of your efforts and having the benefit of your advice. If there are any further questions then we will look forward to your reply in writing to add to your evidence given here today.

(The witnesses withdrew)

HETTY JOHNSTON, Founder and Chief Executive Officer, Bravehearts Incorporated, sworn and examined:

CHAIR: Good afternoon, Ms Hetty Johnston, and welcome to this second public hearing of the Joint Select Committee on Sentencing of Child Sexual Assault Offenders. The public hearings held today and last Monday are exploring a range of issues relating to sentencing options for child sexual assault offenders, including their effectiveness and appropriateness. On Monday the Committee heard from a range of expert witnesses who primarily provided technical information and advice regarding the administration and implementation of the law. Today's hearing provides an opportunity to take evidence from witnesses representing the therapeutic community as well as those advocating and speaking on behalf of victims of child sexual assault.

The hearings will be followed by further private deliberations of the Committee before it prepares its report for Parliament. I draw your attention to the fact that your evidence is given under parliamentary privilege and you are protected from legal or administrative action that might otherwise result in relation to the information you provide. I point out also that any deliberate misleading of the Committee may constitute contempt of the Parliament and an offence under the Parliamentary Evidence Act 1901. As time is limited today, the Committee may wish to send some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

Ms JOHNSTON: Absolutely.

CHAIR: Before we start with questions, is there anything you would like to say by way of opening remarks?

Ms JOHNSTON: Yes, there is. First of all, I apologise for not being as organised as I could be—I have been away from my office for about a month so the submission was done by somebody else. Just listening to the last couple of speakers, I think something I can bring to this is a perspective around how we view children—the cultural perspective around children and how that has permeated through the legal system and everything that we do. This is now almost like an unravelling of that. We are finally seeing our children. They have been invisible for so long, particularly in the legal system. In my view, so far the system has failed victims and their families. My daughter is a victim and I am her family, her mother and her father. So I can speak personally of the trauma of even just deciding to enter the legal system.

First of all there is the trauma that this has happened and trying to deal with it, and then you have to decide what to do about it and how much more trauma that might cause to your child and to yourself. It is a huge thing. I do not think it is widely understood just how difficult that decision is to make, and that is before we even get down the path to sentencing and all the rest of it. We believe that community safety should be at the very centre of everything we do. This is not even for us so much about punishment as it is about community safety. It is about making sure that the people we are releasing from our systems, whether it is the courtroom or the prison, are actually safe to be living with our children.

It is about putting the best interests of children and their safety above the best interests and the civil rights of convicted sex offenders, particularly repeat sex offenders. I would love to see some of the data around rehabilitation and recidivism challenged. The data about recidivism is flaky to say the least. Because we do not have the data, it is very difficult to prove whether or not an offender has actually reoffended unless he or she puts their hand up and self-reports, which is highly unlikely.

I am not saying that I do not believe these programs have some effect for some types of offenders, but those who vehemently believe in these programs claim, in my opinion, ridiculous recidivism rates. They are hard to argue with because we do not have the opposite data. So I would like to see some polygraph testing and other measures put in place and a trial run to find out just how successful this is. We all hope that it works. That would be wonderful. I do not believe in it myself but I think it needs to be tested.

The Hon. MELINDA PAVEY: What exactly are you talking about?

Ms JOHNSTON: I am talking about the offender rehabilitation programs and, depending on the type of offender, whether or not those are effective. I remember talking to people at Long Bay jail many years ago, and more recently to people in Queensland Corrective Services, and even within people working in that system and there is a level of acknowledgement that these rehabilitation programs are not all that they are cracked up to be and not as successful as it is suggested that they are. If you look at the recidivism rates that are published, those recidivism rates are based on convictions, not on reoffending.

I think it may have increased a bit now but only about 10 per cent of offenders ever come to the attention of police in the first place, and less than 1 per cent of those actually go to jail. So if you are a sex offender then, straight off the bat, you have a 90 per cent chance of not being detected. So if you are judging this based on convictions then you are looking at a minute proportion. I have brought some papers along with me which I would like to table, if I may. I am not exactly sure what you have but I have here two reports—the Butner report and one other—which I would really like you to consider. I am not saying that they are foolproof.

CHAIR: We would be happy to accept those.

Ms JOHNSTON: These reports are about offenders who have been convicted for online offences and who have said that they have never had a contact offence—that they have never touched a child. Further investigation of those claims through polygraph testing found that something like 70 per cent of them had actually committed contact offences as well. Another thing I want to touch on is the leniency with which we treat child sex offences such as online possession and those sorts of offences, because we are not really looking at who this person is and whether they are actually dangerous to children. We are very happy to accept that this is someone who just likes to look at pictures. I would like to see that challenged too. I will leave it there and let you begin your questioning.

CHAIR: I recall hearing evidence today, and I am looking to my fellow Committee members to help guide me here, that consideration is given that if they are looking at child pornography within the house then they are very unlikely to go out and actually act upon it.

Mr PAUL LYNCH: I think the evidence was that there are some cases where that was the case but then there are other cases where in fact it motivated them to go out and commit contact offences. So it was a two-way thing. It was also very qualified. I think Dr Lennings gave evidence on this, and he was very cautious in how he put that.

CHAIR: I just wanted to qualify that. Thank you.

Ms JOHNSTON: The research on this is inconclusive. We know that most offenders who are caught sexually assaulting children have child pornography material. So there is a progression of behaviour there.

Ms MELANIE GIBBONS: Given that you get to see the different sentences handed down across Australia, where do you think New South Wales fits in? Are there any jurisdictions doing it better which we should be looking to?

Ms JOHNSTON: The worst thing is the lack of national consistency around how we deal with these offenders. Some States are better than others, but it is not great anywhere. I do not think New South Wales rates badly, and it even sets the pace in some respects. The problem is the case law, as the witnesses from the Police Association of New South Wales stated and as I would underline. It is no good having maximum sentences without a mandatory minimum. In Queensland many years ago a little girl called Keyra Steinhardt was abducted, raped and murdered by a repeat sex offender called Leonard John Fraser. He had been incarcerated and had got to the end of his sentence. There was no mechanism in law to detain him past that point.

That is why Bravehearts lobbied for the Dangerous Prisoners (Sexual Offenders) Act, which got through and which we were very happy about. It has now been duplicated around the country, and it is pretty much the same. So the courts finally had a mechanism to detain dangerous sex offenders past their release date, but they did not take it; and that was what the community were expecting even back then. The courts proceeded really to destroy the intent of the legislation by releasing the most dangerous sex offenders, despite their assessed dangerousness, back into the community. It caused us to up the ante, if you like, just out of sheer frustration.

In Queensland we now have new legislation, which is the two-strikes legislation. So if a sex offender commits an offence that attracts a life sentence then they do the time and are released. But if they do it again then that is it and they have mandatory incarceration for life. In Queensland a life sentence does not mean life, by the way, as it does here. I think the community's expectations are not being met by the judiciary. I think it is a cultural thing and that the problem lies with the judiciary itself, the courts. The problem certainly does not lie with the police. Everywhere across the country the police are absolutely dedicated to pursuing this and have their eyes wide open. The community have their eyes wide open too and are ready to deal with this issue. The frustration being felt in the community and through the media—and I presume that is why this inquiry is being held—is that the judiciary are not meeting the expectations of the community.

Ms MELANIE GIBBONS: In your opinion why is the judiciary not meeting those expectations?

CHAIR: You have parliamentary privilege.

Ms JOHNSTON: I just think they are dinosaurs. They do not like to be told by the community what to do. I think a lot of them have a legally cultural view that, you know, done the crime, done the time. There is a lot of listening in the courts about the offenders but not a lot about what is going on for victims. Let us not forget more kids are dying from suicide than from road accidents. The correlation between suicide and child sexual assault is enormous. This is not a misdemeanour. This is totally destroying and taking lives fatally. I just do not think they get it, as is the saying, in the same way that I said that about Peter Hollingworth years ago with the Anglican Church I just do not think they get it.

They need education but you try to tell a judge—I cannot even get an appointment with one—that they actually need to be educated on this. Not all of them, I should not say that. I think even with them there is an intention. A lot of them really want to give that higher sentence but they will be appealed because of case law so they do not do it. If I had my way I would just tear up the whole lot and start again because it is so complex and so riddled with case law. This morning I read a piece of legislation—I cannot even remember its name—that was 1915 legislation in New South Wales.

All I am saying is I think that we really do need a fresh look. This is a subject that when I started working in this area no-one wanted to even talk about. Child sexual assault—everyone like cockroaches ran for cover when the light was turned on. In a very short time it has now reached the pinnacle of public awareness and the judiciary has not caught up, and I am not sure they are capable of catching up without a bit of a prod. That is why we insist on mandatory minimums because we do not trust the judiciary—not all of them—and their judgement basically.

The Hon. HELEN WESTWOOD: What is the view of Bravehearts in relation to a specialist court?

Ms JOHNSTON: We would love one, thank you very much, that would be great. We would love to see courts being convened by people who understand this issue. That probably gets back to that point we were just making before, whether it is a judge informed by professionals who are in their field of child linguistics, the children are not being heard in the court. We might be seeing them in video but we are not actually listening to children. There is a whole bunch of myths around children and their testimony: children lie and mothers concoct stories and plant them in the minds of their children.

This stuff is still very real for the judges, particularly in the Family Law Court and the Children's Court—more the Family Law Court. These myths are held on a mantle as though they are real and it is incredibly frustrating. By having a specialised court that deals with this and is properly supported with the right people with the right expertise to make that decision would make me really happy, absolutely.

The Hon. HELEN WESTWOOD: I did not ask the last witness this question because there was not enough time. It is as relevant in Queensland as it is New South Wales: Would a specialist court disadvantage victims in regional areas and the more remote areas? Has Bravehearts considered that and has it formed a view?

Ms JOHNSTON: I say that at least 80 per cent of matters that go through the Magistrates' courts, and probably getting up there in the District Court as well, are already child sexual assault matters. It is massive. Wherever there are children who need a court to hear their statements and that of their families, we need to provide it. I think it may, but then again there are circuits and courts in every region. So really it is about making sure that the professionals are available to sit in those courts.

Reverend the Hon. FRED NILE: Why do you say in your submission that you want to remove the good character factor from the sentencing process?

Ms JOHNSTON: I cannot tell you how many times I have sat in a courtroom and heard about the Scout master or the priest "Look at all this wonderful work they have done." My own father-in-law was an absolute legend in the small town in which he lived. He was chairman of this and whatnot of that and he was also a paedophile. He had been offending for 40 years and two generations. It is a front. These people create this persona. They have to be that person so that we trust them with our children. I say respectfully that I think that is the problem with what has happened with the Catholic Church as well. It provided a wonderful haven for offenders. They did not go there because of the faith; in my humble opinion, they went there because it was a safe place. They had access to vulnerable children. They had the protection of the church. They were protected even if they got caught.

Reverend the Hon. FRED NILE: Should there be stricter laws than in other cases for people involved with working with children?

Ms JOHNSTON: Absolutely. There should be no weight attached at all—sorry to not answer your question properly in the first place—to anyone who has good character who does good work in the community because that is negated absolutely, totally, to the nth degree backwards, with the harm that they cause to human beings. They take life. It is like murder, only it takes 15 or 20 years before it happens. Absolutely, no, I do not agree with that at all. It is an absolute insult to the victim. In terms of "Should we have stricter laws?", most definitely.

Bravehearts are about to sign an agreement—we are only hours or days away—with Ernst and Young nationally and globally around risk management and how to better prepare organisations to make sure that their physical surrounds as well as their policy and practice are meeting best practice and they are doing as much as they can do to protect children. We know that these offenders will always be amongst us and they will always be attracted to where there are vulnerable children so we need to make sure that we apply as much, if not more effort at protecting the children as these people do in getting access to them.

CHAIR: I take it from that that any opportunities for non-custodial for other types of sentencing options must come with that same level of risk assessment and community awareness?

Ms JOHNSTON: Yes, it has got to be about how dangerous is the offender. But that is a tricky point because we are relying on therapeutic tools which are not foolproof. Our view is that we should not just be using those tools but we should be using polygraph testing. We should be using other psychometric and tools to assess. They will scream and run a thousand miles when you talk about polygraph testing because in Australia we see it almost as an entertainment tool. As with everything else in terms of technology, it has improved enormously. It is used widely in the United States, not to put before a court as evidence but as a management tool for offenders. It is actually a really good prevention tool because an offender knows if they are released the first time and they do it another time, I am sorry, for me two strikes and you are out.

If they are released back to the community and they know they have to come back and face a polygraph test that will ask them if they have offended again they are less likely to commit an offence, and that is what we want. We do not want to catch them. We do not want them to do it; that is the thing. Sexual assault is largely preventable. So what we have to do is make sure we up the ante across the community in all aspects, including legislation, to make sure that we are not releasing known, dangerous sex offenders back into the community to a system that cannot even cope with it. It has no way of really coping with these offenders or managing them.

Reverend the Hon. FRED NILE: Should the Child Protection Register be available at a local level so mothers can check to see whether a child abuser is living next door?

Ms JOHNSTON: The old register. Well, when I first heard about Megan's law and the register I was happy and thought, "Yeah, we have to have that." But, like everything at Bravehearts, I really thought we should look at it; so we did the research. Open registers like that just do not work. If what we are trying to do is to stop offenders from offending—and that costs a bucket of money to run and to maintain—it is not the best option. I think the United Kingdom has the best register option which is, as you say, the mother with the new boyfriend or the person with the new sporting coach or the new neighbour or whoever can ring the police and say, "There is a new person in my life. This person is spending a lot of time with my child or possibly will be. I need to know that this person is safe, at least is not on the register."

Only 10 per cent of offenders are ever known to police, so only 10 per cent will be on that register. The other 90 per cent are living everywhere so we cannot rely on the register any more than we can on the Working With Children Check. Can I say something about the Working With Children Check? I am sorry I could be here for hours. We need to up the ante with the Working With Children Check most definitely. The way to do that is to make sure that it checks against all known information that we have around that person, not just convictions, because, as I said, they are less than 1 per cent, so it is almost useless.

If we are looking at police intelligence, as they do in Queensland currently—I do not know if that is going to change because they have got some changes going on, I hope not—that is all sorts of police intelligence. So that is allegations that have not been proven, matters that have not had a conviction in court, matters that come before Child Safety or the Department of Community Services here, matters that come before the Teachers Registration Board or the Medical Association. These are matters of concern around child protection that file into a database that should be checked before a Working With Children Check is issued. The Working With Children Check should not just be that a person does not have a conviction but it should also come with some mandatory two-hour training called Supporting Hands, so at least you know what you are looking for.

CHAIR: That is in play when a child is in the Minister's care, or any child that is taken into emergency care. There is a classification that you are associated with a person of interest which eliminates you from having access or restricted or controlled access to that child and/or if you are a person of interest obviously there are restrictions. It is not unprecedented to need to have been convicted of something in order to put in a level of protection for children.

Ms JOHNSTON: It is important because what we know about these offenders is that it is addictive behaviour. A lot of them just cannot help it. They may desperately not want to be an offender but they cannot help it and they will tell you that themselves. They have told me that.

The Hon. MELINDA PAVEY: Do you support anti-androgen rehabilitation?

Ms JOHNSTON: If you have an offender who is like an alcoholic—does not ever want to have another drink again—or a drug taker or whatever other addiction and they are dedicated to that course and they want that badly themselves then I think those things help. But if you have got an offender who is not committed, if it is just an excuse—"I'll be a good boy, let me out"—then I do not support it. They will be out of jail, I guarantee you, three months and they will be going back before the judge saying, "I have got a girlfriend and I want a normal sexual relationship with my girlfriend, can I get off this drug please? You will have your civil libertarian judge who will say, "Of course, sir. We all understand that men need this", once the horse has bolted. So I have no faith in any of that personally.

The Hon. MELINDA PAVEY: Last Monday the Committee heard some interesting comments about the level of child assault or paedophilia. Do you regard anyone who abuses a child as a paedophile?

Ms JOHNSTON: It is semantics. We call them a child sex offender. I do not care whether they are paedophile, a hebephile or a genophile, whatever they are. They are child sex offenders. The damage they cause is exactly the same. It makes no difference to me. Call them whatever you like. I mean a lot of this is getting hooked up in semantics. Even in relation to the other terminology, like "grooming" people. I just hate that word because it implies other things. If you are looking at it strictly, technically there are all different types of child sex offenders and a paedophile is one of them. At the end of the day they all cause the same damage and they all do the same thing. We just call them child sex offenders. I am more interested in whether or not they are psychopaths or sadists than I am with what type of sex offender they are.

The Hon. HELEN WESTWOOD: We have heard that there are different and more effective treatments for some types of child sexual offenders over others. There is a distinction between the paedophile and the opportunistic child sexual offender. Have you read any of that research and do you have a view about the efficacy of treatment? Eventually child sexual offenders will be released from jail into the community. I wonder whether you think it is worth us pursuing any treatment programs, whether psychological or biological.

Ms JOHNSTON: Absolutely. No matter which side of the fence we are sitting on here in this argument we all want the same outcome, and that is that offenders stop offending. If treatment programs can work then I am all for it. Throw all kinds of money you like at it. Fantastic. But I need to know that they work. It is like everything else at Bravehearts. I cannot abide the idea of spending millions and millions, or for us hundreds or even an airfare to get here, without knowing that it is going to actually have some effect. That is why I say let us do some polygraph testing. I am happy to be polygraph tested on any of the claims that I am making. If those people that are giving these treatments are so committed to them and they believe in them let us hope they are right but let us prove it. Let us see something before we start throwing money at it. We want to believe it. We want to. I do. I would love to see you put all these broken families back together again.

The research tells us—well, the research is not complete because we do not know, basically, but we like to think that treatment programs work better for young people. I have actually seen that work so I do have some faith in that, but even those people that are running those youth programs will tell you that it is not all roses there either. Intrafamilial offenders are those that only offend against their own children and that will be because of lack of opportunity. Is that going to work better at all than it does for extrafamilial offenders or mixed type offenders or for those that offend against both boys and girls? There are all different mixes. I just cannot say loudly enough that it really does not matter what type of offender they are: the damage they cause is the same. Maybe the threat to the community is not the same depending on the type of offender.

Again, I just go by the 18 years of hearing all these stories. There are so many offenders that I know of, including the one in our family, who was thought to have been an intrafamilial offender and therefore would have supposedly responded well to treatment. But as it turned out he had been offending against others and it was just that no-one knew about it. It is so under-reported that we cannot actually know. They are not going to tell us so we need to find a way to find out. The polygraph is all we have got and it is an increasingly effective tool. I would love to see a trial just to see. But, yes, if offender treatment programs work, great. I do not believe that they have a great effect overall but it is better to do it and hope that even one offender does not offend again.

The Hon. HELEN WESTWOOD: You spoke about the damage to victims of child sexual assault. Some of the evidence that we have received suggests that a guilty plea that prevents a victim from having to go through the court process and give evidence has less detrimental impact on the victim than if there is a not guilty

plea and they have to go through that process. Hence, that has led to discounting or some sort of inducement for an offender to plead guilty. Does Bravehearts have a view on that?

Ms JOHNSTON: We have not discussed it but I can give you one off the top of my head. That would be that the mandatory minimum remains the same. If you are found guilty after having dragged your victim through the court you will get an extra five years rather than less if you do not. I do not mean that as a joke. I mean that quite seriously because the mandatory minimum needs to stand for something. You have committed this offence, this is what you are going for. I think it is a further punishment. It is almost like saying that you are not such a bad person if you have confessed.

I think there has to be something. The short answer is yes, if it has to be a reduction in sentence because that is what works then that is what works. But, personally, I think that there is a minimum mandatory sentence there for that offence because that is what the person has done. If that is the offence the person has committed then that is what they should be getting. If they are going to make life horrible for the family and for the child then they may face a tougher sentence. That might be as much of an incentive as the other way around.

Reverend the Hon. FRED NILE: There is a point in your submission about the ability to run civil cases and remove the current statute of limitations.

Ms JOHNSTON: Absolutely. Hopefully it disappears. I know in Victoria it is on the slate for being got rid of.

Reverend the Hon. FRED NILE: Do you think there are victims who would go through that procedure in a civil court?

Ms JOHNSTON: Absolutely. It is like society, really. If you look at the penalties around fraud and those things it is like, "You can touch my children just don't touch my money." But offenders hate it when you go for their money. It is a big threat to them and it is another disincentive for them. I think it is only fair because these victims' lives are shattered. I speak from experience again. Their schooling and their education is destroyed, their opportunities are destroyed. Lots of stuff happens. Many of them die. They are in gutters with syringes up their arm. They are filling up our jails. They are in the mental health wards. Yes, they deserve to be compensated. I know that they are not getting that from the State—not in New South Wales especially—so go back to the offender.

There has to be some justice for the victims. This is a serious crime. It is not like someone stole your car or your television set. This is an absolute assault on the mind, the body, the soul and the spirit of a human being. It is gut-wrenchingly awful for the victim and for all those people in their lives who love them. It is life changing and it is becoming generational. I think a lot of that is because we are not really understanding what we are talking about here. This is the worst crime. Is murder worse? I do not know that it is, can I tell you. Ask a rape victim.

The Hon. MELINDA PAVEY: I think the level of awareness of this issue in our community has been greatly enhanced by the work that people like you do, and for that we thank you, but you have painted an incredibly doomy, gloomy picture. Have you come across victims that you have supported through the system in New South Wales where the police have acted in a modern way, it has gone to court, a family member has pleaded guilty and there has been time associated with it but the process has empowered the victim?

Ms JOHNSTON: Absolutely, totally. We have got Sasha Chandler and others who are high profile, such as the Robert Hughes case just recently, and also intrafamilial offenders. Absolutely they are empowered by it. That is why we did it. It is black horse, white horse. It helps, but there is no taking away the pain. There is no "Okay, clean slate, beautiful, let me get on with my life now". I do not care who you are. If you have been sexually assaulted as a child you are going to carry some of that with you for the rest of your life. Depending on who you are and who is around you, how you do that will depend on all kinds of factors around your own personality and your own personal strength.

Some people are very strong, very resilient, they are surrounded by wonderful people who can keep them up and they will go on and live a practically normal life. My daughter is a classic example. There are so many others that I know of here in New South Wales that we work with together with the police who can get on and have a normal life. But that does not mean to say that they do not wake up one day and go and hurt themselves in the worst possible way. It also does not mean to say that they do not go on and have an absolutely

normal life, have children and grandparents and are able to carry this with them in a way that they have learnt to deal with it, which is what we aim for in our counselling. It does work. I am not saying that every person who is sexually assaulted has this horrible life. Many do not, many have normal lives, but there are too many that do have a horrible life. It does not matter who you are, you will take some of it with you. That is my point.

The Hon. HELEN WESTWOOD: I want to talk about offenders in similar age cases. You may have a 16-year-old young man who has sex with a 14- or 13-year-old that both of those people perceive as consensual sex. Indeed, it is child sexual assault according to our laws in New South Wales. That offender can be placed on the register. Has Bravehearts ever lent its mind to whether or not that is appropriate? Some of these offenders can be on the list for many years and may go on to have long-term relationships with the victims.

Ms JOHNSTON: Yes, we have. We have got a paper on it. We believe it comes down to the age of consent. I am sorry, I do not think it is one of the papers that I tabled. It is a differential age of consent. No child should be on a list, in my opinion. If there is hope for rehabilitation that is where it is, it is for young people. We cannot label them for their whole lives. That would be a mistake as well. We just believe that the age of consent laws have to get with the times, basically. Again, they differ across the country and we have to recognise that young people are, unfortunately, having sexual relationships at younger and younger ages. That should not be a crime. I do not believe it is a legal issue. It is a moral issue; it is not a legal issue.

Reverend the Hon. FRED NILE: The police told us earlier that they do not prosecute in those cases.

Ms JOHNSTON: No, they do not. It is very rare, unless there is some sort of predatory behaviour. My biggest issue with that is that children or young people between the ages 16 and 18 have no protection in law whatsoever. They could be being groomed and preyed upon by an 80-year-old and that is all fine with the law. I just need to address back to your question. I am still playing with what you have said. I think that is something that comes in the community a little bit, as an organisation are we alarmist? Are we creating something and making it worse than what it is?

If I can be totally honest about that, it is really annoying. Unless you come and sit in our office for a week and watch the kids and the families march in and out then you do not really get the depth of this. Plus it comes from a time 18 years ago when we started when, as I said, no-one even wanted to talk about it. So you have to be a bit loud, you have to be a bit bold, you have to be a bit controversial and you have to challenge. But at no time have we ever—because if we had we would have been roasted across the coals, there is plenty of people wanting to do that—made any statements or done anything in the media that is inaccurate or overzealous, in my opinion. Unfortunately, it is the truth. As unpalatable as it is, it is the truth.

The Hon. MELINDA PAVEY: What I was getting at is that I hope it is improving?

Ms JOHNSTON: Yes, absolutely.

The Hon. MELINDA PAVEY: After all the work, lobbying and better understanding of the community because, in large part, of the work done by your organisation and others?

Ms JOHNSTON: Yes, if the kids and families out there believe the system is backing them up. So many people come to us because they do not trust the system. They do not want to go to the police or child safety so they come to us.

The Hon. MELINDA PAVEY: What do you do then?

Ms JOHNSTON: We counsel them. One of the paedophile networks—I think one of the offenders is still to go before the courts—was the result of a person ringing the Bravehearts office here in Sydney. I actually took the call and spoke to him. We worked with him for probably six months before we felt he was strong enough to go to the police. When he did go to the police we went with him. We walked the journey with him the whole way through. We have been doing this now for four or five years with his family, and the pressure on his family and his own children. He was a paedophile network so the other survivors are also clients of ours. NSW Police do give us people that they cannot manage at a caring level because the police have to do the prosecuting work, so we do the caring where we can. We are not resourced to do it, so it is tough but it is what we do.

The Hon. MELINDA PAVEY: How many would you do in New South Wales?

Ms JOHNSTON: We probably have about 20 cases. We have just taken some floor space in Spring Street in the city so we will be cranking all of that up. I am sure we have got more but of those types of clients coming from NSW Police currently we have about 20, down to the children of the parents who were taking photos of their kids, sexually exploiting them and putting those online. The parents went to jail and the kids are in care. We are also helping a foster parent—that is another story. They were foster parents who split up so there is only one now looking after all these children, really severely traumatised children because of what has happened to them. We just help them and try to make sure the schools do the right thing and the people around them do the right thing.

We have been doing that sort of work in New South Wales now for over a decade. We do what we can. We work in education. We educate kids. We have seen over 300,000 children and New South Wales has just rolled that out thankfully—yay. Just everything, empowerment, and now the risk management stuff with Ernst and Young, which is about making sure that adults who work and live with children actually understand how to get down on the little chair and listen to children because kids generally do disclose. I would say that most of our clients as children believed that they told their parents but their parents do not ever remember hearing it and it is because we are talking in two languages.

The Ditto education program seeks to bring about a language so that we all understand what we are talking about and it works. The whole community is starting to react and respond more appropriately. Children are being believed; they are not being silenced. If they can go to a courtroom and get justice, fantastic. All of that stuff helps, but historically the way the system works at the moment is not; it is not there for the victim. Part of the ongoing legacy of the pain is not being believed, not being honoured, not being supported and cared about. That is the real ball and chain.

Reverend the Hon. FRED NILE: Thank you for what you do.

Ms JOHNSTON: It is my pleasure. It is an honour actually; it is a privilege. It is an amazing thing.

CHAIR: On behalf of the entire joint select committee, Hetty, thank you so much. Please pass on to everyone within Bravehearts our appreciation for their ongoing stellar efforts, as we have congratulated others in that space.

Ms JOHNSTON: Thank you, Mr Chair, I will do that. I appreciate it.

CHAIR: If there are any further questions we would appreciate your assistance in answering those to help us in our deliberations and ongoing work.

Ms JOHNSTON: Thank you. I would be more than happy to do that.

(The witness withdrew)

(The Committee adjourned at 4.19 p.m.)