REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON THE HIGH LEVEL OF FIRST NATIONS PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF DEATHS IN CUSTODY

INQUIRY INTO HIGH LEVEL OF FIRST NATIONS PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF DEATHS IN CUSTODY

CORRECTED

At Macquarie Room, Parliament House, Sydney on Tuesday 27 October 2020

The Committee met at 9:35.

PRESENT

The Hon. Adam Searle (Chair)

The Hon. Trevor Khan
The Hon. Rod Roberts
The Hon. Penny Sharpe
Mr David Shoebridge (Deputy Chair)

PRESENT VIA VIDEOCONFERENCE

The Hon. Natalie Ward

The CHAIR: Welcome to the second hearing of the Select Committee Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody. Before we commence I acknowledge that we meet today on the land of the Gadigal people of the Eora nation, who are the traditional custodians of this land. I pay respect to their Elders past, present and emerging, and extend that respect to other First Nations people present and those who may be watching these proceedings. Today we will be hearing from a number of stakeholders, including Aboriginal organisations, criminal justice-related organisations and research groups and, again, families of those impacted by these events.

While we have many witnesses with us in person, some will be appearing via videoconference today. I thank everyone for making the time to give evidence before this important inquiry. Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. The guidelines for the broadcast of proceedings are available from the secretariat.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside about their evidence at the hearing. Therefore, I urge witnesses to be careful about comments they may make to the media or to others after they complete their evidence. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. These rules have been provided to witnesses and are available from the secretariat. If the witnesses are unable to answer a question today and want more time to respond they can take a question on notice. Written answers to questions taken on notice are to be provided within 21 days.

If witnesses wish to hand up documents they should do so through the Committee staff. To aid the audibility of the hearing today I remind both Committee members and witnesses to speak more directly into the microphone. As we have a number of witnesses in person and also via videoconference it may be helpful to identify who questions are directed to and who is speaking. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Speaking closely into the microphone gives those appearing by teleconference a better chance of being able to hear what is being said in this room.

ASHLEE KEARNEY, Disability Royal Commission Project Manager, First Peoples Disability Network, affirmed and examined

The CHAIR: I welcome our first witness. Would you like to commence by making a short statement of only a couple of minutes' duration, noting that we have your written submission?

Ms KEARNEY: Good morning, my name is Ashlee Kearney. I am a proud Ngiyampaa, Wiradjuri and Ngemba woman from far west New South Wales. I would like to start by acknowledging the country we meet on today. This country belongs to the Gadigal people of the Eora nation. I would like to pay my respects to Elders past, present and emerging and all First Nations people attending today and watching this hearing elsewhere. I am the disability royal commission project manager at the First Peoples Disability Network. FPDN is the national representative body for First Nations people, family and communities with lived experience of disability. The Australian Bureau of Statistics estimates that 50 per cent of First Nations people have some form of disability or long-term health condition. Despite its high prevalence, disability remains an untold story not solely in justice but in other areas that determine social outcomes for First Nations people, such as education, employment and housing.

As the national representative body for First Nations people with disability, their families and carers, we strongly urge the Committee to pay specific attention to the disproportionate impact on our community. First Nations people with disability are the most marginalised people in Australian society. As such, the criminalisation and incarceration of First Nations people with disability must be understood within the broader intersecting dynamics of coronialism, racism and ableism. To address the over incarceration of First Nations people with disability these underlying structural issues and the trajectory that leads to interactions with the criminal justice system must be identified and implemented through a strategic approach based on the principles of self-determination, person-centred care, a holistic and flexible approach, integrated services, and culture, disability and gender-informed practice.

By the time an Aboriginal and Torres Strait Islander person with disability first comes into contact with the criminal justice system they will most likely have had a life of unmanaged disability. Coupled with discrimination, based on their Aboriginality and disability they will have faced barriers from the time they are born of poverty, early exposure to life in institutions through the child protection system, struggles at school, lack of appropriate health care and an inability to secure employment. Coming into contact with the police, courts, juvenile detention and prisons is normalised in their life trajectory.

The justice system does little to address these factors and outcomes and, in fact, often makes them worse. People acquire the label of a prisoner who must be punished, not a person with disability who needs support. When released from prison the personal, social and systemic circumstances that propelled them into detention or prison will not have changed, thus many face a cycle of recurrent detention that goes on indefinitely. The impact of dual discrimination for First Nations people with disability is often misunderstood and absent from both Aboriginal justice and disability justice dialogue, and is too often lost within siloed government policy and funding. This leads to poorly designed initiatives that are either disability or culturally inaccessible—most likely both.

We welcome this inquiry from the New South Wales Select Committee, at a time when much-needed attention is being brought to the decades of discrimination faced by Australia's First People in contact with the criminal justice system. Multiple high-profile and comprehensive inquiries have come before and we echo and endorse their recommendations for reform, such the Royal Commission into Aboriginal Deaths in Custody, the Australian Law Reform Commission report entitled *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, and the Australian Human Rights Commission's report entitled *Equal Before the Law: Towards Disability Justice Strategies*. We hope that the time has finally come for political will, political commitment and momentum for change.

The Hon. PENNY SHARPE: Thank you for coming today. Yesterday we touched on the issues of disability, so it is good to have a focus this morning. Ms Kearney, why are Aboriginal people so missed within the disability sector and the justice sector as they come together? Why is there so much misdiagnosis and under-diagnosis?

Ms KEARNEY: I think there is a massive gap in the early detection or early identification of disability for First Nations people with disability. A lot of the time, people first entering the criminal justice system are receiving their first diagnosis or any identification of health supports needed. I think there needs to be a lot more

of that early intervention and, I guess, working from a social model of disability and seeing how disability is leading people to a path of being excluded from society—not being able to gain education, employment—and often leading to the criminal justice system.

The Hon. PENNY SHARPE: I know that your organisation and others are very familiar—and you touched on this in your submission—with the difficulty with the NDIS and the ability for people to access it and to get ongoing supports. Do you think—this is slightly off track—that while people are incarcerated, if they are getting their first diagnosis for the first time, that there is not actually an opportunity for an intervention that would actually support people post-release in getting the support that they need? Are you aware of anywhere where that is actually occurring?

Ms KEARNEY: For many years FPDN and other disability representative organisations have advocated for the need for a disability justice strategy in partnership with the New South Wales Government. This would be a cross-government strategy that is also working alongside NDIS to make sure that those supports and services are culturally safe for First Nations people. NDIS for most First Nations communities is kind of looked at as something that is not fit for them, it is not either really looking at how to incorporate their culture as part of it. In some communities there are no NDIS services to service people, especially in rural and remote New South Wales; so we really need to address those contextualised issues if we are going to make the NDIS more inclusive and ensure that people are receiving the supports they need before entering any form of criminal justice system or coming into contact with it.

The Hon. PENNY SHARPE: Just to be clear, within the New South Wales disability inclusion framework justice is not really addressed, is it?

Ms KEARNEY: Justice is not really included and neither is First Nations. I think there is a lack of representation of First Nations people that are part of the leadership of NDIS and people leading the National Disability Strategy. So there is an ongoing need for consultation with Aboriginal-led community organisations.

The Hon. PENNY SHARPE: Can you talk to the Committee about the current operation of the kind of legal capacity in diversionary procedures under the New South Wales Mental Health Act and the way that that is impacting on First Nations people with mental health issues? You sort of touch on that around diversion—people are being diverted from jail but are essentially being held in detention indefinitely because it is unable to be resolved. Can you tell us what that looks like?

Ms KEARNEY: I guess mental health being unaddressed leads to that trajectory, that lifelong involvement, recidivism, of First Nations people within the criminal justice system. I have a very close connection to a family being involved in the criminal justice system with mental health and it has only been until recently that a family member that is close to 50 years old is realising that and getting support for any kind of mental health diagnosis. This person has been excluded from other services and supports because there has been a lack of understanding or any kind of early detection. When we are making implementation plans we need to be looking at a social model of disability, and what I mean by social model of disability is that life trajectory of disability. It is not the medical model and just kind of receiving a label or needing a medication or a ramp to get into a building; it is looking at how disability needs to be incorporated in that whole journey of a person's life and if it is not addressed is going to exclude them further.

The Hon. PENNY SHARPE: What needs to be done in relation to the data and the collection of that for First Nations people with disability? I am assuming that it is just not well collected or able to be interpreted. Your submission says there is not a well-validated tool. Is there a tool elsewhere? Is there anyone who is doing this well that you are aware of?

Ms KEARNEY: Dr Scott Avery, while working with FPDN, had completed his research for *Culture Is Inclusion*, and in there unpacks case studies and touches on as much statistics and data as we could collect. There still is not enough to show the prevalence of this issue in the 45 per cent to 48 per cent of all Aboriginal and Torres Strait Islander people who have some form of disability, and even when looking at Closing the Gap targets there is a lack of any kind of inclusion of disability within that conversation, within that national agreement. So if we are looking at genuinely closing gaps and working towards parity between Indigenous and non-Indigenous peoples, then I think disability honestly needs to be included in each one of those. A lens, if you might think, would be applied to each and every single one of those targets.

I know that as part of the national agreement the New South Wales Government—all State and Territory governments will be having buy-in into these Closing the Gap targets. So we must ensure that there is disability included in each of those because the education gap will not be closed, the employment gap will not be closed,

housing will not be closed, health will not be closed, and, to be honest, First Nations people are sick of being inquired, sick of the reports, sick of the failures.

The Hon. ROD ROBERTS: Thanks for your attendance today, Ms Kearney. I just want to draw your attention to the criminal procedure Act of New South Wales and I do not expect you will be well versed of it. This is not a trap or anything like that, but there is something there I want to discuss with you.

The Hon. TREVOR KHAN: That's what all old coppers used to say.

The Hon. ROD ROBERTS: Section 5 of the Act instructs courts that you should only sentence somebody as the absolute last resort. We will not go into that any further but section 21A in particular, which I want to discuss with you, talks about mitigating factors that the court should take into account when sentencing somebody. Section 21A (j) says, "The offender was not aware of the consequences of his or her action because of the offender's age or any disability." So already legislated in New South Wales legislation for magistrates and judges and sentencing authorities to take into account is the fact of people's disabilities already. Could you please comment on that?

Ms KEARNEY: Just so I can understand the question—

The Hon. ROD ROBERTS: It is not a trap. My proposition is this: We, as a legislative body, the New South Wales Parliament, has already included in the Crimes (Sentencing Procedure) Act that mitigating factors are to be taken into account when sentencing somebody. First of all, do not sentence them unless it is the absolute last resort, but when you do sentence them take into account these factors—and there is a number of them. I am taking you directly to (j) because that is the relevant one in relation to your submission and it simply says, "The offender was not aware of the consequences of his or her action because of the offender's age or any disability." What I am suggesting is disability as a mitigating factor to crime has already been legislated, so I am asking for your comment in relation to that.

Ms KEARNEY: I guess my understanding of the question and how I can best answer that is that it is legislated, that it is up to a magistrate or a judge to be enforcing that.

The Hon. ROD ROBERTS: It is there in front of them.

Ms KEARNEY: That is right. What we are speaking about is disability being addressed before a person even has to enter a courtroom. So we are talking about the early interventions that needs to be in place even before a police officer comes up to an individual. I understand that there are some safeguards in place and at the end of the day the law is under interpretation as well, so it is how I imagine a legal representative or a judge would be using that to, I guess, find a person guilty or innocent or to make sense of the situation. But what we are talking about is, and I think we need to have a better focus on this inquiry actually, we are looking at how disability is incorporated into a legal proceeding.

We do not want people to go to court. This inquiry is focused on deaths in custody. We do not want people dying in prison. We need to be addressing First People with disability in the criminal justice system way before that even happens, shifting that perspective, I think, instead of it being that safeguard that does not really get scrutinised because what a judge will say, will go—you can appeal it, I am assuming, but it stands. But we are trying to work with people before that. At the moment I am four months' pregnant and I do not want to be thinking about laws being made for my child when it is too late. I want to know that there are services, supports, programs and things like that for this First Nations baby to have the best chance at life like anybody else, and if there is disability, that needs to be addressed.

The Hon. TREVOR KHAN: On page six of the submission you make the observation that it is estimated that 59 per cent of young people in detention nationwide are Aboriginal—I accept that fact—and that two-thirds of those young people in juvenile detention have disability. Are you able to tell me in terms of that two-thirds figure—and it is a figure that I have seen elsewhere—what is included in the definition of "disability"?

Ms KEARNEY: Sorry, I am just having a read over it again to make sure I answer correctly.

The Hon. TREVOR KHAN: That is okay.

Ms KEARNEY: When we speak about FPDN it advocates for all disabilities. We are the only organisation—I am fairly certain—internationally that is across all disabilities. So there would be organisations advocating for the autism spectrum disorder, there are organisations advocating for people with blind and sight impairments, for example. So when we speak about disability for First Nations people, it is not one specific disability. So that is right across the board, including mental health.

The Hon. TREVOR KHAN: I suppose where I am going is this, kids can have a variety of developmental delays that mean they do not get to various stages of development at particular times that in due course, if they are not addressed, will lead to learning problems at school. That can in due course lead to a whole series of other issues. I am wondering if, in terms of, the disability factor whether that includes mild developmental delays that these kids will have faced at school or whether it is a more rigorous test than that.

Ms KEARNEY: I am not too sure on the testing but it would be including all forms of disability and all levels, yes.

The Hon. TREVOR KHAN: So if we work on the basis—and, of course, not all people who end up in adult jail have gone through the juvenile justice system in terms of being incarcerated, although they may have had experience with the criminal justice system in its wider interpretation—should the emphasis in terms of the NDIS be at the stage of incarcerated young people and adults or should actually the focus be at an earlier stage; that is, the provision of services to children prior to the age of criminal responsibility, which at the moment is 10? That is ensuring that the kids have the assistance so that they meet the developmental milestones so that they are able to go to school and get some benefit out of it, rather than what may be a pretty negative experience.

Ms KEARNEY: I believe that we need to raise the age of criminal responsibility—

The Hon. TREVOR KHAN: I accept that.

Ms KEARNEY: —for all children. I think the NDIS needs to change its strategy in how it is servicing Australians. My view is that the NDIS is looked at like a life-support system almost. It just keeps people at bay, keeps you alive. What do you need? Okay, you need some medication. For a person with disability, you need some therapy. Things like that. It is still looking at people with disability as though they are less than and are not able to have any—I guess—aspirations. They cannot live a full life and be able to participate within society. So if we start to aim NDIS at looking at different stages of a person's life, then we lose that focus also because some people are not getting picked up as young people with disability.

There is also acquired brain injury, things that are developed, long-term health conditions that need ongoing support in someone's life. I think the NDIS needs to be held accountable as to how effective and efficient they are in working with community members and that needs to be through genuine consultation, through listening to what people with disability really want and need. It is not looking at them with that medical model and thinking—all you need is to get into your house, you need someone to come and bathe you, and roll you over so you are not getting bed sores. How tragic is that and how embarrassing is that to think that is the quality of life we are affording to somebody?

The Australian public service has one of the lowest number of people with disability employed. I think about the policies and the work that would be going on within government departments if we were employing people with disabilities to work there. I know that there is a change when you have First Nations people working within an organisation because their lived experiences comes through. I hope that answers your question.

The Hon. TREVOR KHAN: Let me put it to you this way. I have seen a recent experience where a young child—white, middle-class—has gone off to a paediatrician and ends up with a NDIS package to help with developmental delays at a very young age. I have difficulty seeing that occurring in Tamworth because it would be difficult to get into a paediatrician, but I find it even harder to see the box being ticked for the package to be rolled out in Burke or Brewarrina or even Broken Hill. It seems to me, at least in part, there is a geographic barrier apart from anything else to sections of regional New South Wales, yet alone the Aboriginal community, getting access to funding, particularly funding at an early age for kids with mild developmental delays.

Ms KEARNEY: I think there is a lack of access to services in those regional communities but—in some instances—I have heard reports that there are NDIS plans getting ticked off to different people and then they just sit there. So people are in a position of confusion, thinking that government could be there to support them. They have this really flash NDIS plan, there are no services around and the family is experiencing extreme poverty so there is no way for them to hop on a plane or a bus to Sydney to access any services or even the nearest regional centre. So, I think poverty is another thing that needs to be addressed. We are looking at those regional and remote areas but also the lack of services and the infrastructure that is built around the NDIS system for those people.

The Hon. TREVOR KHAN: Let's just move up a bit in age because I accept what you say. Do you know if, in terms of juvenile justice, whether there is an interaction with the NDIS in terms of juvenile justice?

Ms KEARNEY: Once a child is detained?

The Hon. TREVOR KHAN: Either detained or getting exposure to the system in some way.

Ms KEARNEY: From my understanding I do not think that is the case. I am also on the board of Just Reinvest NSW and as part of disability we are working with the organisation to make sure that disability is reflected and included in a lot of the advocacy. Something that has shown to be of a higher proportion is youth with fetal alcohol spectrum disorder [FASD]. So I am aware that Just Reinvest NSW is working with the Children's Hospital at Westmead and the CICADA unit there. It is government that should be doing these things, but now we have non-government organisations [NGOs] and community people having enough. We have got to take action into our own hands but if things are not funded correctly, the longevity of these programs—days, months, weeks, financial years—there has got to be a better investment in First Nations people with disability, especially youth.

The Hon. TREVOR KHAN: So a youth who is held on remand—and I think the remand figures for juvenile justice are worse than for adult prisoners—do you know what assessment of kids on remand happens or do they essentially just get held and spat out one way or another out of the system in due course?

Ms KEARNEY: I am not sure of the processes that happen once they are held in remand or if they are remanded but I can take that on notice and get some information for you.

The Hon. TREVOR KHAN: Thank you.

Mr DAVID SHOEBRIDGE: Thank you, Ms Kearney, for your work and your submissions today. Mr Roberts was asking you questions about the courts having an obligation to take into account disability on sentence. A significant part of your submission is that many First Nations peoples are not being diagnosed at all. In fact, sometimes the first diagnosis that can happen is after they are sentenced and put into prison?

Ms KEARNEY: Yes, that is right. I think that has a big part to do with the intersectionality of the discrimination that a First Nations person with a disability will be impacted by and there is a high risk of either receiving discrimination for your indigeneity or for a disability. When we think even further through that coronialism lens, that is where it does impact on people coming forward to identify, feeling safe that there are services. Right now the disability royal commission is looking into the violence, abuse, neglect and exploitation of people with disability. I invite you to follow that along and see that. At the First Nations hearings in November there will be a strong focus on out-of-home care, but there has also been big focuses on justice, employment, education and health. That may also help unpack that.

Mr DAVID SHOEBRIDGE: Ms Kearney, about every five years to six years Justice Health produces a Young People in Custody Health Survey. The last one that I can find is from 2015. When you read that report, it says a number of things. The first is that there is substantial self-underreporting by juveniles, by young people in detention, about disability, a lack of awareness about their disability, not having any understanding about their disability. That data seems pretty compelling. Would that be consistent with your understanding about awareness and diagnosis in the community?

Ms KEARNEY: That is right. Some disabilities can be invisible or hidden, but someone's dark skin cannot be. That is an identity that someone often has to be open with. Because there is always that negative attitude towards disabilities, people may not want to come forward with that.

Mr DAVID SHOEBRIDGE: One of the other aspects in that 2015 survey is at least a quarter of kids in juvenile detention self-report that they come from a household where a significant member in that household has a substantial disability. So it is not just the kids having a disability, they come from a family which is already struggling and dealing often with poverty and disability, and that intergenerational play. How does that work?

Ms KEARNEY: If we go back quite a while, there is no comparable word in the Aboriginal language for disability if you want to look at the attitudes of First Nations people and disability. The title of Dr Scott Avery's book is called *Culture is Inclusion* and FPDN is very strong in promoting the messages in that book and the stories that are included. We accepted people how they were. There were no institutions. That is a westernised way of treating people with disability—locking them away, medicating them and getting them away from society. We do not want to see them. It is not appealing. It does not make me feel comfortable, so they need to be locked away.

First Nations people with disability understand and take people how they are. If someone cannot hear—"Hey, you have got to speak up—Auntie cannot hear you very well." She is not looked at as a person who is deaf, a person with disability or a person with a hearing impairment. You are working with that. That is an attitude that First Nations people have to carry on because the Government often lets First Nations people down. So, we have

to take care of people at home—young people especially, having to look after Elders who have those health issues that are impacting their family. Everyone just pitches in and gets done what needs to be done.

Mr DAVID SHOEBRIDGE: Seen from a western medical perspective, that can sometimes be seen as a cultural resistance to diagnosis in First Nations communities. They do not like labelling their kids, their siblings or their parents with disability.

Ms KEARNEY: I think that is because of the attitudes that have come along with those. I do not think that there is anything wrong with disability, but it is the attitudes that come along with that. It is how people will stare, it is how they are accepted in society, it is the opportunities that are afforded to people with disability. So, there are not a lot of selling points to want to put your hand up and say, "I am a person with disability," especially when there is life a trajectory in front of you that leads to a criminal justice system, or to be excluded from employment or education opportunities. Why set yourself back even further?

Mr DAVID SHOEBRIDGE: Mr Khan was asking you questions about regional disadvantage, and I think that we can agree that is a real thing, but when it comes to accessing something like the NDIS, poverty and education can be as much of a barrier to accessing the NDIS. For example, if a child does not have parents, aunties or uncles who will take them to the GP, then identify the specialist and get the specialist's report and obtain the diagnosis, you do not get started on the NDIS. Those kinds of poverty issues, particularly if your parent also happens to have a disability, can mean that a child never gets a start on the system.

Ms KEARNEY: That is right, and I think that it highlights the need and importance for people to have advocates, definitely. In a lot of cases in First Nations families, it is parents, it is aunties and it is people who are older than them. Hearing is quite a high issue for First Nations people. So if I, at age eight I think, did not get grommets and if I was not able to engage in my education—that was through my mum, putting me forward to the little clinics and things that were going on and taking me to the Aboriginal Medical Service Redfern, making sure that I had the operation, going up for follow-ups and that sort of thing. So I feel really lucky to have had that path because that is not afforded to everybody—that is not afforded to every First Nations person. I would not have been able to finish school and love education. I would not have been able to hear what is going on in the class, mucked up, got suspended and thought that there is no place for me. It is that cycle that goes on. There is that path that is carved out that is so common, and it is so high for First Nations people.

Mr DAVID SHOEBRIDGE: I remember talking to an Aboriginal grandmother, and she said to me that all these systems—the NDIS and disability support—are all designed on the assumption that there is a white middle-class family who can navigate their way through, and it is designed to be navigated by a white middle- class family.

The Hon. TREVOR KHAN: You might have heard me use the term "white middle class".

Mr DAVID SHOEBRIDGE: And she said, "What we need is those Aboriginal organisations, those advocacy units that help us navigate systems that are too often designed for a white middle-class family." Maybe that is oversimplifying it, but those advocacy and engagement roles—something needs to translate.

Ms KEARNEY: I think that those advocacy roles are so important, because they break down what is available for anybody and ensures that the supports that are needed for somebody are able to be accessed. It increases the accessibility for an individual. If you do not know that something is out there for you, you are not going to put your hand up for it. You are just going to miss out. You are going to think that it is not there and you are going to think that it is out of reach. I think that through that advocacy and that transparency of what is available, even understanding systems—if we want to talk about the deaths in custody, people have had a gutful of this. It has been inquired into for so many years and reported on.

I think that there is a lack of transparency for some people who are out there and feeling frustrated to know what systems need to be changed. That lack of transparency can sometimes favour the people who do not want to change the system, because they are not being held accountable to what needs to be done. It is as simple as, if you think about it, calling your Federal member to knock down a tree in your street. Do you understand the levels of government? Do you know what I mean? It is knowing the systems that you need to access and that transparency. I think that an advocate definitely can be your translator, your navigator and your connector in that space, because First Nations people are definitely missing out. If you are in regional and remote communities and services are there for you, the advocates can then link you into things that are there, or help get you to a regional town centre where there are more services—get you to Dubbo if you are in Bourke, that sort of thing.

Mr DAVID SHOEBRIDGE: To turn your NDIS plan that you have got sitting on your kitchen table into actual, culturally relevant services.

Ms KEARNEY: That is right—and not to just be that life-support as well. It is making sure that that person can go and gain employment. It is not just about the upkeep of everyday. It is not just making sure you have got your doctor's appointments.

Mr DAVID SHOEBRIDGE: One of the key decisions that we are waiting for from the New South Wales Government is about the funding of disability advocacy services. In this Committee we are talking about doing rather than recommending. In terms of a concrete, practical result that would make a real difference, how important is getting a decision in this current budget cycle—the budget will be handed down in November—and getting meaningful and real funding for disability advocacy services?

The Hon. TREVOR KHAN: This Committee cannot realistically make any recommendation that will impact this budget cycle.

Mr DAVID SHOEBRIDGE: I think it is important for the record though. How important is it to get that advocacy funding?

Ms KEARNEY: It is very important to get that funding, just as important as Aboriginal community land initiatives like Just Reinvest NSW to be out there doing the work. People with that lived experience, people who are on the ground and people who know the solutions need to be heavily invested in.

The Hon. NATALIE WARD: I have two questions. If you prefer to take them on notice, it is entirely a matter for you. I appreciated your earlier evidence about identification before interaction with the criminal justice system and early intervention and support. I am an advocate of that and I appreciate your work. Could you make some suggestions to the Committee about how that might be done in very practical terms. What might be utilised and how could that be a recommendation. I appreciate this is on the run. You might want to go away and think about that. Through what existing systems and/or new practical ways could this suggestion be implemented? The second question I guess ties in with the legal diversionary programs that you talked about, of which I am an advocate and a fan. The more people we can divert away earlier, particularly our young people and particularly those with mental health and other disabilities—I just wanted to ask if you could give us some very practical suggestions about that period before they enter the criminal justice system or at that very early stage.

Ms KEARNEY: I might take both of those questions on notice because there was a bit of feedback. I want to make sure—

The Hon. NATALIE WARD: I'm sorry.

Ms KEARNEY: No, they are excellent questions. I think that I should pay service and justice to the organisation that I work for. There could be a great opportunity that comes out of the responses from the questions, so I will take that on notice.

The Hon. PENNY SHARPE: We have not touched on it, but I think it is quite important. Your submission talks about Australia's ratification of the UN optional protocol to the convention against torture. Obviously, this has quite significant impacts around the oversight of places of detention. Your submission on page 8 talks about some concern in New South Wales about the cost and other implications of the implementation of this. Could you comment on that? Part of what this Committee is trying to do is talk about oversight mechanisms. We are yet to even talk about the fact that there is a whole Commonwealth process going on as a result of ratification of that protocol that would impact any of the recommendations we would make here. Could you take us through that? This is the first time it has come up.

Ms KEARNEY: I would like to go a bit into that. Something like the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [OPCAT] needs to have buy-in from State government. It was ratified by the Australian Government in 2017. When we are looking at different mechanisms for oversight, I guess we need to stop looking so closely to the agencies that could be scrutinised and ensure that it is a transparent and fair process. I will just read a little bit of the OPCAT that I have got here:

> State Parties agree to establish an independent National Preventive Mechanism (NPM)—

and I think that preventative measures are something that this Committee should be looking greatly at in more detail—

> to conduct inspections of all places of detention and closed environments.

Once a person is detained, it is not that they are, like I said earlier, now a prisoner and no longer a person. They still have their human rights. I think what the OPCAT mechanism is trying to uphold is making sure that people are still safe while they are being detained, that their quality of life is still upheld, that they are able to serve the time and then, once released, that it is not going to be a revolving door back through there. But I can also take that on notice and get some more information to feed back to the Committee.

The Hon. PENNY SHARPE: I am very interested in the interplay—we have already got four or five oversight bodies that look at monitoring and standards and investigations into deaths in custody, which is the main focus of this inquiry. I am interested in how you see the adoption of this protocol and its impact, I suppose, on anything that we would be doing here. I am very happy for you to take that on notice. I know it is a complicated question.

Ms KEARNEY: It is upholding international standards as well, just like raising the age of criminal responsibility. I think Australia needs to step up and be in line with what is going on across the rest of the world. I think that there also needs to be more attention paid to the Royal Commission into Aboriginal Deaths in Custody and to the Don Dale royal commission. How many more royal commissions do First Nations people, who are being incarcerated and dying in custody, need to go through? I know that there is a lot of time spent unpacking the issues and explaining to Committee members where we see the problems, but there has also been massive demonstrations of solutions. Like I said in the opening statement: It is political will, commitment and momentum for change. So it is that leadership that we rely on from the New South Wales Government and from the Australian Government.

Mr DAVID SHOEBRIDGE: I have read your submission about raising the age of criminal responsibility, which you say is a matter of urgency. We probably do not have time to go into it now, but could you on notice just unpack how age of criminal responsibility and disability are so intricately linked, particularly given the high level of disability amongst Aboriginal kids?

Ms KEARNEY: Yes, definitely. Thank you.

The CHAIR: Thank you for your evidence. The Committee has resolved that answers to the several questions you have taken on notice be returned within 21 days. If, however, there is some complexity and you need additional time, please notify the secretariat. The secretariat will contact you in relation to the questions you have taken on notice. We thank you again for your attendance, insights and your evidence.

(The witness withdrew.)

THALIA ANTHONY, Board Member, Deadly Connections Community and Justice Services, affirmed and examined

KEENAN MUNDINE, Co-founder and Ambassador, Deadly Connections Community and Justice Services, affirmed and examined

SOPHIE TREVITT, Executive Officer, Change the Record, affirmed and examined

The CHAIR: I welcome the next round of witnesses. Would each organisation like to commence by giving a brief opening statement of no more than a couple of minutes?

Ms TREVITT: Thank you for the opportunity to give evidence to the inquiry today. I acknowledge the traditional owners of the land that we are meeting on, the Gadigal people of the Eora nation, and the particular significance today's inquiry has to Aboriginal and Torres Strait Islander people, who are significantly and unacceptably over-represented in the criminal justice system. I pay my respects to Elders past and present. I particularly acknowledge the families who have lost loved ones in custody and have been driving the fight for justice for many years. I appear on behalf of Change the Record, Australia's only Aboriginal-led national justice coalition. It aims to end the disproportionate incarceration of Aboriginal and Torres Strait Islander people and the disproportionate rates of family violence experienced by Aboriginal and Torres Strait Islander women.

As you have heard from a number of experts, there are a range of drivers of the disproportionately high level of Aboriginal and Torres Strait Islander people in the criminal justice system. We endorse the expert views of the Aboriginal Legal Service, the Public Interest Advocacy Centre [PIAC], Just Reinvest NSW and Deadly Connections. We endorse the calls from family for greater independence, accountability, oversight and an investment in preventative and community-driven programs and solutions as an alternative to the formal criminal justice system. In particular, Change the Record has long advocated for the minimum age of criminal responsibility to be raised from 10 years old to at least 14 years old. As others have focused on these reforms, Change the Record's submission focused on the opportunity for New South Wales to implement mechanisms in compliance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [OPCAT] to ensure strong safeguards are in place to prevent the type of systemic failures that drive deaths in custody.

It is our view that OPCAT and the designation of independent, adequately resourced and culturally competent national prevention mechanisms are crucial tools in addressing the mass incarceration and deaths in custody of Aboriginal and Torres Strait Islander people. Today Western Australia and the Commonwealth are the only jurisdictions to have designated their national preventive mechanisms [NPMs]. This leaves New South Wales with the opportunity to establish a robust, effective, independent and culturally competent NPM that can provide the sort of oversight and accountability that could prevent further deaths in custody. There are a number of key principles that are essential to ensuring that the NPM fulfils the requirements of OPCAT and is sufficiently independent and robust to have the confidence of those in custody and the broader community.

These principles include: that any body must be established with full and transparent consultation with civil society, particularly Aboriginal and Torres Strait Islander people, and others as recommended by the subcommittee on prevention of torture; that Aboriginal and Torres Strait Islander representatives are included in all oversight bodies and expert advisory panels, to ensure that NPMs are established in a culturally safe way and with the trust of community; that NPMs must have a statutory basis and be independent of government and the institutions it oversees; that they must be adequately and jointly resourced by Federal, State and Territory governments; that they make findings and recommendations publicly available and require a response from governments and detaining authorities and that those responses should also be made public; that they should be empowered to undertake regular and preventative visits; that they should have free and unfettered access to all places of detention, announced or unannounced, and all relevant documents and materials; that they should have the power to submit proposals and observations to Parliament and the public; and that they be afforded appropriate privileges and immunities to ensure that there are no sanctions or reprisals for communicating with the NPM.

We take this opportunity to recommend to the Committee that in developing its NPM the New South Wales Parliament consult with Aboriginal and Torres Strait Islander people, representative bodies, Aboriginal legal services and affected people and families. It should ensure that these principles of independence, preventative oversight and free and unfettered access to places of detention are upheld.

Mr MUNDINE: Deadly Connections Community and Justice Services was established in September 2018 as a specialist Aboriginal-community-led not-for-profit organisation. This was in response to direct community concern around the lack of culturally responsive, community-driven, innovative grassroots solutions to address the over-representation of First Nations people, families and communities in both the child protection and justice systems. First Nations people of Australia are grossly over-represented in child protection and justice systems. This involvement perpetuates a cycle of intergenerational grief, loss, trauma and disadvantage. True lived experience, culture, healing, self-determination and a deep community connection must be at the heart and soul of all work with First Nations people and communities.

Our purpose positively disrupts intergenerational disadvantage, grief, loss and trauma by providing holistic and culturally responsive interventions and service to First Nations people and communities—particularly those who have been impacted by the child protection and/or justice systems. Our vision is to break the cycle of disadvantage, trauma, child protection and justice involvement so that First Nations people of Australia can thrive and not just survive. In our work we place culture, healing, true lived experience, deep community connection and self-determination at the centre of all that we do. We embody and embed holistic, community-based decolonising approaches to connecting First Nations people to their culture and their inner and community strength. We advocate and collaborate to improve justice and child protection systems.

Our approach is a life course approach. We recognise the connections across all stages and domains in life. Intervention and change can occur at any stage of a person's lifespan. We challenge the dominance, values and methods of imposed coronial systems, practices and beliefs. We also take self-determination. Aboriginal people, families and communities are experts of their own lives. They have solutions to challenges that they face and are their own agents for change. Healing-centred engagement is a holistic healing model that adopts culture, spirituality, community action and collective healing. This was built because of my lived experience, my connection to community and my first-hand experience of the criminal justice system and child protection. Thank you.

Professor ANTHONY: I would just like to speak to some of the main recommendations of the submission, if I could. I will go through a number of prongs. The first is support for Aboriginal-based community services that are holistic and that provide support for families, for children and for people with justice interventions in their lives. We believe that decarceration is necessary, especially due to its nexus between First Nations deaths in custody and the over-representation of people in custody. We believe decarceration should occur through decriminalisation of minor offences, through the right to bail for First Nations people, through sentence diversion programs and through prevention. We believe that all facets of the Royal Commission into Aboriginal Deaths in Custody recommendations—including decriminalisation, safeguards in custody and self-determination—need to be implemented in New South Wales.

Finally, we call for the establishment of an independent body investigating Aboriginal and Torres Strait Islander deaths in custody. We are opposed to police investigating police and law enforcers investigating law enforcers. We believe that this independent body, which we refer to as an Aboriginal critical incidents body, should have First Nations oversight but should also have powers to investigate deaths in custody at first instance and to prosecute. There is precedent for these types of models in relation to workplace safety and to Aboriginal sacred sites in the Northern Territory, where Aboriginal bodies can prosecute for violations of sacred sites. We should look towards those models. They also exist overseas, such as the powers of the Ombudsman in Northern Ireland. We believe that only with accountability, with independence in the process and with the self-determination of Aboriginal families, communities and organisations can there be justice and accountability. Only then will we no longer have First Nations deaths in custody into the future.

The Hon. TREVOR KHAN: I am interested in why we have high rates of incarceration. I am particularly interested in whether some changes to the Criminal Procedure Act or sentencing legislation have actually been effective or have made the issue worse. If you go, for instance, to the Bureau of Crime Statistics and Research [BOCSAR] paper number 126, revised in November 2017, *Indigenous imprisonment in NSW: A closer look at the trend*. A series have been done. Mr Mundine, I think you referred to one in your paper from 2016, which I have read, but there is a 2017 one and I will go to it.

It seems that the major offence categories relate to either serious assaults, issues relating to stalking and intimidation and the group of offences that it identifies in the paper as "justice procedure offences". If those are the main offence categories that are leading to Indigenous incarceration—for instance, it does not seem to involve low-level drug offences, but the issue of serious assaults and the justice procedure offences does. A lot of those justice procedure offences are either breach of bonds or, alternatively, breach of apprehended violence orders.

I wonder if you have any comment to make with regards to those BOCSAR findings as to where the essential problem seems to be arising?

Professor ANTHONY: I can provide this subsequent to this hearing, but I just want to refer you to more recent BOCSAR studies, including one this year that actually identified that the criminalisation—First Nations people coming before courts was not actually a reflection of offending rates. What this BOCSAR study indicated was that the law enforcement procedures are disproportionately impacting First Nations people. I think this cannot be ignored, including when we come to what types of orders are set down for First Nations people. They are much more likely to involve punitive consequences, as opposed to non-Indigenous people who are much more likely to be diverted or with less harsh conditions attached to orders. I think we cannot separate, at least, matters of breaching but offences included from the nature of policing and court procedures.

The Hon. TREVOR KHAN: Professor, I am very alive to those, particularly with juveniles. I am very sympathetic to the issues that arise. But what I am interested in—at least in this questioning, as opposed to what others will ask—is what is driving the incarceration rates. I accept that early exposure to the criminal justice system will drive outcomes, and I think that is a significant issue. I accept that. But it seems to me that the offence categories that are causing large parts of the problem are quite defined.

Professor ANTHONY: Even if we accept that those offences are the predominant reason—and I would challenge that; I think it is much more nuanced, because even when we look at matters such as assault that can take many different forms. But even if we accept that, Deadly Connections—and it is very clear in our submission—maintains that the way to deal with those underlying behaviours is through a community-based model, not through a carceral model. BOCSAR might be able to highlight some of the reasons why people are ending up in the justice system. What we suggest is that the justice system is not working in keeping them out, and that in fact the levels of recidivism and ending back up in courts or prisons is very high among First Nations people, so we need to be looking at alternatives. We feel that the Deadly Connections model is one of those alternatives to provide the wraparound support necessary to change behaviours.

The Hon. TREVOR KHAN: Sure. You would be aware that—I think it was 2017 or thereabouts—there were amendments that got rid of section 12 and introduced the intensive correction orders [ICOs]. Are you aware of any studies that have been done post those amendments that indicate whether those diversionary programs have been effective or have, in fact, added to the problem?

Professor ANTHONY: The ICOs have only really been in place since early 2019, so there have not been any rigorous studies, but it has become clear—including through the caseload of the Aboriginal Legal Service [ALS]—that there are high rates of breaches for First Nations people disproportionate to non-First Nations people. I think, as with many other diversionary programs, it has not had the same benefit. It is also the case that unfortunately the introduction of ICOs has replaced other types of sentencing options, such as suspended sentences, and in that way narrowed the options available to courts. I do not think that ICOs have perhaps provided the panacea that the New South Wales Government hoped for when it introduced them.

The Hon. TREVOR KHAN: I think one of the reasons for the abolition of the suspended sentence was it was actually found to be an ineffective alternative. I think it was Snowball and Weatherburn who did a study on those. There was actually, in a sense, an academic basis for moving away from suspended sentences to intensive correction orders. Whether it has worked is another thing, but it seems to me there was an academic basis for saying that method of diversion did not work and therefore we go to another.

Professor ANTHONY: It is a very limited option in many ways, because it is only available for certain offenders, on the one hand—those facing less than two years—but also—

The Hon. TREVOR KHAN: Or an accumulation of three.

Professor ANTHONY: Yes. Also, the conditions can be really stringent and there is very little procedural fairness when there is a breach of a condition. It is a very punitive order. What we would suggest is we need to move away from that and have conditions that are appropriate and have diversion, rather than a new kind of structured or prescribed order that will set people up to fail.

Mr DAVID SHOEBRIDGE: Thank you all for your submissions. One of the matters that is stressed in a series of submissions—including both of yours, but I will read from that of Change the Record—is about ending proactive policing and the targeted policing of Aboriginal communities. There is reference there to the Suspect Target Management Plan [STMP-II] as well as targets and quotes that police area commands have for things like

move-on and search powers. How does that proactive policing fit into the mix and lead to the over-representation of Aboriginal people in custody?

Ms TREVITT: I will start and then hand over to Mr Mundine and Professor Anthony. The Committee has heard a range of evidence on the way in which Aboriginal and Torres Strait Islander people are disproportionately targeted by police and come into contact with police at disproportionate levels. We know that you then see discrepancies at each point subsequent to that, in terms of formal charges being laid as opposed to warnings, and what then happens when you get into the formal court procedure, in the sense of criminal convictions but also being sentenced to custodial sentences as opposed to other measures. The trickle-on effect, I guess, is complete in terms of running through that whole process from the point of contact with police right through to detention.

Having targets and having particular proactive policing strategies amplifies the discriminatory contact conduct that we know is happening already and basically formalises it. It makes a formal part of police practice to be actively and deliberately targeting certain groups of people. You get an exacerbation of what we would argue—and certainly Change the Record's member organisations, which consist of the ATSILs around the country, report to us—

The Hon. TREVOR KHAN: Sorry?

Ms TREVITT: The ATSILs—the Aboriginal and Torres Strait Islander Legal Services. They report to us around—

The Hon. TREVOR KHAN: I am sorry. I hear a lot of acronyms and my brain does not work fast enough to absorb.

Ms TREVITT: No doubt; I also speak too quickly. Our member organisations, including those legal services, report the impact of the discriminatory way in which police target Aboriginal and Torres Strait Islander people, target young people, and target Aboriginal and Torres Strait Islander young people. If you add to that formal policing practices, which include things like having a list of Aboriginal children who are targeted by police, you effectively get discrimination upon discrimination. That directly leads to the over-incarceration of Aboriginal and Torres Strait Islander people, both in terms of a result from that single interaction but also in terms of the criminalisation of people and subsequent contacts with police, which leads to a funnel into the criminal justice system.

Mr MUNDINE: I think the only way I can explain the way in which police police Aboriginal communities and the way in which they have the rights to be able to do so with so much resources and finances behind them is it is coming into bushfire season but we do not see fire trucks patrolling the street looking for fires, we do not see the ambulance patrolling the street looking to save people, but we have the police just parading around my neighbourhood and my community stereotyping young people, stereotyping my uncles, my aunties because they do not understand my community. When you have people that come from outside of Aboriginal communities to come in and police them without understanding them, they are always going to see things that do not sit right with them, particularly when they come from privileged communities and then they are going to police poor and disadvantaged communities—everything is wrong.

So if we continue with the way in which we give the police the funds and the power to operate we will never see a change in the statistics, we will never see a change in the relationships between Aboriginal communities and police. There needs to be an understanding of our historical relationship between the police and the mistrust because of the way in which I was—firsthand experience here—a child being pulled over by police because of my name and because of people who frequented my house or my dwelling. This was on my way to school; they would search my backpack. I would go to sports with my non-Indigenous friends and we would get questioned and they would not. So we need to be able to change both sides of this narrative and build the trust up that they are there to protect us.

The most shocking thing is that I have been a victim of police brutality myself—as a juvenile, being manhandled by six grown men, slammed to the ground, knees in my back. Anyone would swear I just went on a mass murdering rampage and all I did was break into a car to be able to look after myself because I did not have my parents to be able to look after me, and nobody understood that. Nobody understood why I was out walking at three o'clock in the morning because I did not have a home to go to. And police always seen me as a problem; police always targeted me. It got to a point where police knew me by my first name and when I was released from custody they would drive past and say, "Are you back at it again? We'll chase you." These things are not what

happened in other communities. I do not see other young children or other families and communities being terrorised like this.

For me, a big part of me building Deadly Connections and stepping up and talking about my experience is to show how it has impacted me and how I carry it today. It still impacts me, it impacts my family and it impacts my children. It impacts me every day; it impacts the work I do. It impacts me mentally and physically. I am not committing crimes anymore and I hear police and my tummy turns upside down, I start shaking. I walk past police in the street, I say "Hello" and my heart races and I think "Are they going to pounce on me? Are they going to pepper spray me?" I do not know what they are capable of. I know what I am capable of and that is me just trying to navigate my community without coming into contact with them, but I do not have any control over what they do when they pull me over.

Mr DAVID SHOEBRIDGE: A fair bit of the work that Deadly Connections does is actually engaging with Aboriginal young people now. Just to be clear for the record, I have seen some of the work you do in Glebe, engaging with young Aboriginal people and giving them access to your experience and activities. You talk about your experience; how different is it now for young Aboriginal people as they walk down the streets in Glebe?

Mr MUNDINE: Nothing has really changed, which I am sad to say, but when we are out there the kids tell us that they feel safer, they feel more confident to be out on the street, to be able to do activities late at night, to be able to walk around their community without being harassed. We have been operating out in Glebe now for about two years with zero incidences of violence between participants, of intoxication, drugs and alcohol. But before we got there, there was a localised youth centre that shut down because they did not know how to work with these kids, they did not know how to address their needs, they did not know how to address the underlying causes to why they are undertaking such behaviour.

So for me to be out there with them, yes, they feel safe, but we are under-resourced and we can only be out there on a Saturday night. I would love to be out there every night to make sure that they are safe, to make sure that they are fed, to make sure that everything is nice and comfortable for them to go home to because I understand most of these homes that the young people come from have been disrupted in some way, shape or form by the criminal justice system. That is why these kids are out on the street, because they do not feel safe at home and their needs are not being met.

Mr DAVID SHOEBRIDGE: Keenan, what kind of expense is it to have your program run for one night a week? What are we talking about?

Mr MUNDINE: There are usually three staff, depending on how many children we have, and then we have a small budget for an activity and some food. So I think annually it comes to about $60K or $80K, and that is to pay our staff to get out there, to take them out of community also to expose them to other communities, other cultures.

Mr DAVID SHOEBRIDGE: How frustrating is it when you compare the small amount of resources you are asking for to run that program seven nights a week compared to the extraordinary amount of resources you see devoted to the policing of your community? How frustrating is that for you, knowing how much good this can do?

Mr MUNDINE: I think frustrating is not the word, man. I think disappointed that society thinks the way in which to address these problems is to chase young children and arrest them and put them in a cell with no support, no understanding, no access to opportunities when they come out and just open the gate and put them back in their community. For me, that was a big part of my experience and my contact with the police. I am still looking for a great police officer who understands my community and our community's needs. I am still hopeful that there is somebody out there with that insight into the way things operate, but, for me, it is very distressing to know that society thinks the way to stop disadvantage and poverty is to chase them and lock them up.

Mr DAVID SHOEBRIDGE: My final question before I hand over to someone else is probably to you, Professor Anthony. We often hear about justice reinvestment as a kind of abstract concept. Do you see the work of Deadly Connections as a kind of very practical example of justice reinvestment?

Professor ANTHONY: Justice reinvestment has two features: one is to take resources out of prisons and police, that structure of law enforcement, and that, I think, in itself is important because of what Keenan has talked about in relation to over-policing and certainly in relation to over-incarceration and it is obviously something Deadly Connections focuses on in Sydney, particularly the inner-west. But it is also the case, and particularly we cannot forget in the regions. In Armidale, Cynthia Briggs—an amazing Aboriginal woman—got

funding from the New South Wales Government to run a program for Aboriginal youth, simply to get things to change, like police driving kids home rather than driving them to lock-up. Cynthia Briggs was very clear that there is racism that happens every night in Armidale because the police will drive home non-Aboriginal kids and they will be locking up the Aboriginal kids, and the program worked with the kids to provide the necessary support, and that is essential to the other feature of justice reinvestment, which is to build up these community-based organisations and build up the necessary services.

One of the key roles of Deadly Connections, for instance, is to provide support with housing, and if we have housing—so somewhere for kids to be safe, and adults—we are able to provide an alternative for bail, for example; an alternative to remand. So it is rethinking where we keep people safe and how we keep the community safe. But Deadly Connections cannot do this work without all the important social infrastructure, so we need to have a shift in the system through justice reinvestment. Prisons are hugely expensive—in some states it is $400 a night for someone to be kept in prison. If we put resources into Deadly Connections and the necessary supports whether that be support with education, which is absolutely crucial as a protective factor against incarceration, or whether that be support with programs to be on country, to be connected with country, as well as other high needs supports relating to mental health and wellbeing. That would create a community, not only First Nations communities but the whole community, that will be much safer than a community that invests in prisons and police.

The Hon. ROD ROBERTS: Ms Trevitt, from your submission I notice you are talking about the decriminalisation of low-level drug offences and I understand where you are coming from with that. Hopefully that would help to reduce the incarceration rates of Indigenous people and, in fact, non-Indigenous people as well. Further to that, I draw your attention to Corrective Services NSW inmates census 2019 done on the 30 June 2019. I will combine the male and female Indigenous cohorts for the sake of brevity. There are 141 inmates for drug offences. Of that, five were for importing illicit drugs, 118 were for dealing or trafficking in illicit drugs, 12 were for the manufacture of illicit drugs but only five, of which none were female, were there for possession and use of illicit drugs. Would you care to comment on those figures?

Ms TREVITT: I think some of the systemic problems around this have been discussed previously around the fact that the final charge and conviction that leads someone to spend time in prison may not be the only contact they have had with the justice system. When we do things like decriminalise low-level drug offences—and that is not to say that everyone who is charged and convicted of a low-level drug offence goes to prison because of that low-level drug offence—when that is an entry point to the criminal justice system and other interactions take place with the criminal justice system, it can become part of the pathway—

The Hon. ROD ROBERTS: I just stop you there for the purpose of clarity. I do not wish to interrupt because you might like to comment on this. The characteristics of the offences listed by Corrective Services lists the most serious offence as the offence the person is recorded under.

Ms TREVITT: Yes. What I am saying is if you get rid of some of these lower-level drug offences—let me start by saying I support what Professor Anthony and Deadly Connections said previously, which is that the criminal justice system is not an appropriate response to many types of offences. It does not work so it does not stop the bad behaviour. So let us take that as a given that there might be better ways of dealing with types of offences. When it comes to decriminalising some of the low-level drug offences, you can add to that list some forms of driving offences and a range of non-violent offences that the community may be more receptive to the idea that there are other ways of dealing with it.

When you get rid of them you get rid of a bunch of entry points for people into the criminal justice system that may later lead them to committing higher level and more serious offences. What we understand about the criminal justice system is that it is inherently criminogenic. We talk about this a lot when it comes to RaiseTheAge, when it comes to little kids coming into contact with the criminal justice system. We know it makes them more likely to offend in future and more likely to come to the attention of police and end up in the criminal justice system, but also more likely to come into contact with the criminal justice system for more serious offences.

Part of the decriminalising of low-level offences is about trying to stop people from coming into contact with the criminal justice system at all. In terms of the high-level offences that you have mentioned that people are imprisoned for, hopefully what you would be doing is getting rid of some of those entry points to the criminal justice system by doing things like decriminalising low-level drug offences and then addressing some of the systemic factors that lead people to be in situations where they are more likely to be criminalised. So if as, Deadly Connections said, you decriminalise those low-level offences, you provide adequate housing, you invest in things like—

The Hon. TREVOR KHAN: Education.

Ms TREVITT: —education, other forms of social supports, you deal with peoples' drug addiction so they are not dealing to support their habits, for example. If you address all of those things, the hope is you are not going to end up with people committing some of those high-level offences. There is the smaller conversation we could have around what happens to a very small number of people who are running these complex, high-level business operations—the majority of those people are not Aboriginal and Torres Strait Islander people. Do you want to add anything to that?

Mr MUNDINE: No, you nailed it.

The Hon. PENNY SHARPE: This is a really obvious question but I do not know what it stands for—NPM?

Ms TREVITT: National Preventative Mechanisms [NPM]. It is the—

The Hon. PENNY SHARPE: It is the mechanism, right. I thought that was what it was but it was not defined anywhere so I am glad I asked the question because I did not know what it was.

Ms TREVITT: It should have been, my apologies.

The Hon. PENNY SHARPE: Never assume.

Ms TREVITT: Absolutely.

The Hon. PENNY SHARPE: Having said that, yesterday this did not come up and I am very interested given the terms of reference of this Committee about how you see the international protocol and how that flows down to States, given there are so many State systems. I think you said before there are four or five oversight mechanisms within New South Wales. Are you able to give us what you think would work? If we are going to have this mechanism—NPM—what does a best practice one look like in the State context?

Ms TREVITT: So part of the OPCAT framework means that NPMs need to be implemented in each State and territory—that has already been committed to. So it is not so much will New South Wales have one as what will it look like and whether it will be an existing body that is changed or whether you—

The Hon. PENNY SHARPE: That is really my question. What does the best one look like from your view?

Ms TREVITT: The only ones that exist in Australia at the moment are Western Australia and the Commonwealth. Western Australia says that they are fully compliant with OPCAT so there are certainly parts of the Western Australia model that can be looked to—for example, making sure that the body itself is functionally independent of government, that it is resourced separately so there is a separate funding stream—

The Hon. PENNY SHARPE: Western Australia are more advanced in this because they had that terrible case of the man who died in the back of a vehicle. Is that because they had to address those issues? Why is it that Western Australia, not necessarily known for their great justice outcomes—

The Hon. TREVOR KHAN: No.

The Hon. PENNY SHARPE: —is ahead of everyone else?

Ms TREVITT: I can take that on notice. I do not know why they are ahead of everyone else but I think that that is—

The CHAIR: What terrible experience led to that?

The Hon. PENNY SHARPE: I think it was the death of Mr Ward.

Ms TREVITT: I think an important point to make with respect to the death of Mr Ward—and this highlights when you ask what is the best practice model or what should it look like—that highlights a deficiency in the Western Australian model. In the Western Australia model there is no compulsion or no ability for the body to compel the Western Australian Government to respond to recommendations. So there had actually been a recommendation made to the Western Australian Government around transportation and around the possibility of transporting people in the backs of those paddy wagons for long distances being inhumane and potentially causing death, which it then did in the case of Mr Ward.

So we would say one of the things to consider, if New South Wales is committed to an OPCAT compliant NPM, would be to not replicate that error and to have it as a mandatory feature of the body that it makes recommendations to government but also that the Government/the detaining body is required to respond to those recommendations and for those responses to be public as another and additional form of accountability. In terms of the other features, there is a bill, for example, before the South Australian Parliament currently, which is establishing their body. They have constituted it with their official visitors program but that program is being funded from the Department of Corrections and I am pretty sure that the Minister—and I will take that on notice—sets the remuneration of that body and governs the resourcing. So we would say that—

The Hon. PENNY SHARPE: So it is an issue of independence.

Ms TREVITT: We would say that that is not an independent body because it is reliant on the Minister and on the department for resourcing.

The Hon. PENNY SHARPE: I assume official visitors are also appointed by the Minister?

Ms TREVITT: There is an independent process for appointing them but they have a time-limited term and there is nothing within the current bill before Parliament that ensures those individuals who are fulfilling that role are free of conflict of interest and are separate. This is another flaw, in our view, of the WA model, which is that it specifically allows for the secondment of individuals from the department to fulfil those inspectorate responsibilities. We would say that is not appropriate, that is not independent. So we would be looking for key resourcing and functional independence for the body to be effective. The one last thing to add is that when thinking about creating a new body or repurposing an existing body, it is obviously crucial that this process involves Aboriginal and Torres Strait Islander people and bodies—both people within the custodial system who have had experience within that system, and families and members of community.

Part of the way in which an NPM is meant to work is to prevent instances of torture or deaths in custody by conducting its own independent and unannounced visits, but also by being able to get information from detainees, families and the community. If there is not trust—and I know that the Committee has heard extensively about the issues of trust—that this body is independent and will take that information seriously and act on it then I do not think that the NPM can fulfil its mandate.

The Hon. TREVOR KHAN: In terms of the inspector of prisons, in New South Wales, I cannot remember—do any of you know whether that role is funded through what I will call the department of Corrective Services?

Ms TREVITT: I do not. I think I remember reading it in the Jumbunna submission, but I can take that on notice.

The CHAIR: Is this the Inspector of Custodial Services?

The Hon. TREVOR KHAN: Yes.

The CHAIR: It is through the Department of Communities and Justice.

The Hon. TREVOR KHAN: Do you have a view as to whether that inspectorate role would be more appropriate to be housed in or under the Ombudsman?

Ms TREVITT: Yes. I have a view in the sense that I think that there are some key principles—the body which is tasked with preventing torture or abuses within the correctional facility should not be the same body that investigates individual complaints.

The Hon. TREVOR KHAN: You can take that as read.

Ms TREVITT: In that case, it may not be appropriate to have them housed in the same body because of an issue around resourcing and division of labour. I cannot comment on the specific body because I am not familiar with it, but I think that the principle would be that you would want to keep the complaints function very separate from the systemic review inspection function.

Mr DAVID SHOEBRIDGE: Policy from practice.

The Hon. TREVOR KHAN: Yes. I think that you have probably got us all sold on that. We now go to oversight of deaths. Do you have a view, and this might be getting too specific, as to whether that oversight function should be undertaken by the Law Enforcement Conduct Commission [LECC]?

Ms TREVITT: No, I do not. I do not know enough about the LECC, except that I understand that it is nominally independent.

The Hon. TREVOR KHAN: To be fair, it is independent.

Ms TREVITT: But I have heard submissions from others that state that LECC is not necessarily considered a body that has the full trust and confidence of people because it just provides that oversight functionality when it comes to complaints investigation.

The CHAIR: At present it only looks at serious misconduct and oversight.

Ms TREVITT: But I am not sure whether that concern would extend if it is playing this other role, which is not to oversee police investigating complaints made against other police. If we removed that functionality, perhaps it would be. But again, I think that there is the issue on which you have said you are sold—the resourcing, and if their role is to oversee the investigation of complaints, would it also be appropriate for them to be conducting independent inspections and that sort of systemic review?

The Hon. TREVOR KHAN: No, I am certainly not suggesting that the LECC would do the inspectorate role.

Ms TREVITT: That would be separate.

The Hon. TREVOR KHAN: That would be more appropriate somewhere else. Obviously if you have got an inspectorate function coming in regularly, they have got to have sufficient confidence that they are not hitting walls created by another investigation that is going on at that time, in respect to the complaint.

Mr DAVID SHOEBRIDGE: Also if they set the policy and the policy misfires, you need to have the ability to critique the policy by an independent body.

Ms TREVITT: I think that is right.

The Hon. PENNY SHARPE: My question is to either Professor Anthony or Mr Mundine—in your submission you go into the issue of the connections between incarceration and young people in care, and particularly First Nations women losing children, but I am wondering if there is anything in particular within the role where you think that we can help with that? We spent quite a lot of time yesterday speaking about the unacceptable increasing rates of First Nations women being imprisoned, do you have any reflections on why that is happening? I think that Professor Anthony has done a paper on this. I have not read it, but I will read it. I wanted to talk about women in prison, but I am also very interested in the pipeline to detention for kids who find themselves in out-of-home care.

Professor ANTHONY: Can I first refer you to the submissions that I and Deadly Connections made to the inquiry into the impacts of incarceration on children that the New South Wales Parliament is currently undertaking?

The Hon. PENNY SHARPE: Do we not just need to go back to 1997 and to Ann Symonds' report? If we did that, I think that we would have that fixed. I am just saying.

Mr DAVID SHOEBRIDGE: Good on Ann Symonds.

Professor ANTHONY: I think that if we did a lot of things and had taken a lot of recommendations from the past, we would not be here. What we really emphasised in our submissions was that incarcerating parents is much more likely to result in children being in the protection system and then going on to being in the justice system. It is really important to take stock of recent months and how quickly we have reduced incarceration rates as a result of a range of factors, but I would suggest different approaches to law enforcement, to bail and sentencing decisions, and this—

The Hon. PENNY SHARPE: The evidence that we had yesterday showed that was not the case for women, and no-one could really put a finger on why that was the case.

Professor ANTHONY: Maybe not for women overall, but I have seen evidence that for First Nations women there has been some benefit. Maybe not proportionate, but there is—

The CHAIR: Well, that is actually important because the evidence that we received yesterday was that while overall First Nations incarceration had reduced by 11.3 per cent, the incarceration rate of First Nations women had not decreased.

Mr DAVID SHOEBRIDGE: Do you want to take that on notice?

Professor ANTHONY: Yes.

The Hon. PENNY SHARPE: I am not asking you to guess. It is not a test.

The CHAIR: We would be happy to be wrong about that.

The Hon. PENNY SHARPE: It came to our attention, and if there is a reason for it then we want to understand that.

Professor ANTHONY: Because my understanding is there was a decrease but not as much. It shows nonetheless how quickly we can reduce rates of incarceration. The concern we have is for any parent being incarcerated, not just women—although women tend to take on primary care responsibilities and when they are imprisoned, their kids are more likely to end up in the child protection system. That is why we believe that it is important to have parents supported outside of prisons, but also for parents not to have other types of punitive justice interventions that normalise the experience for children of the criminal justice system being involved in their lives.

Flowing on from that, what we would support—and Mr Mundine can talk more to what this would look like—are the many of the recommendations of the Megan Davis inquiry that point to the need for self- determination. This has also been an ongoing demand of Grandmothers Against Removals—that we need to set up advisory boards in the Department of Communities and Justice and Child Protection Offices, that those advisory boards need to include Aboriginal people and that there also needs to be resources for Aboriginal organisations to do the work that ensures that children are with their family and not in care.

Mr MUNDINE: Just to touch on that question, there are many factors that lead to the overwhelming statistics. You already touched on it—children in care—and Thalia just touched on it too. When most of these women who are young parents or mothers lose their significant other to incarceration, they become single parents and they take on a lot more responsibilities than they can handle. Then interventions happen and child protection officers come in and remove the children, so now the mother is traumatised and alone. She may turn to drugs to deal with that situation, become dependent and commit drug-related crimes. Now they are in prison. The cannot get their kids back. They have more kids. The kids go into care and they still go into prison. Nobody is equipping these people with the skills to be able to be the best parents they can be.

I think what also needs to be noted is that there is a lot of research and statistics in many of the submissions, but there is no research that prison actually works. There are no opportunities for people to be functioning members of the community when they come out of prison and, when they have a criminal record, to try and get employment, insurance, their car insured, to get life insurance or real estate. So when you come or when you enter at 10 or 14 and have a criminal record, what future do you have? One that is dependent on welfare and government housing. If that is not adequate enough, what resources do they turn to? Illegal activity. There are a lot of factors that need to be addressed to be able to make a big impact in this climate and to change this overwhelming and shockingly disproportionate rate of my people being entrenched in the child protection and justice system, which has just been cycles of intergenerational trauma since being colonised.

Mr DAVID SHOEBRIDGE: I think one of the opportunities that has come about from this dreadful pandemic is changing our policy settings on bail and remand and the like, and divert people away from the criminal justice system. Is that something you would all agree on?

Ms TREVITT: Yes.

Mr MUNDINE: Yes.

Mr DAVID SHOEBRIDGE: If we were to look at something very practical that could be done, maintaining those policy settings as we come out of the pandemic would be one measure that this Committee could potentially recommend. Do you agree?

Mr MUNDINE: Yes.

Professor ANTHONY: Yes. I would just add that what has been very clear, at least from what we can see from court decisions, is a real emphasis on the health and wellbeing needs of people coming before the courts. Obviously that is in the context of a pandemic, but what we would suggest is that prison places a health and wellbeing threat to First Nations people outside of a pandemic because of their higher rates of other types of diseases and infections, such as hepatitis C. But it is much more subtle and insidious. It is a threat to mental health

and wellbeing in terms of disconnections with family and community. What I guess is being emphasised in the pandemic are considerations that we think should be universal to both enforcement and policy settings.

Mr DAVID SHOEBRIDGE: My final point is this. I suppose it is an observation—

The Hon. TREVOR KHAN: Is it a point or a question?

Mr DAVID SHOEBRIDGE: It is a question. Because we had evidence from Mr Coutts-Trotter, Secretary of the Department of Community and Justice, in another oversight inquiry just earlier this month. He was talking about the fall in prison populations in terms of juvenile detention and adult prison populations. I will just read his conclusions. He says in relation to the juvenile detention, "We would expect that trend to be maintained"—a lower level of juvenile detentions. But then in relation to adult prisons he said, "We do not expect the current significant fall in the adult prison population will be maintained. We think that will creep up again over time." What can be done to prevent that?

Professor ANTHONY: I think if we look at juvenile justice or youth justice, as it is called now, there is a clear emphasis in policy on diversion. There is a mentality absolutely espoused openly by the Chief Magistrate of the Children's Court that is in favour of keeping kids out of custody. That is what we need to superimpose onto the adult system. The trend has been absolutely downward in youth justice but not to the same degree for First Nations children. So we need to have measures in policy but also in enforcement that ensure an even approach in application. I believe that can only be done through enhancing the role of relationships and partnerships with First Nations organisations to try and shift the stereotypes and systemic racism that occurs within the systems to bias against First Nations children and adults.

Mr MUNDINE: Part of the work that we do when supporting people coming before the courts when going for sentencing procedure is using the royal commission recommendation that imprisonment is the last resort. What other sources have they looked at besides looking to imprisonment? Because at the moment—even my experience was that I would get arrested and I would see a prison cell before I would see any alternatives.

Ms TREVITT: One of our recommendations is around legislating the requirement for imprisonment to be an option of last resort. I think what the pandemic has done is change our understanding of—I think it is in practice. It is a practice that is meant to be used.

The CHAIR: It is legislated already but it is a question of—

Ms TREVITT: Whether or not it is implemented.

The CHAIR: It is also whether or not there are other options available to the judicial officer before they do that.

Ms TREVITT: It appears the that pandemic has shown us that there are, because we have had less people being imprisoned during this period. I think that that is a reflection of a different understanding of risk—the heightened risk within a prison context to the transmission of COVID-19. But what a large number of Aboriginal and Torres Strait Islander people and their families have been advocating for a long time now is that there are existing high levels of risk in a custodial environment and in a prison for Aboriginal and Torres Strait Islander people at any time. If we truly believe that prisons should be used as an option of last resort, that is the sort of practice and cultural mentality that needs to change. Prisons are not a risk-free place to send people in a non-pandemic environment. They are, in fact, an extremely risky place to send people, as the fact this inquiry is taking place is evidence of.

The CHAIR: Thank you. The Committee has resolved that answers to questions taken on notice be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice. We thank you again for your attendance, evidence and valuable insights today.

(The witnesses withdrew.)

(Short adjournment)

JAMES CHRISTIAN, Chief Executive Officer, NSW Aboriginal Land Council, before the Committee via videoconference, sworn and examined

The CHAIR: Would you like to commence by making a short statement on behalf of your organisation?

Mr CHRISTIAN: I thank members for the opportunity to provide the evidence for you today in addition to the NSW Aboriginal Land Council submission, in which we made seven recommendations. The fact that this Committee has been seen as necessary by the New South Wales Parliament is clearly evidence that there is still much more that not just can be done but should be done to address the excessive contact rate between the State's criminal justice system and First Nations people. Of the 435 deaths since the royal commission, of those in New South Wales of course the figure [inaudible] people have been held responsible for their role in those deaths. The issues before the Committee are not issues that have not been explored by the place that you work in. There have been various reports and inquiries. It is a blight on the Parliament of New South Wales that we are still over- represented as First Nations people in New South Wales in the criminal justice system, particularly the alarming rate [inaudible].

The CHAIR: Mr Christian, if I could just interrupt you. I am told that if you turn your video off the sound quality might improve. It sounds at our end like you are under water. Please proceed and we will see whether that fixes things.

Mr CHRISTIAN: How is that?

The CHAIR: Much better. Please proceed.

Mr CHRISTIAN: I expect that the work before you will be well informed by countless numbers of various inquiries into these matters. It is an enduring blight on the State of New South Wales and its Parliament that we have not seen any improvement in the over-policing and over-representation of First Nations peoples in the State's criminal justice system, as well as the harm that is done to those individuals emotionally and physically while they are in the State's criminal justice system. It is absolutely true that this is not just about a social justice good. It is actually an economic imperative. The submission that you received from Just Reinvest NSW and the actuarial analysis that they have done show that it is not just a social justice good but an economic imperative that more is done, appropriately in partnership with First Nations people.

The NSW Aboriginal Land Council is a member of what is known as the New South Wales Coalition of Aboriginal Peak Organisations [CAPO]. CAPO is a member of the National Coalition of Aboriginal and Torres Strait Islander Peak Organisations, some 50 organisations across the nation that have been working to deliver the new Closing the Gap framework. The new national agreement on Closing the Gap includes targets to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031 and to reduce the rate of Aboriginal and Torres Strait Islander young people aged between 10 years and 17 years in detention by at least 30 per cent. However, in New South Wales, we should be aiming for much more ambitious targets than those. We should be aiming for at least a 23 per cent reduction for adults and a 28 per cent reduction for youth, year on year, in order to reach parity on incarceration rates with mainstream levels within the 10-year life of that current Closing the Gap agreement. The new agreement, importantly, also includes four broad priority reform areas that aim fundamentally to change the way in which governments work with First Nations people.

I specifically draw your attention to priority reform three, which is about transforming mainstream institutions like our criminal justice system and policing and review systems in New South Wales. The high incarceration rates of First Nations people have been canvassed, as I said, in numerous reports since the Royal Commission into Aboriginal Deaths in Custody in the early nineties. It is time for a new approach. What we would say about that new approach is that governments have to shift from delivering systems that are predicated upon disadvantage to facilitating life outcomes and respecting self-determining rights for First Nations people. This will include partnering with organisations like our own and those that are members of CAPO to deliver those reforms across Government. I am sure that I am not the first to say to you that reforms in this area need to be broad. They need to be about improving access to housing, education, health—mental health services in particular—early intervention programs and reinvesting justice funding into those areas that put particularly our youth on a different life path or trajectory than they are currently on.

If we do nothing differently, we can expect to see large numbers of our young people who are aged 10 today entering the youth corrective system in the next five years. I expect to applaud the Committee on taking what will hopefully be a multi-partisan approach, because this cannot continue to be a political football that is

kicked between political parties. This has happened under the watch of various governments and cannot be laid at the feet of any one government. It will require you to take a multi-partisan approach to how you frame your findings and your recommendations as a result of these inquiries. For whatever party is in government, it will be important that they take an enduring approach to partnership with First Nations people. It is simply not good enough to continue to have a government-out approach to these sorts of issues. I will not go into the statistics because I expect that you are well across them.

But I make the final point about those multiple investigative bodies and the fact that, for whatever reason, they still do not seem to be well enough coordinated. They do not seem to be sufficiently independent. They do not seem to be sufficiently empowered to oversee the institutions that continue to conduct their own inquiries into their own conduct. The resourcing available to those oversight bodies is also a problem. I think they are under- resourced, they are under-empowered and they are hampered in their inquiry. In many cases, whether it is legislative or procedural, they are required to step back until the relevant agencies review their own conduct. I think in anyone's assessment, that would simply be seen as totally inadequate and inappropriate. I might stop there and see whether there are any questions or areas that the Committee wish to explore further.

The Hon. TREVOR KHAN: In that regard I take you to page 3 of your submission, which is very helpful, and particularly the issue with regards to bail reform. You refer to the insertion of a provision to take into account the question of Aboriginality when considering bail. Is that right?

Mr CHRISTIAN: Correct.

The Hon. TREVOR KHAN: Are you aware that there is an Australian Law Reform Commission report that recommends, on page 169, that State and Territory bail laws should be amended to include standalone provisions that require bail authorities to consider any issues that arise due to a person's Aboriginality? I will not read the rest of the recommendation. Are you aware of that? Or perhaps the better way to put it is, do you adopt that proposal?

Mr CHRISTIAN: I think that recommendation is one that should certainly be explored in a jurisdiction like New South Wales. We have extremely high numbers not only of Aboriginal people coming into contact with police and court systems, but then around decisions to refuse bail. Clearly the fact that bail decisions do not go in favour of Indigenous peoples needs to go beyond the point of identifying to consider what options are made available to those decision-makers. I think identification is one point in order to be able to consider the different factors that need to be taken into account. Beyond that committee there needs to be broader reforms, including those around bail decisions.

The Hon. TREVOR KHAN: I think you might be pushing against an open door in that regard. I think not only is there a specific provision in Victoria, there are also specific provisions in the Queensland and Northern Territory bail acts that make provision in that respect as well. New South Wales seems to have, for whatever reason, lagged behind in implementing any recommendation in that respect.

Mr CHRISTIAN: I concur with that. The one point I would make about the New South Wales settings for policy and legislative reform in relation to First Nations peoples' interaction with the criminal justice system is that New South Wales is a jurisdiction that has lacked sound interaction between Indigenous community-controlled bodies that work in the area and the people who are responsible for advising the Government on reform. A strong community-controlled sector is one thing but the ability for the Government to have partnership and work effectively with that sector is also critical if governments are to maximise the opportunity of getting that expertise that rests in that community-controlled sector.

I think that the criminal justice system in New South Wales has really suffered from a lack of strong partnership between community and those justice agencies. It is piecemeal and, at best, intermittent in terms of those agencies' interactions with community and Aboriginal community-controlled organisations. I think that is different from places like Victoria. I worked in Victoria for a number of years as the Chief Executive Officer for the Victorian Aboriginal Legal Service. Even under a fairly conservative government at that time, the relationship with community and the community-controlled organisations was quite strong and quite effective. I think New South Wales and its institutions could learn a lot more from things like the Aboriginal Justice Agreements and so forth that jurisdictions such as Victoria have had in place for a number of years.

The Hon. PENNY SHARPE: Mr Christian, I think you made some comments—I apologise it was a little hard to hear you at the beginning.

The Hon. TREVOR KHAN: It was very hard.

The Hon. PENNY SHARPE: Yes. I am particularly interested in the National Agreement on Closing the Gap targets. During your opening I think you said—to summarise—that the targets lack ambition in relation to what can be achieved within the time frame. I am just wondering whether you are able to expand on that? We heard some evidence yesterday of a similar ilk that suggested that COVID has changed the game around the way that we can look at flexibility and reduction in incarceration rates, which I think you touched on. If you did not, I apologise, but I am giving you an opportunity to now comment on whether you think it is a reasonable thing that New South Wales could look at going it alone in terms of having more ambitious targets around justice and closing the gap.

Mr CHRISTIAN: The new National Agreement on Closing the Gap, which New South Wales Government is a signatory to, has signed up to two specific targets in relation to incarceration of First Nation people. The first is to reduce the rate of Aboriginal and Torres Strait Islander adults still in incarceration by at least 15 per cent by 2031, and to reduce the rate of Aboriginal and Torres Strait Islanders aged between 10 and 17 years in detention by at least 30 per cent. We continue to strongly appeal to the New South Wales Government to be far more ambitious than that. We think that the targets should at least be 23 per cent for adults and 28 per cent for youth year on year—so not over a period from 2020 to 2031—because that rate will enable New South Wales to reach parity on incarceration rates between First Nation people and other citizens in this State. We think that within 10 years that should be, at a minimum, the target for New South Wales.

If I could just reiterate the point that I was making about when governments understand and respect First Nation rights to self-determination, and when policies, programs and services are designed and then delivered by Indigenous people for Indigenous people, we get better outcomes. I think successively in the justice and community safety areas over many years the New South Wales Government has lost the skill, the relationships and the respect in the way in which it works with First Nation communities. It needs to be reframed and reset. By resetting I mean there needs to be an understanding of that self-determining right and that Aboriginal community-controlled organisations should be the preferred provider of services to Indigenous people because we get better outcomes. That partnership needs to be an equal one. I am sure that members of the Committee have seen programs come and go, and we are sick and tired of programs. Programs that bring resources are a good thing but they are never really given the opportunity to deliver.

Again, if they are programs that are designed by people who have no idea about what goes on in the life of First Nation people in the State of New South Wales, how could they possibly design and deliver appropriate services? I make that point because the National Agreement on Closing the Gap, which the New South Wales Government has signed up to, has four key reform areas, and I want to briefly bear out two of those for the Committee. One of them is about the issue of having a strong, well-supported Aboriginal community-controlled sector across all of the domains of closing the gap. Again, reinforcing that point that when services are designed and delivered by Indigenous people for Indigenous people, we get better outcomes. Not all service sectors in the Aboriginal community-controlled area are at the same stage of development. The justice sector is one of those sectors that is really underdeveloped and I hope that the Committee will get a chance to have a look at the issue of Aboriginal community sector development. We have far too few funded, resourced and supported community-controlled service delivery arrangements in the community sector.

You might have the figures on what funding goes into various community-controlled organisations for services. I would guess that at the moment—and I think I would be fairly accurate on this—a lot of the services that are funded by government are after Indigenous people have become involved in the criminal justice system and are at the really pointy end. They are not at the much earlier stages. I would just make that point.

The last point I would make is on what is called "Priority Reform Area 3" of that National Close the Gap Agreement, which is about transforming mainstream institutions like the criminal justice systems. But if they are going to be doing that in the New South Wales system effectively they need to be working in partnership with Indigenous community controlled sectors as equal partners not government dictating, and I am sure you have heard this concept of co-design, but co-design from my own perspective, having been involved in those processes, unfortunately is often about decision-makers determining what the program parameters will be, or what the parameters for the design will be, and then sending their bureaucrats off to work in the community to try to work us down and bring us around to what they already had in mind. A lot more needs to be done in that area. I appreciate the Committee's time this morning and your questions. I am happy subject to any other time have got comments or questions committee members have got.

Mr DAVID SHOEBRIDGE: Thank you for your submission and evidence today. Recommendation 5 is that the New South Wales Government review police practices and procedures including the exercise of police

discretion and the police suspect target management plan so that the law is applied equally with respect to Aboriginal people. Can you give us context as to why that recommendation is in your submission?

Mr CHRISTIAN: So from our understanding of those target management plans is that they do not—let me back it up. There is a bundle of characteristics that I guess generally when you diagnose evidence of those characteristics in institutions that amounts to institutional racism because the way in which those things are administered, despite what might have been a reasonable intention, when it comes to First Nations People they are not applied equally. So you have a choice to make. You can continue to have the assumption that these measures that are designed will be applied equally to everyone, or you can decide that actually when there is evidence that they are not being applied equally that you have to change those for that particular population group. I think this is another example of where First Nations People—but I think there would be some other minority groups who the evidence would show do not get treated equally and without discrimination—that these generic sort of approaches are not applied equally.

You only start to really understand it is when you start to engage effectively with Indigenous people and their community controlled organisations. We are a ready-made asset. We have proven time and time again as organisations that we are prepared to work with government. We are a ready-made asset however there has been a real reluctance on the part of successive governments to treat us with due respect and also an approach which is about an equal partnership. That is why we are recommending that some of those, again, practices and procedures need to be reviewed but importantly they need to be reviewed with us and how they are re-designed need to be done with us.

The CHAIR: I thank you for your evidence. I do not think you have taken any questions on notice. If you have, the Secretariat will be in contact with you in relation to those questions later in the day.

(The witness withdrew.)

(Luncheon adjournment)

MINDY SOTIRI, Program Director Advocacy, Policy and Research, Community Restorative Centre, affirmed and examined

SARAH HOPKINS, Chair, Just Reinvest NSW, affirmed and examined

DANIEL DAYLIGHT, Member of the Executive Committee, Just Reinvest NSW, affirmed and examined

MELISSA MERRITT, Senior Youth Transition Worker, Community Restorative Centre, affirmed and examined

KELLY PARKER, Senior Case Manager, Miranda Project, Community Restorative Centre, affirmed and examined

JACK de GROOT, Chief Executive Officer, St Vincent de Paul Society NSW, affirmed and examined

JAKE ROBERTSON, Team Leader, Housing and Homelessness Services, St Vincent de Paul Society NSW, affirmed and examined

The CHAIR: Usually we start by asking each organisation, not each person, whether they would like to give a short two-minute opening statement. It is not required. We do have your written submissions but if you would like to each organisation may give a short two-minute opening statement.

Dr SOTIRI: Firstly, I would like to acknowledge country that we are meeting on Aboriginal land and pay my respects to Elders past, present and emerging and also any Aboriginal and Torres Strait Islander people in the room today. I would also like to pay my respects to the roughly 3,500 Aboriginal men, women and children that are locked up in New South Wales prisons today.

The Community Restorative Centre [CRC] welcomes this inquiry and the opportunity it presents for organisations such as ours to have input into addressing the really urgent issue of over-incarceration over-representation and the unacceptably high levels of deaths in custody of First Nations People. CRC, is a community based service delivery organisation with more than 70 years' experience working with people coming out of prison and their families. Its specific focus and expertise is on reintegration and on post-release support. We are a mid- sized non-government organisation. We employ around 45 staff, we have got 18 different funding schemes that enable us to do this work and each year we work with between 400 and 500 people quite intensively who are leaving custody—around 40 per cent of those people are First Nations; around 20 per cent of our staff are First Nations. We work with a number more people but not as intensively.

Although we are the largest post-release organisation in New South Wales, it is worth noting that there are more than 20,000 people coming out of New South Wales prisons each year and that around 4,000 people coming out of prisons and directly into homelessness and we are only working with a very tiny proportion of that population. Our position is that the decarceration of First Nations people is not a wicked policy problem, it is not an impossible policy dilemma. We believe that dramatic decarceration is entirely possible, that what is needed is political will alongside genuine prioritising of resourcing of the community in order to be able to provide meaningful support for people at risk of incarceration and people leaving prison.

We know this because we see it every single day in the work that we do with people that are successfully building pathways outside of the justice system. We know this because the people that we work with have incredibly low recidivism rates when compared to the general population, and I am very happy to talk more to that as we talk today. This is not because we are doing anything miraculous. This is because we are a community-based organisation who employs skilled First Nations staff and we are doing something that is providing holistic, long-term culturally safe support when most of the time for most people leaving prison there is absolutely nothing.

The CHAIR: Thank you. You have kind of reached your allotted time.

Dr SOTIRI: Sorry. I did want to introduce my colleagues.

The CHAIR: If you would like to, but I do ask witnesses to please restrain themselves. We will ask questions. We do not wish to not have you be heard but please.

Dr SOTIRI: Okay, that is fine. I just wanted to say that alongside me providing evidence is Kelly Parker from the Miranda Project at western Sydney, and Melissa Merritt from the Youth Transition Project, but they can introduce themselves later when we have got more time.

The CHAIR: Would Just Reinvest like to have a brief opening statement?

Ms HOPKINS: I too would like to acknowledge the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation and pay my respects to Elders past, present and emerging. I would like to thank the Committee for the opportunity to give evidence today. Like other witnesses before the Committee, I note the plethora of previous reports of inquiries in relation to the over-representation of Aboriginal and Torres Strait Islander people in custody and the need to implement solutions. I also note that there is an opportunity for the New South Wales Government in its Closing the Gap implementation plan to detail a roadmap as a matter of urgency. Community-led justice reinvestment must be a key part of that road map.

In my opening remarks I thought it might be useful to clarify what reinvestment means in justice reinvestment. While an American concept, its application and development in Australia to address the over-representation of Aboriginal and Torres Strait Islander people in prisons is unique. Reinvestment in America across a very large scale has meant closing prisons or avoiding the building of new prisons and reinvesting savings. Creating a change sizeable enough to achieve that is an end goal. Ultimately we want public resources directed towards addressing the needs of and creating opportunities for young people and not incarcerating them.

In Australia as it has evolved, community-led justice reinvestment is a practical and commonsense approach. A series of small but significant shifts in resources and decision-making that will enable reinvestment at a larger scale: Firstly, support Aboriginal communities with the information that they need—the data to work out what is happening in the lives of young people and what can be done to keep them away from the justice system—so that leaders can make decisions, identify justice circuit-breakers and set a community strategy for change. That is the first shift. Secondly, resource a small community-led team to support service sector collaboration to deliver on the goals in that strategy—a modest investment in evidence-informed innovation and community leadership. That is the second shift.

Thirdly, establish a joint accountability framework. The service sector comes in behind the community plan, realigns their resources to ensure gaps are filled and better outcomes are delivered. The Government facilitates this through measures such as embedding the plan in government contracts. Over time, key agencies like police—like the police in Bourke—shift the way they direct their resources to operate with a focus on early intervention and prevention. Improved outcomes at the community level create savings. In the big picture they might be small, but scaled out to other communities savings increase. Further savings are created through statewide legislative and policy measures such as raising the age, such as the Walama District Court—key systems reforms that form part of an overall justice reinvestment strategy.

The fourth shift in resources can then occur. Place-based and systemic changes put significant downward pressure on the prison population, such that savings can be realised and communities can be better supported, with pooled funding to be spent as directed by community leaders in accordance with what they determine will work to create better pathways for Aboriginal young people. Thank you.

The CHAIR: Thank you. Mr de Groot?

Mr de GROOT: I will ask Mr Robertson to start.

Mr ROBERTSON: First of all I would like to acknowledge the traditional owners of the land where we meet today, the Gadigal people of the Eora nation. As the Committee would be aware, there is a severe lack of social and affordable housing in New South Wales, with a shortfall of 24,000 homes for Aboriginal and Torres Strait Islander people alone. This contributes to homelessness which is experienced by Aboriginal and Torres Strait Islander people at four times the rate of any other Australian. In turn, homelessness can be both a cause and a consequence of contact with the criminal justice system. I will pass over to Mr de Groot to speak a little more on the opening submission.

Mr de GROOT: Thank you, Chair, and thank you members of the Committee. I too join in acknowledging the Gadigal people of the Eora nation and their Elders past, present and emerging and Aboriginal leaders in this room with us today. Vinnies, as you know, provides accommodation and supported accommodation services throughout the State of New South Wales; we respond to people with complex mental health diagnoses and behavioural support needs, people with disability, people with alcohol and drug addictions, and young people at risk of exclusion. We have a very large, extensive network of volunteers who provide immediate care and assistance to people doing it tough.

Disadvantage is experienced in disproportionate amounts by First Nations peoples in New South Wales. Close to a quarter of the people that the St Vincent de Paul Society sees in any one year are identified as first Australians, and one in five of those people seeking our homelessness services are first Australians. We recognise that disadvantage comes from colonisation inter-generational trauma and that over-incarceration of Aboriginal

people in turn leads to a perpetuity of that disadvantage. We wish to see in the conversation today issues that require a different way of working, that we work in partnership with Aboriginal organisations at all levels of government and community-based organisations. Thank you, Chair.

The CHAIR: Thank you. I might commence the asking of questions, and I will restrict myself to two topics. My first question is to Just Reinvest NSW, and I note in your submission you say it is not a program but it is an evolving process. We have certainly received a lot of submissions talking about the process and advancing its cause, as it were. At page 17 of your written submission you talk about the Maranguka project or process in Bourke. I think I would find it very useful if you were able to talk us through what happened in Bourke and why did it lead to these, on the face of it, very beneficial outcomes, in your view? What were the tangible things that were done differently that led to those changes? I know it cannot be a cookie-cutter approach, but to help me understand more about this approach I think I would find that very useful.

Ms HOPKINS: The first thing that happened in Bourke was that the community asked for a set of data that would help inform a community-led strategy, so a data snapshot was created that looked across the whole life course of children and young people in Bourke and data conversations were held to increase the amount of information available to the Bourke Tribal Council and the strategy Growing our Kids up—Safe, Smart, Strong was developed. It is a strategy that does not actually have within it strategies; it has aspirational goals and priority areas across early childhood, eight to 18 year-olds, and the role of men in community and, overarching these focus areas, service sector reform.

So what it looks like in Bourke is that there are working groups set up across each of those areas and then to address service sector reform issues, a cross-sector executive group that consists of senior representatives from government, usually at the regional level. Each of those working groups then develop strategies to try and reach the target outcomes that have been set by the Bourke Tribal Council. So in the early childhood working group, their focus at the moment is to reach the outcome of kids being ready to start school and for there to be universal access to health and development checks at the age of three years old. The eight to 18 working group has a number of focus areas, including introducing a structured and restorative approach to suspensions. And the Role of Men Working Group has a domestic and family violence collaboration agreement that has been signed by key stakeholders in the community, including the police. It is a test-and-try approach, so a number of different things are happening at the one time. When things are not working, it is paused and there is reassessment at the working group. When things are working, they are built on.

The CHAIR: Who are these conversations between? You mentioned the Bourke Tribal Council, but which areas of government? Is it the local council? Is it the departments? And who is coordinating the work of all these different bodies involved in the conversation?

Ms HOPKINS: The coordination happens at a community hub called Maranguka. They drive the collaborative process through the working groups. On each of the working groups are all the key stakeholders in community—the different services and community members—and they meet quarterly. On the Cross-Sector Leadership Group that authorises and facilitates the work of the services on the ground—that could be representatives from Justice, Health and Education, as well as philanthropists who are supporting the work and the Ombudsman's office.

The CHAIR: The police?

Ms HOPKINS: The police, absolutely. At every level of the process the police being at the table has been critical.

The CHAIR: Perhaps other Committee members will return to that, but I will put a pin in it for now. Mr de Groot, in relation to your organisation's submission on page 3, at point 15 you say that the New South Wales Government should consider establishing an independent body, located within the Coroner's Office, responsible for all investigations into Aboriginal deaths in custody. This idea has been advanced through a number of submissions, usually in a call for a totally new body to sit outside all the existing bodies that would be Aboriginal-led, or at least informed by culturally appropriate practices, and designed with Indigenous people. You suggest that it should be located within the Coroner's Office. Can you talk us through why you reached that view, and how you would see that body working in this important space?

Mr de GROOT: I think that the court is a very important point of connection with all sorts of peoples within Aboriginal communities throughout New South Wales. To actually have the respect of the court to family representatives and to the community is an important part. There needs to be a really strong presence of families within the court telling their story, having advocate of those who have died. We think that there needs to be that

sort of access to the court, presence within the court and an equality. We are not opposed to an outside body, but we think that daily presence, that daily part of the system of the coronial court, could be a very important point of access and equality for families as they go into that setting.

Mr ROBERTSON: I agree with most of what Mr de Groot has said. But in terms of timeliness, I think that the existing of a board within the justice system presently would be really positive, rather than trying to create a new one. In terms of timeliness, we could be looking at a long time before that happens.

Mr DAVID SHOEBRIDGE: I had a question about the CRC. First of all, I see that you acknowledge the work of Uncle Ray Jackson. What was the role of Ray in the establishment of the Community Restorative Centre?

Dr SOTIRI: We acknowledged Ray in our submission because he was deeply involved with our work for about 15 years. He was a board member of the CRC for about 10 years, and he was also an adviser to the CRC for many years outside of that. He felt very much like the heart of the organisation for a very long time. Our relationship with this work and our relationship with working with First Nations people in custody as a wide organisation was very much directed by the leadership, wisdom and kindness of Uncle Ray. It felt like it would be strange to write a submission to this inquiry without acknowledging the incredible work that he carried out in the space, obviously not just with the CRC but across so many other organisations in terms of reducing deaths in custody. I wish that he was here to witness this.

Mr DAVID SHOEBRIDGE: I think that we all miss him. Ms Merritt, can you describe the work that you do? Because the work of your organisation is quite diverse.

Ms MERRITT: I am currently the senior youth transition worker for a new project that has been funded at the CRC, working with young people between the ages of 10 and 24 in the western Sydney area. This is a fairly new program funded by the western Sydney PHN [primary health network] that works with young people exiting custody back into the community within the western Sydney area. It is a holistic approach to young people, both First Nations people and non-Indigenous people who are residing in the western Sydney area. Previous to that I worked on a project in far west New South Wales with the CRC as the Aboriginal alcohol and drug project officer in Broken Hill and Wilcannia

Mr DAVID SHOEBRIDGE: Sometimes we talk about the issues around engaging with Aboriginal communities and accessing resources in regional New South Wales on one hand, and then we suggest that there is a totally different situation in the cities. You have worked in both spaces, what are the common features?

Ms MERRITT: Very, very limited resources for anyone exiting custody. If not very little, absolutely none that are culturally appropriate for any of our First Nations people exiting custody back into community.

Mr DAVID SHOEBRIDGE: And that is the same in Mount Druitt—which we will come to at some point—as it is in Broken Hill?

Ms MERRITT: Very much so. A lot of people think that there are services, especially in urban cities, that young people, or people in general, exiting custody can access, such as mainstream services. But then again, there are barriers, especially for our First Nations people, to access those services. A lot of services will not take people straight from custody. I found that, especially in Wilcannia and Broken Hill, there is nothing there to service our mob in those areas.

Mr DAVID SHOEBRIDGE: I might at some point come back to Wilcannia and Broken Hill, but can I go to what Just Reinvest is doing in Mount Druitt and what the key—I think that it is being led by Aboriginal youth, but what are the services being provided and what is the model in Mount Druitt?

Ms HOPKINS: I will pass to Mr Daylight in terms of the need in Mount Druitt, but the work in Mount Druitt is still in the exploratory phase. We are looking now at developing these justice circuit-breaker ideas in Mount Druitt. So what are the key things that can be identified looking at the data that will create immediate change in the lives of young people caught up in the criminal justice system? We are doing some work with Aboriginal young people with mental health issues who have been caught up in the justice system, trying to bring their voices to the centre of the conversations and decision-making, particularly in programs that directly affect their lives. We are looking at a short-term remand project, dealing with the issues around short-term remand. We are already partnering with some key stakeholders on delivering a driver licensing program. Mr Daylight might have some comments about Mount Druitt and the need for the work out there.

Mr DAYLIGHT: Previously to working at Weave, I worked for the children's court out at Parramatta for about eight years and I helped to set up the Youth Koori Court. I am still the managing director of Infinite Hope Aboriginal Corporation that offers support for young people in Mount Druitt and is part of a youth-led Oztag team. I support an old client of mine who runs that team, and he is basically driving a lot of the work that Just Reinvest is doing in Mount Druitt.

Mr DAVID SHOEBRIDGE: So you officially have no spare time, Mr Daylight?

Mr DAYLIGHT: No. Of course, I am on the board of the medical service at Redfern. I am a bit everywhere, but what can you do? As you know, there is a lot of need. As Ms Merritt just said, in western Sydney and across the whole of Sydney—from Redfern-Waterloo all the way to Mount Druitt to Lethbridge Park to Willmot and everywhere in between—there is a lot of need, do you know what I mean? There are services set up out in western Sydney but the Blacktown local government area [LGA] actually has the most amount of young people anywhere in Australia. It is just that you could not get enough youth services at all.

In particular, I take into account or I will use the example of the OzTag team. Isaiah Sines, who leads the Mounty Yarns project, which is about trying to embed the lived experience of young Aboriginal people in the system in western Sydney to try to make it better, basically he told us all when he got out that they just wanted to play football when they were young, do you know what I mean? Every time they tried to play football, they would get a move on order by the police so they were not able to go to the park to play football. It sounds extreme but I have seen it happen. I have been given a move along order myself by the Mount Druitt police and it happens fairly regularly. And so, basically, once he has got out he has done a lot of good work. One of the things he did was set up an OzTag team that now has 24 young people that every service in western Sydney will tell you they cannot engage, but we were able to engage them. We have some letters that I suppose we could provide that the Aboriginal Legal Service and Legal Aid and the youth group have all written support letters for us to continue that team because those boys who are in and out have not reoffended.

So, they have got out on a Thursday night, which is late night shopping. So, anyone who has worked with young people knows that that is the night everyone breaches the curfew. That is when we decided to put on the team and it has just made a big difference in our community and it has let the young people be young people without the fear of the police coming down. We always have youth workers there just in case anything like that happens so that we can handle the situation. But our young people just deserve to live a free life and we do a lot. They are doing a lot of ads and STMPs and different things like that because, from all of my experience—I have worked in with the Mount Druitt community for 10-plus years—from the time they turn 10 they cannot work down the street without being pulled over. The first time we had a meeting around Mounty Yarns in Mount Druitt, Isaiah just pointed to the corner and said: "When I was 12 I got strip searched there." And that is Luxford Road, which is the main road in Mount Druitt. When you are starting getting up against all these odds, it is remarkable what he has done. Me and Ms Merritt both saw him.

Ms HOPKINS: Yes.

Mr DAYLIGHT: Back in the days locked up, we have seen where he has come from and what he has been able to do. But all our young people can do it—the young people in Wilcannia, the young people in Tamworth, the young people in Waterloo. They can all do it if they are given the appropriate support and that support is community controlled and Aboriginal-led.

The Hon. PENNY SHARPE: I have a couple of questions. First of all I just want to go back to the Justice Reinvestment issue. I am very happy when you say that Justice Reinvestment is not a program but I am trying to understand how much investment you receive from the State Government and under what conditions that is provided. That is my first question so I will let you enter that first.

Ms HOPKINS: Sure. I should say that the idea, I think, from our viewpoint is that Government should provide operational funding for these small community-based, community-led teams. So, in Bourke, what that looks like is there is a co-funding arrangement between the Federal and State Government through the Stronger Places, Stronger People initiative and there is also philanthropic investment. So the role of philanthropists has been critical to date and then Government has come in after the first five to six years.

The Hon. PENNY SHARPE: But I assume that that Government funding is time-limited—

Ms HOPKINS: Yes, that is right.

The Hon. PENNY SHARPE: —and not secure into the future.

Ms HOPKINS: That is correct.

The Hon. PENNY SHARPE: The point then is that it is one of the great conundrums. The Holy Grail is to say instead of putting all this money, for example, into building a new prison, that money would be reinvested around the community supports and we will get better outcomes. I think that the evidence all shows that. What we never see is where any Government resources are actually really directed into that; it is always that add-on piece of money. Where do you think you are at in Bourke where we have seen the most advanced project? Are there fewer police that are now in Bourke than there were before? After you got an extra teacher because you have kids who are now at school more than they used to be, those kind of changes are about turning around the titanic of Government funding into that. I just want your observations of that and where you think along that process you are at.

Ms HOPKINS: In my opening remarks I was trying to explain that idea of the sort of small shifts in investment decision-making that can take place along the way that will then ultimately enable that larger-scale reinvestment piece. So, in Bourke, an example of that is the funding of that small community-led team in itself. That is an innovative piece of funding for Government at the State and Federal level so they are now convening these working groups, bringing all the different services together. The police internally are shifting the way they spend their resources so instead of being out on the street with this proactive punitive policing model, they come to the Maranguka hub every morning at 9:30 for check-in to see what has happened with kids over the last 24 hours. So we are starting to see how the shift in resources can create better outcomes for children and their families.

The Hon. PENNY SHARPE: How long is it? Is it about seven years? How long has it been going?

Ms HOPKINS: So, the funding—at the first funding cycle started in 2014.

The Hon. PENNY SHARPE: So six years and you are getting to that point that really there is not a lot of money. My concern is that if State or Federal governments decide tomorrow to no longer fund that core work then essentially all of that time and effort and commitment is gone. Is that the case? Is that the reality?

Ms HOPKINS: Yes, and that is critical. The idea of this funding cycle that we are currently in is to develop that long-term fiscal reinvestment model. We started having conversations with Justice and Treasury in the New South Wales Government around that. The Federal Government through the Department of Social Services are very keen to be part of those conversations but it is a conversation that needs to happen now and there needs to be progress.

The Hon. TREVOR KHAN: Are you going to ask how much money it is?

The Hon. PENNY SHARPE: Well, it is not very much. My understanding is that it is about $11 million, is it not?

Ms HOPKINS: Our proposal to Government, yes, that is right—over four years.

The Hon. PENNY SHARPE: Yes it but that is for what? The next four years?

Ms HOPKINS: Yes.

The Hon. PENNY SHARPE: It is a tiny amount of money. This is my concern—it that it is such a small amount and it is obviously having a big impact, but it takes time and commitment and funding. I was going to go to Ms Merritt around this. Her project sounds fantastic but I was going to ask you: How much is it for? How long have you got it? All of this work that you are doing, yet again, you will show great outcomes while you have the money but I assume Dr Sotiri will be scrabbling around to work out how she keeps you in a job to keep doing it.

Ms MERRITT: That is correct. So, the current program, the Pathways Home program that I am the senior transition worker for is for a period of two years and the previous one, where I worked in Broken Hill and Wilcannia, was for a period of six months.

Dr SOTIRI: We have 18 different funding streams from different governments and we have some philanthropic funds as well. But all of them are time-limited so all of our staff have great uncertainty and obviously that translates into the work, into how are we able to do the work, that we want to do which is that very long term—usually for more than 12 months with people coming out of prison. So, the funding cycles in terms of our capacity to really embed systemically, our post-release pathway, is absolutely one of the critical issues in this area. I guess it is testament to workers like Ms Parker and Ms Merritt that we are able to get the outcomes that we do

in terms of recidivism. But organisationally, it is a nightmare. It is always a nightmare but that is the case in the community sector everywhere.

The Hon. PENNY SHARPE: Which she goes to a question I was going to ask Mr Daylight. I have some familiarity with the service system in Mount Druitt in a previous inquiry I was on yet again talking about the scourge of pilot projects. Mount Druitt, I think, at the time had over 245 NGOs operating in that postcode alone and the outcomes were still terrible. I am just wondering—and I am very excited to know that Justice Reinvestment is looking at Mount Druitt but it is a much bigger scale than Bourke where there is a handful of organisations and a lot of community will. Can I ask you to talk about how you are dealing with that issue?

Mr DAYLIGHT: Yes, Mount Druitt is extremely diverse. There are so many people and from all different cultures as well. But what is exciting to me is that there are brilliant young people from Mount Druitt. To be fair, I think Ms Parker and Ms Merritt will probably agree with me that as Aboriginal workers we do not do it for the money. As community organisations we do not do it for the money. The way I look at it, reinvestment is about reinvesting our mob back into our communities. That is all we need. I kind of live by the words of Angela Davis that prisons do not disappear problems; they just disappear human beings. What we need in all of these places is just to put our people back into our communities. Our kids need their fathers, their mothers, their aunties and their uncles so that they can grow up and learn what it is like to be an Aboriginal or First Nations person in this country.

To go back into Mount Druitt itself, it is western Sydney. You put "western Sydney" on any funding application and you are probably more likely to get some money. You can then stretch that however you want. You can be in western Sydney in Kellyville or some of those mansions that they have around Parklea, or you can be in Willmot and be in a suburb that has no public transport and one shop. What I have found—and I think Ms Merritt will find this too—is that you are often out there by yourself. If you go to a NAIDOC event or any kind of service expo, like you said, there are a lot of services. But if you go to Willmot at 7.00 on a Friday night it is just you, the drug dealers and a lot of the other people in the community. We need to really put some time and effort into investing in those young people. The women at Baabayn, which is a great organisation in Mount Druitt, told us that when we started looking into doing justice reinvestment in Mount Druitt. They said that we need our young people to step up. We are not going to be here much longer. We need them to step up and make that change.

I am a part of the Redfern Aboriginal Medical Service. That was started by a group of young Aboriginal people with the support of the old ones. We need to harness that talent that is out there. The two people leading it both have lived experience of time in custody and have spent more time in their teens in jail than they have outside. But they are brilliant, they are amazing and they will be the change that is needed out there. I know it is kind of longwinded, but it is just services. To Dr Sotiri's point, there are all these things and you go for this grant, you get this money but none of it is driven by the community. Community control has always worked for Aboriginal people. It has worked for 50 years at the Redfern Aboriginal Medical Service—50 years next year. It has worked everywhere that it has been used. Mount Druitt's Aboriginal medical service is run by Wellington Aboriginal Corporation Health Service. It is not community controlled. There are only a few Aboriginal community controlled services in that whole area, and I am just talking about Mount Druitt. If you go to western Sydney—you know what I mean.

The Hon. PENNY SHARPE: I use Mount Druitt because I know how many people are tripping over each other in terms of Government deciding that there are all these problems to be fixed or other people to be found to work on their own issues.

Mr DAYLIGHT: Yes, and that is the thing. Everyone points to Mount Druitt because of the issues and the things that happen out there. But before all the money is sent there, you would think that with 240 organisations—to think of a really easy circuit-breaker, to Ms Hopkins's point, the Youth Justice office is in Penrith. If you have no train fare, you will get breached. You will get a $500 fine to go to Penrith so that you can check in for Youth Justice and then get home. There are plenty of buildings in Mount Druitt that could host it, but you either have to go to Blacktown or Penrith. If you know anything about the community politics out there, at any given time people from Mount Druitt might be fighting people from Penrith. You also have to get on the train.

Every time I have been to Mount Druitt train station—you get fined. I have had clients when I worked at the Children's Court who got fined both ways. They got fined at Mount Druitt train station and then at Parramatta train station when they got off the trains. Then to go home, they will get fined again. They know that if they do not do that then they will go to jail, or they will go to Cobham or to Reiby now. To me, that is a really easy thing

to fix. But because no-one listens to the people of Mount Druitt—or especially listens to the young people—we just have this problem that exists.

The Hon. PENNY SHARPE: I just want to get to the bottom of this. We have heard differing evidence around the impact of women in jail during COVID. Your submission is the most detailed on this so I wanted to talk to you about it. Yesterday we were told that we should be looking at being more ambitious around our justice targets and decarceration. We have seen during COVID that you can actually get a lot more people out of jail without compromising community safety. We were told yesterday, though, that for First Nations women that was not the case. That is not what your submission says. It says that there was a reduction of 18.7 per cent—I assume that is women—across the board.

Dr SOTIRI: Yes.

The Hon. PENNY SHARPE: Can you just unpack that a bit for us? As I said, we had many questions about why it would be different for women and we are trying to get to the bottom of that.

Dr SOTIRI: I will talk to that and then I might throw to Ms Parker, who works with women. We took that data from the BOCSAR research showing the reduction over that period. In terms of what we observed happening with our clients during COVID, many First Nations people were certainly granted bail that we would not normally have expected to be granted bail. Especially in Far West New South Wales, a number of people got parole who we anticipated would not get parole. There was definitely, under existing legislation, a greater number of clients in the community. Although over-policing is a part of life for all of the people that we work with, our clients noticed during lockdown that that over-policing was happening in different ways. They were certainly not as over-surveilled as they often are.

Again this is probably different in different regions of New South Wales. We have five different sides. I will get Ms Parker to talk about the particular issues. For Aboriginal women during COVID—especially the women that Ms Parker works with in the Miranda Project, who are at risk of both criminal justice system involvement and family and domestic violence—things were very complex. Although we were optimistic because decarceration was able to happen so rapidly, it highlighted enormous gaps in the community sector in terms of capacity to provide support. Demand for our services, especially for Ms Parker's service, increased dramatically. I might get you to talk more to that.

Ms PARKER: We are only a very small program. There is myself, another caseworker and we also have a part-time manager. That is all that we have on our team, so we are quite limited in the women that we can have on our books. We do long-term case management. Even though we are not an Aboriginal organisation, both of the caseworkers are Aboriginal and 54 per cent of our clients are First Nations women. We have found over this period that because we are so jam-packed, we cannot take any new clients on. We have just done a little bit of trying to refer to other places. Our manager has taken that side of things on because we have a high client volume and we are working quite intensively.

Our manager who works part-time has actually been doing some case management as well, just trying to refer people to other services and to get some supports. We find that it is really, really hard out in western Sydney because there are very limited places for housing and things like that. For women coming out of custody and going into custody, it is sometimes a lot worse than for men. When a man goes into prison, the woman usually stays at home. She has the children and she might be putting money into the man's account. For females when that actually happens, they are losing their homes and children. They do not have someone that is putting money into their account. They seem to have a much harder time during custody.

We also work in the domestic violence space. I have worked in the DV space in western Sydney for a long time in my previous role and then when I was with the Community Restorative Centre. A real issue that I have been seeing in the last 12 to 18 months is so many more women than men being charged with domestic and family violence that are actually the victims, not the perpetrators. It is the way that they are reacting to their victimisation that they are actually being charged. There has been this real shift that I have seen, and I have been working in DV in western Sydney for the last seven years. I have just seen this real shift over the last 12-18 months.

The Hon. PENNY SHARPE: I am not asking for definitive answers, but if you have worked in the area for so long, what has changed in terms of this?

Mr DAVID SHOEBRIDGE: And you are not the first person who has told us that.

Ms PARKER: I am not exactly sure what the change is. I know that a lot of men will, once the police come, have a conversation with the police officers, when the woman is actually the one who is calling the police to come out because of the incident. Then the male is actually using that against them. I also have women who I am working with who are on probation and parole and a lot of the time part of that DV is then actually using that against them.

The Hon. PENNY SHARPE: So it is coercive control.

Ms PARKER: Yes, a lot of coercive control. So, "I am going to call your probation and parole. I am going to revoke your breach or revoke your parole." There is a lot of that going on as well. And because women do not have the same strength as a male, sometimes they are using weapons and different things to fight back. Yes, even though they are calling, they are the ones who end up being incarcerated and being taken to court. It has been a real shift and a big change that I have seen.

The Hon. TREVOR KHAN: Ms Parker, I will follow-up on that, because it is consistent with evidence that we received yesterday. If you can just go a bit further, and I will get to why I am asking this, but is it a change in the reaction of the police, or is it a change in the reaction of either what we will describe as the true perpetrator or the true victim?

Ms PARKER: I personally think there has been a change in the reaction from police. DV has been a huge issue for a very long time. At the moment Penrith has the highest rates of DV in Sydney. They are out doing the Mount Druitt and Blacktown areas. Their rates are so much higher in Penrith. Maybe the police are getting tired. They are coming to these DV incidents and the women are not leaving, they are going back. But, as we know, on average it takes women seven times to leave a DV relationship. It is not as easy. A lot of people say, "Why don't they just leave?" It is not always that easy.

The Hon. PENNY SHARPE: That is assuming they have somewhere to go.

Ms PARKER: That is exactly right, yes. There are a lot of things that are tied into why women do not leave, so it makes it very difficult. I cannot completely say what it is, but from my perspective I am finding that police are targeting women more so than what they had previously.

Dr SOTIRI: I will add to that in terms of one of the structural shifts over the last little while around the absence of places that women actually have to go in those circumstances. Women have to fight back. For the women who we work with, especially for First Nations women, there are often not DV services that will take people straight from custody. Women face either homelessness or they return to a violent situation. That is pretty much everybody that Ms Parker works with in that situation. The options that are available, or the lack of options that are available, absolutely influences how women who are in violent situations are going to respond. If they know that there is absolutely nothing out there for them, if there is no support in DV services and if there is no housing, fighting back is what they have to work with. For a lot of women that we work with, they are in that situation where they are fighting back.

The Hon. TREVOR KHAN: What interests me is that there was a paper prepared by Hamish Thorburn and Don Weatherburn in January 2018 that actually looked at Indigenous rates of incarceration. Part of that was a discussion about domestic violence. This is a precursor. One of the things that that study looked at is that if you could look at one area where there seems to be a disparity in sentencing, it is actually domestic violence, and the Indigenous or Aboriginal community seems to be getting tougher sentences. What the paper does not actually identify is whether that is men or women, but what I take as a lesson from that paper is that the police and perhaps the courts are now taking the position that, because of what you could say is long-term domestic violence coming down harder, it is actually producing what may be perverse results. That is, we are increasing the rates of incarceration that then feed back into the system. That is why your evidence is important in terms of the circuit-breakers of accommodation and the like becoming so essential in terms of the outcomes. I think St Vincent de Paul is absolutely onside on this. What is the nature of the accommodation that needs to be provided? It is potentially different from the sort of accommodation that you would be looking at providing in other circumstances. Do you have a view?

Ms PARKER: Yes. The accommodation is there but there needs to be supports around accommodation for those families.

The Hon. TREVOR KHAN: Sorry to cut across, but what is the nature of that support?

Ms PARKER: There definitely needs to be support looking at and working with people around their trauma. That has to be long term, not short term. A lot of programs and a lot of organisations are three to six

months. That is pretty much the support period. That is not long enough. When you are dealing with 20, 30 or 40 years' worth of trauma, it is not going to take three to six months to work through that trauma. That is going to be a long time. That is a really big issue that we have at the moment. We need long-term supports. That is really hard with government funding as well, because we are funded for short periods of time and then we are waiting for more funding.

It is things around that, but it is also education, work, skills and upskilling. There are a whole range of things, so that a woman who is on her own, who is a single woman or who is with a family, can actually be self-sufficient. The next time they go into a relationship it is not because they need to have that relationship, but it is because they want to be in that relationship. That just makes that foundation so much different right from the start. It is about being able to have that resilience, having that and being able to do that for themselves and for their children. There are a lot of things that need to go around that. It is not just accommodation. Those supports also need to be put in place.

The Hon. TREVOR KHAN: Dr Sotiri or Mr de Groot, do you want to make a comment?

Dr SOTIRI: I will follow-on before I throw to Mr de Groot. With accommodation, there is a need for a whole range of different kinds of accommodation for people, especially for First Nations people who are leaving custody. For women who are at risk of DV, access to DV services, including crisis services, should be available for people leaving custody. Currently it is almost impossible for anybody to access any service straight from custody. The ideal, and the research is certainly clear about this, is housing first for people who are in vulnerable situations is what we should be working towards. That is, people should not be moving or bouncing from crisis accommodation to crisis accommodation, but they should actually be in long-term support with, as Ms Parker said, the whole range of supports wrapped around. It does need to be long term.

Again, it is so critical, and it sounds like such a simple and boring thing to bang on about, but it is actually the bane of our lives a lot of the time in the community sector, because we know if we work with people for more than 12 months they do not go back to prison. I know that some of my colleagues here would be able to bear that out. We need long-term accommodation, not just transitional accommodation. I would say that there are such differences in terms of what people need when they leave custody. Some people really require a place on their own. If they are still using drugs and alcohol, they will get kicked out of any service if it is a share situation.

A lot of clients are still in active addiction and we need to still be able to house that population. At the moment people just end up homeless. There is a need for people to be on their own but with supports wrapped around them. For people who are going to get lonely, we need the option of supported accommodation with more than one person, but at the moment there are 38 beds for people coming out of prison in New South Wales specifically, and there are 4,000 people who are coming into homelessness. At the moment anything is pretty good for that population.

Mr de GROOT I think the housing thing is an increase in the amount of social and affordable housing so let's—

The Hon. TREVOR KHAN: I have seen the numbers. I understand.

Mr de GROOT: So there is not enough and we are in desperate need. The second part is the planning pre-release for people about housing and what their needs will be, and that pre-release planning is crucial to the success of the first couple of weeks post-release from custody. The fact that we do not do this well is something that is easy to fix and not going to cost a lot of money actually to do that. So, far more connection between corrections and organisations at this table and throughout the community who are going to provide housing solutions. Then it is the wraparound support. Ms Parker has talked about the trauma-informed approach and the intergenerational trauma that we are dealing with here as well. Then there is, perhaps less complex, the financial tendency management piece for someone who has not been paying rent for a while. How do we actually work with them on some of the basics?

The wraparound support services need to be a comprehensive model and I think probably the next part is around a pathway on housing. St Vincent de Paul Society is lucky here. We do from emergency to transition to long-term housing, and to actually have that sense of pathway for anyone coming out of custody, but particularly for First Nations people, to say that there is an actual pathway here, whether they are Aboriginal-controlled housing solutions—and we would be working very closely and referring—to if they wish to be in our housing. Then there is a real sense of a pathway through. That seems to be one of the terrible crisis points for people. Yes, they will have transitionary accommodation but what happens then in the sense of giving up very quickly. Mr Robertson does this daily. I am sitting in a head office.

Mr ROBERTSON: I think the need for wraparound services is paramount and I think they need to be self-determined by the person going into these programs, which is the most important thing. It is really difficult for anyone leaving incarceration to find any kind of accommodation. Overwhelmingly, I think around 95 per cent of the primary need for someone exiting incarceration is accommodation and that is just not happening. As a service, I manage an accommodation centre in Nowra. We are about five kilometres away from the South Coast Correctional Centre, so I would say around 40 to 50 per cent of anyone at any given point we have in there is from that facility. I could probably count on my left hand how many clients we were actually able to go and see in the prison before they were released.

These people are being released straight out onto the street and just lobbing up on our doorstep with no real understanding of what the service is or if we have got any vacancies. A big challenge is that people are being released at six o'clock on a Saturday. They are being released at four o'clock in the afternoon on a Friday. Services are shut. There is no way for these people to access anything. So they are essentially homeless on the street for three days before a service can pick them up, often without any medication so you can move in to psychosis and there is significant evidence that says that people with mental health are picked up a lot more than people with no mental health by the police.

The Hon. TREVOR KHAN: Taking into account the terms of reference of this inquiry, should we consider making a recommendation—because I have got no idea what the other members of the Committee will think of the priorities—for greater availability of post-release accommodation and housing or should it be—in a sense, thinking about money—greater availability of post-release accommodation for First Nations people? Can we limit it on the basis of the underlying issues relating to the Aboriginal community or is that not a basis to limit the request or demand? Have you got a view?

Dr SOTIRI: Sorry, is the question: Should the recommendation be specific to Aboriginal—

The Hon. TREVOR KHAN: Yes, and can that be justified?

Dr SOTIRI: I might hand that over to other people.

The CHAIR: You can take it on notice if you are not prepared to answer today.

Dr SOTIRI: Obviously it is up to the Committee and the scope of this Committee as specifically looking at First Nations overrepresentation. So as a response, regardless of whether or not it is particular to First Nations or not, there is no way that there can be a response to the overrepresentation of deaths of First Nations people in custody without having housing front and centre of that response, but I do not have a view at this stage as to whether or not that should be specific.

Mr DAYLIGHT: I was just going to say—and I know this is about incarceration but—those 24,000 people who need housing, they are not all in jail.

The Hon. TREVOR KHAN: No, they are not.

Mr DAYLIGHT: There is just not enough affordable housing across the whole sector and there is not enough social housing. We need it for people getting out of jail but we also need it to stop people from ever going into jail.

The Hon. TREVOR KHAN: I accept that.

Mr DAYLIGHT: LaVerne Bellear, who is the CEO of the medical service at Redfern, once said to me that she wishes that the Government would fund her to keep well people healthy instead of funding her to treat sick people. So I think that it goes across the whole system that Aboriginal people—this is my personal opinion, maybe not Just Reinvest—have a lot of land here in New South Wales. Our land councils, our different organisations, different things like native title; we cannot use that land to live on. We cannot use that land to build houses. The land just goes to waste in a way. Do you know what I mean?

I think that a solution might be to be able to like all of this stuff, and I am a child of the Redfern Aboriginal Medical Service and the Redfern Aboriginal movement. It is about self-determination, community control and land rights. So it is about us having access to our land and being able to do what we need to be able to do as Aboriginal people so that we do not end up in jail. I am always conscious of the fact that I have spent 15 years working with Aboriginal people getting in the courts or getting in and out of jail, but also an Aboriginal young person who is struggling, who is homeless and trying to do his HSC to me is as important as an Aboriginal person in Cobham trying to get released.

Only we as Aboriginal people know that. I do not know how you would write a recommendation around that but it is basically about giving Aboriginal people our land back, and I do not mean that in a way of giving us this building. I mean in the way of having us being able to control the land that we have been given back and being able to use that land to do things. It is good that St Vincents does stuff but that is not an Aboriginal organisation and a lot of people will not go to a non-Aboriginal organisation. I think that would be the solution. I do not know how that will go but that is my answer.

Mr DAVID SHOEBRIDGE: You kind of sidestepped the point by saying investment in Aboriginal-led housing organisations. That kind of neatly sidesteps the point because that is going to focus the investment for Aboriginal housing, and it is part of the empowerment and the Just Reinvest model.

Mr DAYLIGHT: Yes, to me we are about to lose Waterloo. Do you know what I mean? We have already lost a lot of different community control around the Redfern and Waterloo areas. It will be a different area. I work at Weave down there in Waterloo and we do great work. Mel helped to set it up and we have a 5 per cent recidivism rate and we cannot get any government funding.

Ms MERRITT: I will just back Daniel in regards to that. In my previous role as the Aboriginal Project Officer out in Wilcannia, my research was the gaps in culturally fit Aboriginal affairs department services for our mob in Broken Hill jail, which is a very small jail. There are mainly Aboriginal inmates in that jail. I think I saw one non-Indigenous inmate in that jail the whole time that I worked on that project out there. My research—and I was managed by Dr Sotiri—was to identify the gaps within Broken Hill and Wilcannia. A lot of consults happened with community members, the Elders and Aboriginal services in Broken Hill—Community Restorative Centre holds an office out in Broken Hill. The answers that I got from community were that we have the land to build a healing centre to accommodate our mob—not just mum and dad but the whole family.

They obviously have masses of land out in Broken Hill. Again, it would be an Aboriginal-controlled, Aboriginal-led healing centre instead of a rehab centre. That is not a cultural fit for our mob; it addresses the addiction side of things, not those layers and layers of trauma. The research that came out of that was that Broken Hill needs a healing centre. The research goes to show that somebody from Broken Hill jail had to travel 10 hours to Dubbo to a rehab centre—again, off country; they had never left Broken Hill ever. It was quicker for them to go to Adelaide but, then again, the barriers—because then they had probation and parole, they were not allowed to leave Broken Hill, so New South Wales.

It is there: The cry is for a healing centre within Broken Hill that can accommodate those surrounding areas like Wilcannia, Menindee and other small communities around that area. Again, like Mr Daylight is saying, we have those land councils that are saying, "Yes, we have the land." We have got NSW National Parks and Wildlife that will assist in helping set up that healing centre that will accommodate, culturally appropriate, for our people without them having to travel 10 hours by car. They cannot fly; it is like an $800 flight just for myself to fly from Sydney to Broken Hill. We have the land. It is community-controlled: Aboriginal and First Nations people driving this back and empowering our people in making it inclusive—not just of the individual mum or dad but the children within those communities—and having it as a whole unit.

Mr DAVID SHOEBRIDGE: My question goes back to the spike of women being arrested for domestic violence. One of the things that has changed in the last couple of years is the police issued their domestic and family violence policy in February 2019 which, for good reasons, talks about having very limited discretion and urging prosecutions where there is domestic violence. Then if you read into it more deeply, it acknowledges that there is a disparity between the rates of domestic violence against women and others, but then speaks about domestic violence being not necessarily gendered—I am summarising it. Do you think there may have been a change in policing practice where they see all domestic violence incidents as being automatically going down the prosecution rate, and therefore more women being prosecuted may be explained by police practice? Or is that just a correlation in time with that policy?

Ms PARKER: It may be. That may be the case. But I also know that—I do not think that police are trained enough. I have spoken to other police officers before. They do their six weeks' training and they have a DV component at the end of that six weeks' training that lasts for about a week. Then they are put on the beat. Generally the people who are going out to incidents are not your domestic violence liaison officers [DVLOs]—they are not the ones who are going out to incidents. They are your first responders. They are the ones who are at the desk, a lot of new recruits and things like that. They are not experienced and they are not trained in trauma and DV. I think that is a real issue that we have, that they are going out there to these events. I think just having more training to let police officers understand that—it is quite complex to have more understanding of that complexity.

Mr DAVID SHOEBRIDGE: Ms Parker, how long have you worked in the DV space?

Ms PARKER: I have worked in the DV space, paid, for the last seven years, but I have been across the DV space for about 20 years unpaid as well, as a volunteer.

Mr DAVID SHOEBRIDGE: Largely in the Aboriginal space?

Ms PARKER: No, more mainstream, so across the space—Aboriginal and non-Aboriginal. I actually used to work in a refuge in the Blacktown-Mount Druitt area for nearly five years. I started as a caseworker, then I was a team leader and then I coordinated one of the services out there.

Mr DAVID SHOEBRIDGE: In terms of changing police practice, police cannot be trained for everything.

Ms PARKER: No.

Mr DAVID SHOEBRIDGE: Maybe it is in circumstances where you have DV—particularly in the Aboriginal community—that someone like you goes out with police?

Ms PARKER: Yes, definitely.

Mr DAVID SHOEBRIDGE: How much of a benefit do you think that would be? Or someone like Ms Merritt?

Ms PARKER: I think that would be a huge benefit—just having the understanding of culture and also having understanding of the trauma. We have got that experience. We have worked in this field for a long time. Being able to walk in there with police and having the understanding of the complexity and the way that DV does actually work, and being able to assist the police in that matter—

Dr SOTIRI: Can I just add to that? Our clients, especially women—because they may also be using drugs and alcohol, because they may be black, because they may be living in incredibly impoverished circumstances, because they may have their own histories of criminal justice system involvement, the way that police walk into those DV situations is not the same as the way that police may walk into a DV situation in a privileged area. I agree that training the police is often not the answer; the answer lies with the community. Whether that is the community being with the police—I think in our submission we made a lot of recommendations about the need for independent First Nations community-led organisations to have a presence in all of the different parts of the justice system but being very deliberately separate from the agencies of justice—like the police and like corrections—in order to establish a rapport and trust in the way that is necessary. I have got no idea about why those rates are increasing, but I certainly observe all the time the discriminatory practices that our clients experience—especially our First Nations clients—when they are also victims of crime.

Ms HOPKINS: I think this is borne out by the experience in Bourke, too, with the Operation Solidarity. How that was implemented was in consultation with community, with the idea that a community member would accompany police to a household where there had been a recent incident of domestic violence. The visit to the house would be less sort of supervisory and punitive but more a check-in, and it would be very regular and it would check-in with both perpetrator and victim. That really had very positive results in Bourke. I think when we are talking about these issues we need to keep coming back to the idea that this is going to be different place to place, that policy responses need to be informed by what Aboriginal community leaders and members are telling us.

Ms MERRITT: I would just like to make comment in regards to Mr Shoebridge saying that if it was a First Nations face attending with the police, the huge impact that would have. I can comment for myself that I volunteer as cell support for my local police station, Redfern Police Station, and get called upon when they have got a youth in custody and they cannot contact mum or dad, or mum and dad might both be in jail and they are hopping from house to house. Just seeing that impact of me being able to sit there with that young person throughout that charge process or that interview process, and they decline an interview—and again, then there is the barrier and issue when they are granted bail: Where do they go to as a young person within our local community when mum and dad are in jail? Again, to have that support at that front line is crucial. You get that call to say, "We have got a young person in custody. Are you able to attend?" Ten out of 10 times I will attend that police station to sit with that young person. But just to see their behaviour de-escalate once a Koori face comes through those doors and is able to sit with them while they are in that police cell, it definitely makes a huge impact for that young person to see a First Nations face.

The Hon. TREVOR KHAN: I suppose what I invite is—and it goes back to the domestic violence issue. It has been 14 years since I practiced, but I have to say, particularly in my earlier years of practice, there were some areas—and I will include Coledale in Tamworth—where the cops just did not go into the suburb. They did not go over the railway line. If there was a domestic violence issue that occurred in that town—whether it be a man or a woman, there was no help from the cops. That was an exercise of discretion by the cops of not bothering. It was a problem that occurred in Coledale and it essentially stayed in Coledale.

We now move to a system where that discretion is gone. If you are involved in a domestic violence incident, cops have to attend and have to deal with it. That is why I raised earlier that there is a negative outcome. Either you exercise the discretion—and it was a complaint often that the police did not assist particularly women in domestic violence circumstances because it was an Aboriginal problem, a Koori problem—or you say, "No, we're not going to tolerate violence in the home." I am just wondering—if that was, in a sense, the extreme of what I saw all those years ago—how you balance giving the cops discretion in one circumstance to act or not act when in fact, when they used to exercise the discretion, it worked against particularly women in the Aboriginal community. How do you achieve a balance in those circumstances? You have been there probably as long as I have, Ms Parker.

Ms PARKER: Yes.

The Hon. TREVOR KHAN: And you see both sides of it in that regard, don't you?

Ms PARKER: Yes. I am just trying to think. Can you say something?

Dr SOTIRI: Yes, sure. Look, I think it is a great question and there is nobody—I do not think discretion can operate. Domestic violence has to be treated like domestic violence. The question is: What is then happening to the people who are both perpetrating it and are victims of it?

The Hon. TREVOR KHAN: Sometimes they are both.

Dr SOTIRI: That is right, and sometimes there are confusing boundaries. It is a difficult question to answer because at the moment we are very reliant on incarceration or on, as Ms Hopkins was noting, very punitive responses. For a lot of people that we work with that is not a great outcome. Having somebody go to prison as a consequence of domestic violence in a First Nations family is not what anybody actually wants. I think that we need to be a little bit more imaginative—not so much in terms of how we are defining or not defining what violence is, because violence is violence and it needs to be addressed as such. But I do think that there is an opportunity for community- and First Nations-led organisations to be part of that response so that it is not just down to the police to implement things, which police often do in a very blunt sort of way.

The Hon. TREVOR KHAN: A blunt instrument way, yes.

Dr SOTIRI: My thoughts are that it needs to be people like the experts around this table who are formulating responses. It sounds like one approach is happening in Bourke and I am sure there are other examples. It is not in any way to minimise the impact of the violence or to treat it differently, but it is the responses that we need to really start thinking through in a careful and thoughtful way, and in a way that is led by community rather than led by people that have the power to put you in prison.

The Hon. TREVOR KHAN: Alright. Well, there was a reason that I asked the question, because it is my recollection that judges and magistrates do not have the capacity at the present time to give an intensive correction order in the event of a conviction for a domestic violence complaint. Do you think we need to reflect upon that as being inappropriate in light particularly of the circumstances of women?

Dr SOTIRI: I do not think that intensive correction orders are the answer either.

The Hon. TREVOR KHAN: There we go.

Dr SOTIRI: I think they are one part of quite a complicated puzzle. When I think about what works—if we are actually serious about, say, increasing community safety and if we are serious about reducing violence, then we need to look outside of the criminal justice system entirely. That is not to say that the criminal justice system does not have a place and that police do not have a place in terms of responding. But I think that, again, we need to be a little bit more imaginative in terms of the way that we configure our responses. I think we can look to, say, justice reinvestment projects and other projects where it is not just, "You've done something bad and you go to prison," because we know that does not actually work in terms of making any difference for anybody. In fact, it makes most things worse.

Ms HOPKINS: I think an example of that is in Bourke. If we are agreeing that we need to support police community partnerships across New South Wales, an example in Bourke—and it links into housing—was that the community were saying to the police, "An issue here is that men have nowhere to go. Women should be able to stay in the house with their kids. The men should have a place that they can go, so they can leave the family together." That has been something identified and now they are looking at trying to increase the access for accommodation for men to leave the home. It is a non-justice system approach to a problem that may well result in better outcomes.

Ms PARKER: Yes, which makes sense, because usually it is the women fleeing and going into a refuge with the children. It is much more for them to move. It is so much easier to leave the women at home with the children and to actually take the men out. But having somewhere for the men to go—because otherwise they are coming back to the home and they are harassing.

The Hon. TREVOR KHAN: They are bitter and twisted because they have been chucked out on the street.

Ms PARKER: That is exactly right, yes.

Mr DAVID SHOEBRIDGE: So much of this comes back to housing.

Ms MERRITT: Yes, and that was even raised in Wilcannia and Broken Hill. The men need a place to go.

The Hon. ROD ROBERTS: Just one quick question to you, Ms Hopkins, if you do not mind? It is a point of clarification; I just want to get this correct. You are talking about caseworkers visiting perpetrators and victims of domestic violence in company with the police. I think you said that happens in Bourke at the moment. This is the point of clarification: This is after the event, though? We are not talking about at the time of the incident. We are talking about a follow-up the next day and after that. Is that right?

Ms HOPKINS: That is right. It is not necessarily a caseworker, but someone working in an organisation.

The Hon. ROD ROBERTS: Some community involvement, yes.

Ms HOPKINS: Yes. It is usually when there has been an incident. And then, there is that regular drop-in contact that continues, though, not just after the incident but as an ongoing process.

The Hon. ROD ROBERTS: Yes. Just so you know where I am coming from, my point of clarification was that it was not at the time of the incident.

Ms HOPKINS: That is right.

Mr DAVID SHOEBRIDGE: Is there any reason not to also include an Aboriginal-led response at the time of the incident?

Ms HOPKINS: No. I think there could be great value in that, particularly when there are issues around mental health and addiction. Having a specialist on hand could be of great use.

Mr DAVID SHOEBRIDGE: We have seen the Police, Ambulance and Clinical Early Response [PACER] led reforms in some parts, which is a mental health team going instead of police. Can you see that there might be circumstances where we could broaden out that non-police response beyond mental health? In which case, do we look to the PACER program as an example?

Ms HOPKINS: Yes. I think there is real scope there for de-escalation.

Ms MERRITT: I agree.

Ms PARKER: Yes.

The CHAIR: Does any member of the witness panel wish to add anything further?

Mr ROBERTSON: Just in terms of Aboriginal community liaison officers [ACLOs] within the police, often they are singular workers. In the Illawarra we have around 12,000 Aboriginal people and there is a singular community liaison officer across two police commands. That person primarily also works from eight until four. We see the spike of crime obviously raise during the night-time, or incidents at night-time. Wages for an ACLO start at around $65,000 a year. So, asking someone to work generally within their own community and to be, essentially, the face of the police to every Aboriginal person in that region is a huge ask. Where is the rotating roster? Where are more community liaison officers within the police? It is just not there. We are asking one person

to be the face and we see the burnout of the ACLOs. You go through five or six every couple of years and that is the exact reason why. Other services pay more, but the need is obviously, as well, within the police.

Mr DAVID SHOEBRIDGE: And the very hard line that ACLOs have, walking between being with the police and being with community, can be deeply destructive of their family relationships and their community relationships. Ms Parker, Ms Merritt and Mr Daylight?

Ms PARKER: Definitely. I work closely with a Redfern ACLO, not in my role at Community Restorative Centre but as a community member. I am very connected to my community. I live and was raised on Gadigal land. I work closely and meet up with the ACLO who—Redfern police has now merged with Mascot, so now they come under the police area command of South Sydney. He is an ACLO that covers Redfern, Waterloo, and out to Mascot and the boundaries around Bayside Council. That is a very fine line between him being an ACLO for the police and the government and then a fine line between him having to walk, live and breathe his community seven days a week. He resides not far from Redfern police station, so, like you are saying as well, Jake, they are underpaid; they are only there from nine to five and they are the lives of Aboriginal community members volunteering their time, like myself, as their sole support whenever a young person comes into custody. They are underpaid and I think there needs to be that continuous base of support services, whether it is community-led organisations or police recruiting staff after that from a night shift timeslot to address those issues.

Mr DAVID SHOEBRIDGE: That role, because it is so compromised, it is probably better having them than not but it is hardly the answer. Mr Daylight?

Mr DAYLIGHT: Yes, I think what happened from my history—I am not that old I do not think—we started all these community organisations to deal with all of our issues, and the field officers for the Aboriginal Legal Service were down the block, down there arguing with the police and then somewhere in the seventies and the eighties and the nineties everything just got merged into these government jobs—like $65,000 is really good pay for a community worker. So I think that is what it is because, to your point—I have family in Coledale; I am a slater from up Tamworth—we want the community to care, we want the police to care enough that it is not about an arbitrary decision of "We are going into Coledale" or "We are not going into Coledale and now we have been told by some new strategy to go in", we want you to care for our women. I will work with perpetrators but I will never make an excuse for them. They cannot continue to commit violence against our Aboriginal women and our Aboriginal children. There are plenty of reasons why that happens but there is never an excuse.

When it comes to the point that an Aboriginal woman is maybe getting beaten up in Cole Road down there, how does that go for that whole service, that whole community, knowing that the police did not care enough to come and save her life? How do her kids then come to any position in their minds that the police actually are there to serve their community when they were not there to protect their mum? So it is on us as Aboriginal men to not perpetrate violence against our women, and it is on the whole community including this Committee and Parliament and the police to actually care for our young people who are in custody, for our women who are getting assaulted, for our men getting out of custody who are homeless. We can recommend all we want, we can do all the money, but it is actually about a care factor. We know in general the system does not care for us, so we do not care for the system.

The CHAIR: Any further questions? A good point to end on. I thank the witnesses for attending the hearing and giving us the benefit of your experience and your insights. The Committee has resolved that answers to any questions taken on notice be answered within 21 days. The secretariat will contact you if you have taken any questions on notice today. We thank you for your participation.

(The witnesses withdrew.)

(Short adjournment)

CRAIG LONGMAN, Head, Legal Strategies and Senior Researcher, Jumbunna: Institute for Indigenous Education and Research, University of Technology Sydney, sworn and examined

LARISSA BEHRENDT, Director of Research, Jumbunna: Institute for Indigenous Education and Research, University of Technology Sydney, sworn and examined

PAUL GRAY, Associate Professor, Jumbunna: Institute for Indigenous Education and Research, University of Technology Sydney, affirmed and examined

HUGH DILLON, Ex-Deputy State Coroner and Ex-Magistrate of the NSW Local Court and researcher, University of New South Wales Law School, sworn and examined

REBECCA SCOTT BRAY, Associate Professor of Criminology and Socio-Legal Studies, University of Sydney, affirmed and examined

PHIL SCRATON, Professor Emeritus, School of Law, Queen's University, Belfast, before the Committee via videoconference, affirmed and examined

The CHAIR: Would each group here giving evidence this afternoon on this panel like to give a brief, no more than two minutes, opening statement?

Professor BEHRENDT: I will deliver the opening remarks on behalf of the others. On behalf of my colleagues at the Jumbunna Institute Research Unit, I would like to thank you for the opportunity to submit on this important policy area and we commend you for looking seriously at reform on an issue that causes great distress and trauma to Indigenous families. Jumbunna is an Indigenous-led research unit that also has a clinical practice through which, as our submission highlights, we work on coronial inquests and, importantly, supporting families going through that process.

Our key concerns are that many deaths when investigated repeat recommendations that are consistent with those of the Royal Commission into Aboriginal Deaths in Custody. This not only highlights that blueprints for reform have long been in place but not acted upon, but also that many of those deaths are preventable—a conclusion coroners themselves come to. When asked why, given all we know about reducing over-representation, those figures continue to climb. One answer must be that there is an inherent conflict between tough on crime political posturing and attempts to reduce incarceration rates, especially for those people on remand. There is also a tension between directing resources to more prisons and underfunding or underinvesting in strategies and programs that will avoid pathways to incarceration or offer appropriate alternatives to imprisonment.

As well as changes to the Coroners Act and the Office of the Director of Public Prosecutions guidelines, we advocate in our submission for the establishment of a First Nations-led investigative body to inquire and determine the circumstances of First Nations deaths in custody; the introduction of First Nations counselling and therapy services for families of deaths in custody and homicide victims; the appointment of a First Nations Elder to assist the Coroner; a First Nations liaison for the Coroners Office and First Nations coroners and counsels assisting. We also, of course, advocate for a more robust implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, the Family is Culture review and the Law Reform Commission's Pathways to Justice report.

As an Aboriginal person whose cousin was a death investigated by the royal commission, I am acutely aware that behind the statistics of incarceration and deaths in custody are real people, families and communities. Reform along the lines we are advocating will, we firmly believe and evidence supports, lead to reduced numbers in prison, reduced deaths in custody and more support for already traumatised families as they try to get answers and get justice. Thank you.

The CHAIR: Thank you. Professor Dillon?

Adjunct Professor DILLON: I acknowledge and pay my respects to the Gadigal people, their Elders past and present on whose land we are meeting. I also pay my respects to all the First Nations people of New South Wales. I also wish to offer my respectful condolences to families who have lost loved ones in custody. Their pain is immeasurable and I have seen that in court. I thank the Committee for this invitation. It is the first independent review of the operations of the coronial system in New South Wales since 1975. I know that is not your focus but it is a remarkable thing that the coronial system has not been looked at independently since that time.

It has been both an enlightening and a chastening experience for me to hear the voices of so many Indigenous people in their submissions. Their experiences of the justice and coronial systems have indeed been thought-provoking for me. The coronial system has considerable strengths and potential and I acknowledge all of those but it needs fundamental reform. In the first place, it may strike you as strange paradox that the Local Court of New South Wales, Australia's largest criminal court, is also the court responsible for conducting inquests into deaths in custody. Magistrates imprison people and other magistrates investigate those deaths. Regardless of the quality of the coroners and their undoubted integrity, there must be something wrong in principle with that picture. For that reason alone, we need a specialist Coroners Court to be established by statute.

New South Wales has a poorly drafted Coroners Act. It needs a complete rewrite. In particular, a new Act should focus on objectives which include respect for life, families, culture and the prevention of future deaths. Victoria and New Zealand provide good models. Coroners should be specialists and not overworked country magistrates. The current hybrid structure is inefficient and not designed for the job it is intended to do. The coronial system, by which I mean not just coroners, but the whole system including medicine, investigation, family support and legal representation of families and so on, is under resourced.

The coroners, in particular, are going out backwards trying to keep up with the work. They need resources to do a better job of preventing future deaths. Families need resources, including legal assistance, to navigate the system—which is a mystery to most people—and to prompt the system to work better for them. New South Wales lacks appropriate performance measurements for its coronial system. To improve performance, it needs to be measured appropriately. This means the system needs strategic direction and a strategic plan to make the system operate optimally. The distress and pain—registered in all the submissions—reveals both the lack of strategic direction and the lack of a plan. I think we can do a lot better and I commend this Committee for trying to aim in that direction. Thank you.

The CHAIR: Dr Bray will you be giving the address or will it be—

Associate Professor SCOTT BRAY: We were going to share it if that is okay? I would like to acknowledge and pay my respects to the Gadigal people of the Eora nation on whose lands I sit today. I pay my respects to their Elders past, present and emerging and acknowledge their sovereign connection to this land. Aboriginal sovereignty was never ceded and this was, is and always will be Aboriginal land. I would also like to acknowledge those families whose loved ones have died in custody, their resistance and their advocacy and who yet again are voicing their experiences so as to action change. Thank you for the opportunity to appear before the Select Committee and I will hand over to Professor Scraton who is going to make some introductory comments before I finish the opening statement.

Professor SCRATON: My thanks also. I endorse fully Professor Scott Bray's Acknowledgement of Country. We have worked together for several years on the coronial system across jurisdictions, focusing on deaths in contested circumstances particularly during police arrest and in custody in prisons, detention centres and special hospitals. Our work demonstrates that institutionalised racism underpins differential policing and disproportionate incarceration. First Nations people in the United States of America and Canada, black communities in the United Kingdom, Māori in New Zealand and Aboriginal and Torres Strait Islander people in Australia.

We define institutional racism as demeaning words or actions of individuals unaddressed within organisations. Institutionalised racism however concerns the operational core, organisational structure and established functions that inform the policies and functions of organisations. Underpinned by economic marginalisation, endemic poverty, social exclusion and political underrepresentation, it confines communities to settlements, 'reservations' or public housing and underfunded schools. It limits opportunity, negates potential and contains personal and collective resistance through discriminatory policing and regulation.

At every level—political, economic, social and psychological—the governance of Aboriginal and Torres Strait Islander communities is woven into the fabric of welfare provision and statutory agency interventions. Pushback and resistance leads to harsh regulation in schools and communities, feeding a school-to-prison pipeline. Disproportionate representation in carceral and mental health facilities—sites of institutionally racist abuse—fuel despair, hopelessness and repeat criminalisation. At the sharp end of this continuum is death through institutional negligence or excessive use of force. I will hand you back to Professor Scott Bray.

Associate Professor SCOTT BRAY: Thank you. Central to our submission we reiterate our commitment that the Committee prioritise the voices, experiences and activism of First Nations families and communities, those who continue to endure the loss of loved ones in custody and who are persistent advocates for

change. As the Royal Commission into Aboriginal Deaths in Custody stated 'a death in custody is experienced most deeply by the family' and that applies to all subsequent processes, including the coronial investigation and inquest. As highlighted by Black Lives Matter protests internationally and as indicated by Professor Scraton, these are global issues.

Our research laboratory and its workshops drew on international expertise, illustrating that the oversight of deaths in custody and the concerns faced by bereaved families are endemic. However the situation in New South Wales and Australia is unique and requires scrutiny. Our broad submission combines reform and substantial institutional change. It endorses the Royal Commission's recommendations and highlights the disconnect with current coronial legislation and practice. For example, Recommendation 35 of the Royal Commission indicated that coroners are to inquire into the cause and circumstances, including the care, treatment and supervision of the deceased. The Coroners Act 2009 does not stipulate this requirement nor does its statutory predecessor, The Coroners Act 1980. Yet the State Coroner's annual report to Parliament states this is to be investigated. This underscores our primary submission for a root and branch review of New South Wales coronial law and practice consistent with that undertaken in other States and territories and which must involve First Nations peoples.

A statutory review of the legislation and piecemeal reforms will be insufficient. A large scale review is clearly beyond the current terms of reference, although the above reviews offer important insights especially as the Committee is committed to significant reform. We also propose that a Coroners Court should be a court of specialist jurisdiction, enabling the ignition of its key purposes consistent with our proposed range of reforms. These include specialist accountability measures and processes of examination following custodial deaths. These must accord with Indigenous self-determination regarding the deaths of First Nations people.

In their detailed submissions, Indigenous advocates and representatives establish the grounds for systemic reform. Concerns range from what may appear as minor details of administrative conduct to major issues regarding process and procedures that our research shows have lasting impact on the bereaved and their communities. We conclude our opening statement on the issue of coronial recommendations discussed at some length in our submission. We assert that while mandating responses to coronial recommendations is important—which has been raised by a number of submissions to the inquiry—inquests require dedicated research support. Coroners should have the capacity to make informed, targeted recommendations of quality and feasibility within a clear time frame for implementation.

There should be State and national oversight and monitoring of coronial findings, as well as recommendations and implementation. This would enable an appropriate circuit of accountability. If we fail to follow through on this fundamental aspect of coronial practice, bereaved families and their communities will endure further hurt. Death prevention is central to the process but cannot be realised unless recommendations are followed through to institutional changes in policy and practice, and unless these matters are tracked and monitored. Many of our recommendations are consistent with the submissions of others. We are privileged to have learned from their insights and expertise, but most especially from the sovereign voices of the bereaved and their advocates. Thank you.

The CHAIR: Thank you. All the current panel witnesses have made very extensive and powerful cases for strengthening and improving the legislation around coronial practice and jurisdiction in New South Wales. Professor Dillon makes the case for the under-resourcing of the current Coroners Court. Obviously if its jurisdiction was to be strengthened, there would need to be further resourcing. In terms of improving oversight of the investigation of deaths in custody, particularly First Nations deaths, there appears to be in the material that we have received if you like at least two main streams of thought. One is that the investigative powers and resources given to the Coroner should be improved, and that the Coroner really should drive that improved investigative function. There is the Jumbunna submission, which makes the case—common with other submissions—that there needs to be a new, bespoke investigative body. Other submissions have specifically said that new body should be First Nations-led in its creation, design and personnel.

Yet further submissions have suggested that this new investigative body should be located in some institution like the Law Enforcement Conduct Commission, which is a relatively new body that oversights serious police misconduct and critical incidents. We have discussed the idea that the Coroner could access the expertise of the LECC in the same way that it accesses the investigative expertise of police. We note from the many submissions that First Nations people do not trust the police to carry out this investigative task. Where should any new investigative function and resource be located? Should it be with the Coroner or should it be somewhere else? Is it not better to improve and build on existing institutions rather than creating new bodies, given that there is already six oversight bodies in this space?

Professor BEHRENDT: I think that it is our very firm view that there is a case that is specific for the way that Indigenous people—First Nations people—sit in relation to the rest of the legal system. The experience of people who have gone through the process of trying to get some resolution and understanding of how their loved ones have died in custody speaks to the fact that what would provide the best and most transparent outcome and would result in the most faith in the process would be an institution that is independent. I will let my colleague Mr Longman speak more to that, but I would say that in our submission we expressed our firm view that that is the preferred model. We believe that there is good evidence to support the fact that when institutions such as this—if one were created—are Indigenous-led then they provide better outcomes for Indigenous people for a range of reasons. Any other attempt would really be seen as trying to fix a system that is already systemically disadvantaging Indigenous viewpoints. Having said that, within our submission we make some very strong and thorough recommendations for how we think the current system should and could be improved with greater participation across a range of different areas.

Mr LONGMAN: As distinguished Professor Behrendt says, our firm view is that it should be a new organisation that is First Nations-led. I understand the position that it is better to build on what already exists. That may be true for other deaths in custody but when you are talking about First Nations deaths in custody, building on something that already exists fails to realise that you are automatically at that point importing the history of that organisation. What we see in the inquests that we work in is usually it falls upon the family and their legal representatives to take an investigation—and we have seen in an investigation at the moment where the detective has done an exceptional job in terms of a homicide investigation, but those institutions will rarely look for systemic discrimination. They will not even know where to start looking for systemic discrimination. It quite often falls on the family, and I can give an example of this.

There was a matter that we were involved in where the Coroner indicated that they did not think that there was a need for an inquest at all. The family were lucky enough to have some culturally sensitive practitioners. When the family said to these lawyers, "Look, the thing is, this particular institution is racist. We know it is racist. We live around this institution." And the lawyer, instead of disregarding that, went and investigated. That investigation identified some indicia that this institution in fact did have some institutional racism. That was then brought to the Coroner's attention, an inquest was conducted and the Coroner themselves identified that there was some indicia of systemic discrimination.

The practical reality is that if you take an existing organisation, it is unlikely to have been built for, or informed or educated about, those kind of issues. If you go and talk to the community, they see those issues immediately. The reason that we would say that it needs to be First Nations-led is there has to be an acceptance by the mainstream legal system and the mainstream institutions, like the police, that we do not necessarily know better. We cannot just reason our way into a First Nations perspective. The practical reality is that I am an English-Scottish man and I have never lived suffering racism. I can talk to a lot of people who have, but if you want an institution that is going to go out there and help you find it, and identify it and address it, it needs to be led by those who have.

The CHAIR: Is that not an argument for First Nations coroners as part of the existing coronial system? Just as the First Nations people are overrepresented generally in the criminal justice system, the people running the system at different points are not reflected in that. If you had more Indigenous people in those roles, would that not help address that very point that you are raising?

Professor BEHRENDT: We can look at a range of institutions that have sought to lead institutional change by the employment of more Indigenous people from the courts, prisons systems and police et cetera. And actually I would include child protective services in this area as well, where there is an attempt to try to increase the understanding of the institution as a whole by having more Indigenous participation and Indigenous leadership. I think that the statistics continue to show that that strategy does not work. That is perhaps part of the scepticism that many First Nations people have about the idea that systems can be improved simply by that participation increasing—the structure and institutional racism is much deeper than that. That is why there is a firm view from Indigenous people—and I share this view myself—that the ability to design the institution is an opportunity to ensure that you are not just trying to change a structure and a culture that already exists, and you instead bring a different framework, mindset and perspective.

Mr LONGMAN: I might just add to that something that Professor Dillon wrote about. When we are talking about the coronial system, we are not just talking about the police and the Coroner. We are also talking about some institutional organisations—and my colleague Alison Whittaker has written about this—that play a very strong role in how inquests set their scope and how they run. So frustratingly what we see in a lot of inquests

is you have a two- or three-year run-up to the inquest, and in the second week the Coroner or the family is starting to investigate issues. Then suddenly these institutional organisations might dump thousands of pages of evidence that they could have brought forth earlier but they did not. Asking a First Nations Coroner to change a culture in circumstances where they are not just dealing with the Coroners Court but also with institutional organisations like Corrective Services, Justice Health, NSW Health, who already all have a sense of what an inquest is and how far it will go and what they have to disclose and what they do not, puts far too much expectation on that Coroner in my submission.

The CHAIR: Professor Dillon, is this not something that coroners could address through practice directions?

Adjunct Professor DILLON: I think practice directions are necessary but insufficient. As I have said in my opening remarks, I have been frankly somewhat chastened by reading these submissions. Jumbunna, the ALS, Legal Aid and others have made very powerful submissions. It has been an education for me. I spent nine years in the system being a Coroner and I do not think anybody would accuse me of being callous or not caring but, as Mr Longman says, we do not have the experience. There were no Indigenous people working in the Coroners Court when I was there. There still are not as far as I am aware. I personally would love to see Indigenous coroners not just investigating cases of deaths of Indigenous people but deaths of everybody. That would be good for our society as a whole. But I take the point that there needs to be effort made at all these levels. This is a very multidisciplinary, complex process—or it should be if it is to be done well. People like me do not necessarily see, feel or intuit the issues there that are very important to Indigenous families. They are kind of hidden in this milieu. I think you do have to be Indigenous or very closely attuned to Indigenous people to get the feel. It is the vibe, if I can use that phrase.

Associate Professor SCOTT BRAY: I agree with Mr Longman in the sense that—Amanda Porter has written about this sort of mix-and-stir approach to inserting Indigenous bodies into various parts of the criminal justice system. What Mr Longman is referring to is this notion that you could put all of this pressure on coroners. I have sat in inquests where it has been an Indigenous death in custody and a non-Indigenous death in custody. The Coroner is not the only player in the room. The inquest is just one space we are talking about here. If we are talking about an entire process of investigation that ensues over a couple years, that is a whole different ball game. The inquest is just one part of it. To see the argy-bargy that goes on with some lawyers in court—I agree. I think it is too much to put that pressure on an Indigenous Coroner when you are actually talking about an entire system right from the get go that not only does investigative work but works with families as well. A couple of Indigenous coroners is not going to settle the issue.

The Hon. PENNY SHARPE: You would not argue that it would do harm.

Associate Professor SCOTT BRAY: No, but I think we are talking about different things here. We have different aspects of reform that exist on a spectrum towards revolution. The notion that we need to offer something within the system to families who are repeatedly standing outside Parliament, who are protesting on the streets and who are not getting resolutions to inquests into the deaths of their loved ones—we are seeing repeated deaths in custody. There is something not working in the system that is supposedly underwritten on the principle of death prevention. So what is going on there?

I think the other issue is that, in terms of reforms, Jumbunna and many other people make very cogent arguments for different insertions, changes, amendments and the ways in which we can kind of mould the system. They are all incredibly important, but they do not just sit with an Indigenous Coroner, for instance. They sit with, at a minimum, Aboriginal family liaison, all those aspects which relate to the management and the viewing of the body, the autopsy, the whole process right from the get go. The submissions are incredibly nuanced and detailed in respect to the notification of death. I think we need to read back. Even though we have coroners who direct investigations, the notion that it is a multidisciplinary exercise is a very important one. In essence, we do need to really build from the ground up. We cannot kind of go back down that way.

The CHAIR: There is a lot of discussion about the lack of accountability and oversight of responses to coronial recommendations. I know the Coroner is only one part, but they report on the matter and cause of death. Although this practice varies amongst the coroners, there is an expectation that systemic issues can and will be addressed by coroners, who often make recommendations, but there is no legislative requirement for government to respond at all or within a certain time frame. What are the mechanisms that should be built into that so that there is a reporting on and an accountability for when coroners do say, "Well, this is how the death occurred. To stop this kind of thing happening, these five things should occur"? That report may never see the light of day. What can we do to improve on that?

Adjunct Professor DILLON: I think it involves two or three things. First of all, it involves developing high-quality, robust practical recommendations. The Coroners Court of Victoria has a large research unit, but it also has connections with university accident-prevention and health agencies such as Monash University. You need a relationship between coroners and people who can come up with ideas about how this has worked in the past, where the risks are and so on. Then you obviously need people who are going to make recommendations—coroners—who are educated and specialist enough to recognise systemic problems when they see it and seek expert help.

Thirdly, in answer to recommendations which are made, you need a system which requires a response not just from government—we have got a form of that system here. I do not think it is very good. Victoria probably has the model. Victoria's model more or less mimics what the royal commission recommended in 1991: response within three months. But it should be response from everybody. It is not a perfect solution because it still requires good, quality recommendations to be made. If you require people to respond within three months to wishy-washy recommendations, that is not an answer really. That is just cosmetic. It is that combination of things, which goes back to the question of multidisciplinary approaches.

Associate Professor SCOTT BRAY: I think this really represents in a microcosm of detail a number of issues with the system. Victoria's Act was enacted in 2008. It is sort of considered the frontrunner in terms of coronial legislation in Australia. They have mandatory responses. They have internet publication of findings and recommendations and all that sort of stuff. The Victorian research tells us there are all sorts of gaps within these systems. I mean, legislation is incredibly important. It is symbolic and instrumental as well, but the notion of—Victoria has a coronial prevention unit [CPU]. It is epidemiologically based. I am a social scientist. I read oodles of research around the globe that deal with issues of racism and racialised stereotypes of Black men in custody and how they are uncontrollable. I see these issues unfold before me at inquests straight out of the social science literature. A CPU that is epidemiologically based is not going to consider the social science research.

We need to actually expand what we understand by valuable research for coroners, first and foremost. I think in New South Wales recently we have seen some very bold moves by coroners to incorporate criminological and socio-legal research—with some criticism I might add—into their inquests. The notion of what we understand to be research-informed or research-based coronial practice is something that we need to address. We also need to address the notion of what lies behind the question of mandatory responses. There has been very minimal research done into this, but it has demonstrated that response letters are incredibly opaque—they are waffly and vague and do not address the issues—and this is a mandatory response regime. Also, that some recommendations are a bit soft—training and all sorts of other things are common recommendations—and many of them are supplanted. That demonstrates that you have such a significant delay from the moment of death to the inquest findings and recommendations, that you have organisations that are able to address criticisms at inquest by basically enacting reformist gestures in the period that the inquest is held.

Jumbunna raise a really interesting point about this. What they say in their submission is absolutely spot on. It is not just about the fact that organisations get to reform their process, it is that other people cannot make submissions on those recommendations. What you have is a crowding out of expertise in the inquest process that could contribute to recommendations and submissions on recommendations. These are all really important points. We can talk about CPUs, mandatory response regimes and all those sorts of things, but we have to get into the nub of the detail—research, recommendations and implementation—and have an effective monitoring and oversight, not just publish them on the web and call for responses. The New South Wales system leaves a lot to be desired. The latest Attorney General's report is about 171 pages of responses to coronial recommendations. That digital swamp of coronial data means nothing without intelligibility and interrogation. That is what I would say about it.

The CHAIR: Professor Dillon, you make the point that you did not receive any special training when you became a Coroner. Does the Judicial Commission of New South Wales not provide proper training for people becoming coroners? If it does not, should it not do so, particularly given the variability of coronial responses?

Adjunct Professor DILLON: It does, but it is fairly limited. As you probably all know, country magistrates are also coroners ex officio. Once a year for about one or two hours they receive some sort of talk from one of the Deputy State Coroners—one of the specialist coroners. But it is not specialist training in the depth that you need. Every case involves medical issues. Professor Bray, Professor Behrendt and Mr Longman have talked about complex social issues that are relevant to preventable deaths. Those sorts of things—accident research, et cetera—are a bit of a mystery to most lawyers. When I went to the Coroners Court in 2008, I felt

while my ignorance was still fresh in my mind I would try to ask some questions. I and some others rewrote the standard text on coronial law as a means to educate—well, for me to educate myself.

Five years later I wrote a little manual on coronial practice—again, because I was learning so much on the job; I was not being taught that stuff by the Judicial Commission. I really do not have any idea how country magistrates learn how to be coroners, or if they do learn anything much at all. One thing we know, taking a medical analogy, is that high-volume teaching hospitals teach people better skills because they get lots and lots of practice. Country magistrates do not get a lot of practice in coronial work at all. If you go to the Coroners Court, I think it took me about two years as a full-time Coroner to become competent in the job. That meant learning medicine and other things. I think I could call myself an expert having been there for five years. I would say that that is a common experience in whatever profession you are in. Barristers take about five years to become any good. I am sure Mr Searle and Mr Shoebridge would agree with that.

Mr DAVID SHOEBRIDGE: At least, is what I would say.

Adjunct Professor DILLON: So the 10,000-hour rule—I know it is a bit of Mickey Mouse science there—says something about expertise. It takes a lot of practice and country magistrates do not get it, nor does the Judicial Commission provide that high-volume sort of case-study approach. You have to learn on the job.

Professor SCRATON: Can I say something?

The CHAIR: Yes, of course.

Professor SCRATON: Sorry, it is very difficult with a link to dive in as we would normally if we were sitting around a table. One of the things I wanted to suggest is that we are talking about two different issues here. On the one hand we are talking about improving what exists. The recommendations that we have heard down the years, not only in the jurisdictions in Australia—[audio malfunction]

Mr DAVID SHOEBRIDGE: I think we have lost the data link. We might come back after this to Professor Scraton. A lot of the submissions talk about core conflicts of interest—police investing police and police investigating correctives. But one of the conflicts of interest that has not been addressed until now is one you raise, Professor Dillon, which is magistrates one day—

Professor SCRATON: Sorry?

Mr DAVID SHOEBRIDGE: Professor Scraton has just come back on the line. Would you like to complete your answer, Professor Scraton?

The CHAIR: If you keep your video turned off it may improve the sound quality for both you and us. Are you there professor?

Professor SCRATON: Yes, I am. I am trying to organise this at the moment and at the same time keep my train of thought.

Mr DAVID SHOEBRIDGE: You are coming through clear now.

Professor SCRATON: What I was saying was that we have the choice here of improving what exists and we have heard multiple recommendations in the submissions that you have seen. The second option is root and branch change. We were facing those issues in the working party that has just completed in the United Kingdom, regarding the relationship between public inquiries and coroner's inquests. I wanted to make clear that some of the findings from that led us to the same issues about systemic failure that is specific to race, class and, to a large extent gender, and the intersection of those issues. We made 54 recommendations in that. What is really important from the conclusion we came to, was the need for Special Procedure Inquests that not only involve exceptional circumstances such as mass deaths and disasters, et cetera, but also single deaths that indicate systemic failure. That issue, from our point of view, became one of the most significant findings.

We can, on the one hand, continue to improve training, process, information and legal scholarship—all of those issues that we are now familiar with. Alternatively, we can start from a point of view that says that we have to have Special Procedure Inquests in those issues where we now know that there is systemic failure, clearly in terms of the discussion that we are having here. We have witnessed now for decades systemic failure. This cannot continue. What is really significant is to look at how we address systemic discrimination and develop a new organisation that not only is First Nations led but also across the board addresses issues around class, gender and all other forms of discrimination that we have seen play out in our jurisdictions in the Coroners Court.

On the one hand, I agree entirely, support fully and am involved in improvement of an existing service—the training, the background, all of that. But I think we have to once and for all address issues of systemic institutional failure, which cannot be put right simply by what we would call ordinary system reform. We have to start again with a system that allows us to have an independent body that leads oversight and monitoring of inquest findings, and that is investigations, and feeds back into that process that we are arguing for in terms of not only oversight but also a real fundamental change that communities will relate to, understand and become involved in.

Mr DAVID SHOEBRIDGE: Thank you Professor. That touches upon the question I was going to put to Professor Dillon. As I was saying, we have heard about those other conflicts of interest. One of the conflicts of interest you raise—and I am putting conflicts of interest around your thought—if a magistrate one day is part of a criminal justice system within which there is systemic racial prejudice that puts Aboriginal young men and women into jails, and sees them the victims of institutional racism in the criminal justice system, and playing a part in it, and then the next day is asked by an Aboriginal family to pass judgement on the racial bias of the system of which they are part, is that a kind of inevitable conflict of interest? Is that part of why you are talking about having a separate coronial court that steps outside the criminal justice system, or am I putting words in your mouth?

Adjunct Professor DILLON: I think you are putting words in my mouth a little bit. Magistrates will not sentence somebody one day and then do an inquest on them the next day because there is a separation. I hope I am speaking the truth here. It is the senior Coroners who do the inquest into deaths in custody, Deputy State Coroners. I hesitate because since I left a number of country magistrates have been appointed as part-time Deputy State Coroners. So theoretically it may be possible that somebody, for example, in Lismore is doing both functions which would be very problematic for the reasons which I think are perfectly obvious to everybody. I think it would be unusual if a magistrate found him or herself in that position that they would continue the coronial inquest. I have enough respect for the integrity of my colleagues, or ex-colleagues, to think that they would excuse themselves from that particular case. But they may not remember because you might do 60 sentences in a day—

The Hon. TREVOR KHAN: More than that.

Adjunct Professor DILLON: More than that, exactly.

Mr DAVID SHOEBRIDGE: But I am not even talking about where they may have a role in putting that particular person in prison. If you are a key participant in a racially bias criminal justice system, it is hard to pass independent judgement on it in the role of a Coroner is it not?

Adjunct Professor DILLON: Sure. I guess most magistrates do not regard themselves as part a racially discriminatory system. They might observe that 25 per cent of the people in jail are Indigenous but they would not personally think "Oh gosh". They might think "I am part of this and I am going to try to do my little bit to reduce the harm" certainly that is the position in which I have found myself and I know others have found themselves in. But you go off to their Coroner's Court. You are not doing Indigenous cases all day. There are relatively few actually over a year.

For example, a Coroner will manage something like 600 or 700 cases a year. I do not know how many Indigenous deaths are reported to the coronial system but I would imagine if it is 3 per cent of 6,000 that means around about 200 deaths per year, including deaths in custody. There is a lot of space in between Indigenous cases but I do know that I and my colleagues used to pay special attention to Indigenous cases when they were reported to us, and a lot of them are not, they are reported to country magistrates. These are not deaths in custody or police operations, they are deaths due to some failing of the health system, accidents, natural deaths or whatever. So you do not see a lot of Indigenous deaths. So the question that you raise, I think, does not really occur to people.

Mr DAVID SHOEBRIDGE: Professor Behrendt, in your experience does it occur to Aboriginal families when they enter a court room and they see a Coroner in a court, and the history of First Nations People's interactions with the criminal justice system? I cannot generalise but what were some of the likely reactions from First Nations People in that space?

Professor BEHRENDT: I guess what I would say from our experience supporting families through the coronial process is that there is not a huge level of understanding of the different processes that occur. People come before the Coroner's Court before that process having had very little of the experiences we would have with the court system. So when they see the Coroner's Court it is not like they understand the difference necessarily between that and the rest of the legal system and those experiences holistically.

I think it is easy to see a continuation between, say, experiences with police and experiences with magistrates and experiences with judges. It is all part of a holistic impression of how the legal system treats Aboriginal people and their families and communities. I would just make this observation. We obviously have also supported victims of crime through the criminal justice process. I think it is true to say that in our experience there is a lot less support in the coronial system for those families which not only means a lot less attention is given to managing their trauma and their complex circumstances but also a lot less resources are given to assist them in understanding the nuances of a process and understanding why that process takes so long.

The Hon. Trevor Khan: Would you like to tease that out a little bit more because I think that is a significant issue?

Mr DAVID SHOEBRIDGE: Yes. I will ask my question and you can come in. What about when you sit down with families early on in a coronial process, maybe a death has just happened and you are talking through with an Aboriginal family about the fact that the police are largely going to be doing the investigation, the police are going to the jail and will be leading the investigation and then that material will find its way to an independent Coroner. How does that conversation play out with First Nations People?

Professor BEHRENDT: Obviously one of the real challenges is that often in that situation you are starting with a high-level of distrust from the Indigenous community about their ability to have a fair account or a fair investigation, given the complexities. That can be a part of the circumstances themselves. I think it is important that in all of these contexts there is often a larger history. I am not just necessarily talking about the history of colonisation. It is not unusual that in extended families like my own you would have had an experience of a death in custody or those sorts of interactions with the criminal just system that bring those families, when they sit down to start to go through this process, with a whole very personal history of their interactions with that system.

I think one of the things that we are really challenged by in relation to that, as well as, as you point out, the challenges in trying to in some ways—not that it is our role—but it is very clear that there is a lack of trust in how this process is going to play out and actually how long the process will take. That is another issue. How long will the family wait for an inquiry, a hearing date, and then managing the expectations that that is a process that somehow will achieve some sort of justice. And throw into that the fact that it is highly likely that, given the fact that there is a lack of those support services through the coronial system that we speak to in our submission, there is a high chance of traumatising people all over again. I will just hand over to Mr Longman who can speak a little bit more about that in terms of those experiences of taking families through that process.

Mr LONGMAN: In my experience, I think the first thing to say is most of the people in this room would be familiar with the legal process, but if you are not, firstly, an actual inquest does not look too different to a criminal trial—there is an opening address, witnesses are cross-examined. We sitting there we might be thinking, "You can't lead like that", and thinking about the nuances of evidence law, but for a family that is not the case. Starting at the beginning though, often the first notification is made by a police officer and that officer may or may not have any cultural sensitivity around how the notification is made or, in fact, whether they are talking to the right person. If that notification is made at midnight and the knock on the door comes and they open the door and it is a police officer standing there, you have immediately got a very different situation than if it was someone who was not a police officer.

Usually what will then occur is the family will get very little information out of the Coroner's Office. They might get information out of the autopsy report, but they are rarely going to have any insight into what happened, and that could last 18 months to two years. There was an inquest recently—we were not involved in this—where for some reason the lawyers thought they were not supposed to share the brief of evidence with the family, so the family saw it a week before the inquest. That was the first time the family had understood what had happened to their loved one. What happens often in those circumstances is those 18 months to two years they then become filled with hearsay and innuendo and theories of the family as to what happened, because no-one is giving them any information.

Mr DAVID SHOEBRIDGE: And that can be self-entrenching too; the family all repeat the same—

Mr LONGMAN: Absolutely. It does not help that in many inquests that I have worked in there is evidence that should be there that is not—CCTV that is not available or forensic evidence that is not secured—and, in point of fact, quite often these investigations do not run as strenuously as a homicide investigation would run, for example. The other thing that is not, I think, quite often made clear at the start is the difference between this process as an inquisitional process and an adversarial process that actually leads to a criminal accountability.

So very often families will get this evidence, they will see witness statements come in, they will go to court and they will expect that if something comes out in this process that seems to be criminally negligent or seems to indicate homicide, that what happens then is someone goes to jail, and the reality is in Australia in First Nations deaths in custody that does not happen and has never happened.

Mr DAVID SHOEBRIDGE: In some ways I feel like all of us should just let you, this panel, have a chat amongst yourselves because of the extent of knowledge. We have got the sort of global perspective from professors Scraton and Bray, we have got the eight years of hardscrabble professional experience on the Coroners Court from Professor Dillon and we have got the cultural expertise from Jumbunna. In some ways we should sit back and you should talk amongst yourselves and fix it, but we do have a bunch of potential concrete bottles. I think the Chair started with that. One option is not the wholesale reform of professors Scraton and Bray, it is not the pure coronial model of Professor Dillon, it is not the pure First Nations model of Jumbunna, but one model is to expand the jurisdiction of the Law Enforcement Conduct Commission to also independently oversight police investigations of deaths in custody, attach a First Nations commissioner to the Law Enforcement Conduct Commission and improve.

The Hon. TREVOR KHAN: Why not deal with each component?

Mr DAVID SHOEBRIDGE: Yes. So what about that: the extension of the Law Enforcement Conduct Commission to have that independent oversight of the police investigations in prisons? It is not the wholesale reform. Would it improve confidence in the system amongst First Nations families?

Mr LONGMAN: If I understand the model that you are suggesting, you are still talking about an institution overseeing police investigations.

The CHAIR: No. We are talking about it being given the jurisdiction to itself conduct these investigations of its own staff who are not police.

Mr DAVID SHOEBRIDGE: There are two models. One is they do the investigations of deaths in custody with their own staff, which is a high-resourcing model; the other is they do what they do with deaths in police operations where they oversee from the outset a police investigation. So address both.

Mr LONGMAN: I can say very quickly I do not think the second model works because you still have police investigators investigating. It must be said too that it is not particularly fair on the police investigators to investigate their colleagues; it is the only organisation I know that is tasked with investigating itself.

The Hon. TREVOR KHAN: But the majority of deaths in custody occur in corrective services facilities.

Mr LONGMAN: That is right.

The Hon. TREVOR KHAN: So that is not police investigating police, and I understand the problem with that. But particularly if you have a specialist police investigating unit, which we understand is now not the case, that is looking at investigating deaths in corrective services, oversighted by an external body, that is that model. It does not work as well when it is the cops, but if we talk about most of these incidences being in the corrective services context, does it work there or is it an improvement? And I was trying to stay out of this.

Mr LONGMAN: I think the danger is, is it improvement? Yes. Are you going to make this improvement and think you have fixed the problem? That is the danger. It is certainly an improvement to have an oversight body that oversees those investigations. I would suggest that if you wanted to have a proper oversight body it should also have its own powers of prosecution or referral to the DPP, so that it is not dependent upon the Coroner or the police.

The Hon. TREVOR KHAN: That is not an unreasonable observation.

Mr LONGMAN: Do I think that you are going to engender trust with that in First Nations communities? I would say no for all the reasons that we have already talked about.

Mr DAVID SHOEBRIDGE: What if you added to the model a First Nations commissioner? You have three commissioners: you have the chief commissioner, then you have a First Nations commissioner whose job is to provide that First Nations input and direction for both the policing aspect and for the correctives aspect; so you consciously build the First Nations commissioner into the model.

Professor BEHRENDT: I would suspect, just adding to what my colleague has said, that again I think that would be seen as a reform, but I think at the end of the day there is a long history of deaths in custody that

have left communities and families with a lot of questions, both where deaths have occurred in police custody and in prison, and while those reforms would be positive I think you will not engender the trust until we see a change in the outcomes through the system.

Professor SCRATON: I would like to make a point about independent oversight. Here in the north of Ireland in this jurisdiction we have an independent ombudsperson for prisons and an independent ombudsperson for policing. Just recently we completed an inquest, which looked on the surface to be fairly straightforward. It was of a young man who went into prison and who took his own life on the day of his arrival in prison. To cut a long story short, after 10 days of evidence and testing that evidence, the conclusion we came to was that it was obvious that he took his own life but there were 16 substantive failures by the police in transferring him to custody and his treatment while in custody, and quite clearly some of those failures were directly related to sectarianism rather than to racism.

The issue that is significant here is that we got that verdict because for seven years we worked with the family and we worked on the case itself. We had to send the independent ombudsperson's report back three times in order to get a sufficiency of evidence—and that was the independent ombudsperson. The previous independent ombudsperson for prisons we had a very clear, strong relationship with, that was independent of - truly independent of - the system. What we are looking for in all these jurisdictions is a way in which we can not only develop true independence of inquiry that supports the inquest system, but also a situation where the families can feel that they have full support from that, not only in terms of investigation but also—as we have already heard and is in all of our submissions—in terms of empathy, full communication and support, because so many of those families are going through the repeated trauma of waiting, wondering and rumour, and all that comes with that.

The point that I am trying to get to is that while we theoretically have independent oversight guaranteed here by the Ombudsperson for policing and Ombudsperson for imprisonment, what really becomes significant is to establish a truly independent body. That will always require support from police investigators and it will always require the current State departments to feed into it, but we have to be able to find a way of bringing into the forum a level of independence that can be scrutinised as being significantly separate and distinct from the authorities that it is investigating.

Professor BEHRENDT: Is it possible that we can take the question on notice and provide a written response to that?

The CHAIR: Absolutely. I say to any of the witnesses, there may be things that have come up that you, on reflection, would like to address further. If so, please do take those things on notice. We are very open to receiving further material.

Mr DAVID SHOEBRIDGE: Professor Dillon, one of your proposed reforms which goes towards independence is building up the support base within the Coroners Court itself, or within a new independent Coroners Court. Could you expand on that a little?

Adjunct Professor DILLON: If you are proposing that this be a rational system, which I hope it would be, you need to explore—as Professor Scott Bray, Professor Stratton and the people from Jumbunna have said—and take account of some of the systemic issues that are relevant. I do not know that you need to run a mini royal commission in every inquest, but if something is socially relevant to a particular death then you need to know that. Coroners, being lawyers, are not necessarily the best people to provide that sometimes. I think that the coronial prevention unit in Melbourne is a very good example of people who can provide you with an epidemiological view and a preventative approach—Professor Scott Bray has said that does not go far enough, and I would agree—but that will generally take you quite a long way. That is independent science, if you like. Social science, in some cases.

If the system is going to be trusted, it has to go beyond a few people's lived experience, or whatever else. That is very important but it is not ultimately decisive of everything. If people are asking the system to find other people accountable in some way, which in this context often means that some people should be punished, then you need to be careful and take a very rigorous approach. How you gather that evidence and test things is a very important issue. The police are not necessarily very good at gathering together those things to do with societal factors et cetera, so you need to have other lines of investigation and inquiry available to you. Ultimately, if you were going to take a preventative approach then you need to have people who have expertise in a particular field. That is part of what I am talking about in terms of independence.

The other thing that I think is a good feature of the New South Wales system is the independent bar provides real horsepower, if you like, to the coronial system. I know that this is a controversial point but even in

cases involving Indigenous deaths, if you can get counsel assisting who have real experience—perhaps in the Aboriginal Legal Service or whatever—with Indigenous people then you have half a chance of developing a trustful relationship with the families. I do not think that we can overstate the importance of having Indigenous and non-Indigenous people who can actually connect—where they come from, how they operate, at what levels of the system they are interpolated and their functions within the system, I cannot really say. I think that they should be at all levels and in all relationships—medicine, family support, the law, coroners et cetera, and as researchers providing significant background material against which the individual case can be seen in its proper perspective.

The Hon. TREVOR KHAN: Professor Dillon, I was interested in the two other actors at play—and that partly arises out of Mr Longman's earlier observation with regard to seeing the brief a week before the inquest, but it also rose out of the evidence that we received at the end of yesterday—and that is: Do we have to look at some more effective training, or culling perhaps, of those practitioners who are assisting families, particularly in terms of deaths in custody? The second thing is with regard to counsel assisting, do we have to look at the point in time where counsel assisting is appointed and also their training in the deaths in custody field?

Adjunct Professor DILLON: I think that they are both very important points. I did not know this until I read their submission, but Ngalaya says that there are about 400 Indigenous solicitors in New South Wales. I was unaware of that. That is encouraging to me, because that means that there is a pool of legally trained people who could provide legal assistance. People can be trained to be counsel assisting. It is a new skill set for most people, but they can be trained. Everybody has got to start somewhere. Forgive me, what was the second question?

The Hon. TREVOR KHAN: It related to the timing.

Adjunct Professor DILLON: The royal commission said that someone should be appointed within 48 hours to assist the Coroner. I think that is a brilliant idea. One of the real problems which causes significant delay in the system is—well, there are a number of them, and I think the legal aid commission outlined several of them, but here are two: The practice when I was a Coroner was before anything was done to wait for the post-mortem report and wait for the police are brief to come in.

The Hon. TREVOR KHAN: Which could be ages.

Adjunct Professor DILLON: It could be ages, yes. Post-mortem reports can take a year, maybe longer. The police brief can take a year or longer. Then having got the two big documents, the Coroner sits down and analyses those, writes to the Crown Solicitor's Office and says, "I would like you to assist me. These are the issues that I identify for inquest." Then they brief counsel, and they take further time because they are busy, and so on and so forth. So you can see how this thing gets out of hand and how files get left on desks and families are left in the dark about what is going on. If we had someone appointed within 48 hours, as the royal commission proposed, you could ring up the Crown Solicitor's office and say, "Okay, I've got a death in custody. Please come and see me. Let's talk about it. This is what we know. Can you then talk to the police officer in charge who is doing whatever they're doing? These appear to be the issues, as we know them." So you could ask them to look at certain questions. By this time you would hope someone has got a touch with the family and they have told them that someone has died. "What can you tell us about that? Did he talk about taking his own life? What was he feeling?"—all the sort of things that is Professor Behrendt has talked about.

Families know a lot. Families now a tremendous amount about the person who has died and that should be the first point, I would have thought, to which you go to find relevant information about people because most of these deaths are either suicides or health issues. Families know a lot about those things. The sooner you get started, the sooner families are included, the sooner that phenomenon of people inventing their own stories is suppressed, the sooner real information starts coming out and the sooner you can get on with the job of finding out what happened—truth-seeking, making sense of the story, et cetera, et cetera. In England, I know Professor Scraton is critical of the English system, but they have at least one good thing going for them and that is that the English Coroners and Justice Act requires coroners to get the inquest done within 12 months or explain why they have not to the Chief Coroner.

Is that a good system? I do not know and if they do quick and dirty inquests, maybe their inquests are of poor quality. I do not know, but at least it accelerates the process and presumably that means that families are included in the process at a reasonably early stage. Frankly, I am shocked—pardon my croaky voice; it is not COVID—that in any case families would only get a brief a week before an inquest. I do not know how long it is after the death that the inquest was scheduled but I assume it was at least 18 months for families to only see the

full picture as is known to the Coroner at that point is unusual, I would have thought. I do not know what the explanation is. I hesitate to criticise anyone but it is problematic.

The Hon. TREVOR KHAN: I am cognisant of the time.

Dr BRAY: Can I just add something to that? I think what it represents and it symbolises in both its message but its instrumentality as well is what should actually be at the heart of the process. Many submissions—I am including Jumbunna's, Adjunct Professor Dillon's and many others such as the Aboriginal Legal Service, have talked about the notion of restoration and therapeutic jurisprudence and cited academic research that has talked about the ways in which this has been enacted in other parts of the justice system, namely the criminal justice system. But I guess one of the things that we are talking about here is a completely different system. We are talking about death investigation.

The person who has died, the inquest is about what happened to them, and the corollary of that is that the family are the most important players, really, in that process. They are the ones who have lost someone. So, really, at a minimum restoration should be a kind of an underlying principle. When you read the research around restoration it is about healing, it is about recognition, it is about timely disclosure and it is about no delays. I mean, all of these things should be obvious, should they not, to a system of death investigation when at the heart of it is a fact that someone has died, and often in very difficult and contested circumstances.

The Hon. TREVOR KHAN: Dr Bray, can I say that from my experience in inquests some of them are extraordinarily cathartic. Some people do actually get a degree of closure through explanation. I can think of one which was a suicide—I use that term advisedly—in a mental health facility in Tamworth. The family, not Aboriginal, came into that with a large conspiracy theory and left satisfied that it was in a sense a tragic set of circumstances where the deceased had worked very hard to bring about his own death. There are certainly others where I have seen people leave not at all satisfied by this process.

Associate Professor SCOTT BRAY: Yes, because I think we are talking about different contexts and a history of different experiences that Jumbunna are talking about.

The Hon. TREVOR KHAN: Look, I am not arguing that.

Associate Professor SCOTT BRAY: I am very happy for those happy cathartic moments. That is really fantastic. But in some of the evidence this morning, Mr Shoebridge was talking about systems that are set up to be navigated by white middle-class families and I think potentially the same applies here. The evidence is just before the inquiry that that is just not everyone's experience.

The Hon. TREVOR KHAN: No. I am not suggesting it is.

Associate Professor SCOTT BRAY: Yeah, but even though when people front up to a coronal inquest they are not fronting up to a jurisdiction of criminal liability or responsibility or probability or accountability in that sense, but they are fronting up for some sort of justice and understanding. As Jumbunna has very clearly articulated, it is the history that families take to the door of the inquest, you know, that in many senses further hope is squashed because of some of the structures and the natures of the practice itself.

The CHAIR: Mr Roberts?

The Hon. TREVOR KHAN: Can I ask one more?

The CHAIR: Okay. One more and then Mr Roberts.

The Hon. TREVOR KHAN: Professor Dillon—and others are quite entitled—we change the way the Children's Courts looked now many years ago to try to get away from the old Traffic Court look. Is there some argument that we should actually almost change the style of Coroners courts to try to break that nexus between criminal jurisdiction and the inquisitorial coronial jurisdiction? If so, what would it look like?

Adjunct Professor DILLON: I think there are at least two questions there. In general terms I think, yes. I think, generally speaking, inquests can be restorative and sometimes cathartic. I have seen that numerous cathartic experiences of families as well, like you, but some cases are contested. But the good thing about the Coroner's jurisdiction is that you have flexibility. Our current State Coroner, Teresa O'Sullivan, is alive to that issue. She, I have been told, is trying to make the experience for families as restorative as possible, sitting around a table, et cetera, et cetera. I did an inquest where I sat with the family at a table. We had a talk about a very sensitive and troubling issue for a young man and it worked. I actually regret that I did not do it much more

often—that we did not get out of the big courtroom that looks like someone is going to jail. I did not take off my gown.

In Germany, courtrooms are flat. The judge's table is at one end of the room and everybody else is on the same level. It is a much more informal process, even at their highest level in the Constitutional Court. I think we have a lot to learn from the architecture, from the egalitarianism, really, of the Germans. That may sound surprising, but we do. The process could be much more gentle, informal, restorative and ultimately therapeutic for families, I think. Contested hearings could be different, but I do not see why you could not for example do some therapeutic stuff before the full-blown contested hearing. For example when London did the big inquest into the 7 July bombings the judge who was appointed Coroner, Lady Hallett, had a kind of town hall meeting for all of the 50-odd families. She told them what was going to happen and what they were going to do. They could ask questions and raise issues if they wanted to—all of those sorts of things.

We could do that in a much less formal way than we do. But one of the problems and one of the reasons why I would like the Coroners Court to be separated from the Local Court is that you just get into habits—of wearing specific kinds of clothes, of doing things the Local Court way et cetera. You translate those habits, which become subconscious, into this arena. It takes a conscious effort to cut against that grain. I think Teresa O'Sullivan is the person who can do it, if anyone can, because she is thoughtful about these things and is thinking about them. I know that she is reading the submissions to this Committee so she knows what Jumbunna and others are saying. I am sure she is giving it a great deal of thought.

Mr LONGMAN: Can I just add one thing to that on the point of flexibility? We have been in inquests where if the family feels heard and they feel like they have agency, then for example there have been agreements with Coroners—and this does depend on the Coroner that you have—for smoking ceremonies and for cultural expressions as part of grieving statements. One thing that we could not unfortunately do because of logistics is something like delivering the findings at a spot nominated by the family that was close to the deceased, which is something that the Federal Court can teach the Coroners Court how to do. There is capacity there.

The Hon. PENNY SHARPE: I want to ask about something that is not the Coroners Court. I want to ask about criminalisation of children in care. I know that Jumbunna has done a lot of work in this area and Mr Shoebridge and I have been involved in some of that work. I could not let you leave the room today without giving you the opportunity to talk about the impact of child removal, the over-representation of young Indigenous people in out-of-home care and the pipeline to the criminal justice system. It is very clear but to date has not seen a lot of—I really just want to give you the opportunity to talk about that and your reflections on what needs to happen. I know there is the *Family Is Culture* report and Professor Davis did very extensive work there. We have now seen the Government's response to that and I just wanted to give you an opportunity to put on the record your views in relation to that matter.

Professor BEHRENDT: Sure. We anticipated that focus and we do speak to it in our submission. We have our colleague who heads our child protection work, Dr Paul Gray, with us. He has been leading this work from us and he is our absolute expert. As an Indigenous-led research unit, our research responds to what we feel the community needs. It is no coincidence that we have now invested heavily in this area of child protection and our recruitment of Dr Paul Gray to lead that work is very important. I will just say this as well because I think it goes to the points that you were pressing before.

We made a decision to invest our very scarce resources and find funding from elsewhere to effectively now have two—with Paddy Gibson and Alison Whittaker doing a lot of this work—within our unit to just do family support. I just wanted to raise that because in all of these pieces that we are talking about regarding things that might change the experience once somebody is inside the coronial court, there is all of that work that it takes to get the families to the court in the first place and to keep them through the process. Our focus has necessarily had to be on that. We have had to put that much resourcing in because the system does not provide that level of support. I just wanted to add that.

Mr DAVID SHOEBRIDGE: As everybody agrees, it should be family centred.

The CHAIR: Yes, this is a very important perspective.

The Hon. PENNY SHARPE: I know that Jumbunna has been working in this area. The evidence is very clear that if we are to seriously address the over-representation of First Nations people in our criminal justice system then we cannot do that without looking at what is happening in the out-of-home care system. I know that you have quite a lot of information in your submission, which we have read, but I wanted to give you the

opportunity today to highlight what you think are the key links and the kinds of things that this Committee should be thinking about when we are making recommendations out of this report.

Mr DAVID SHOEBRIDGE: I think you initially said in the context of the Family Is Culture review as well.

The Hon. PENNY SHARPE: Yes.

Dr GRAY: I think the Family Is Culture review actually does a really good job of explaining many of the issues in this space. It looks at the research that exists about the fact that for many young people in the care jurisdiction, their contact with the criminal justice system occurs earlier and their experiences within that system as a cohort are unique in a range of ways. That increases their chances of moving into custody. That includes things that we would not really expect of other children and young people who might come before the courts for various reasons, like not having caseworkers and others present. Caseworkers are responsible for supporting them through their youth and are often not present when they are appearing before court, so they do not have that sort of active support. In some cases Professor Davis found that—I suppose to put it simply—there were questions about things like bail because a placement could not be found for them. In terms of custody as a last resort, that is not really the case if it is being used as a placement option.

The Hon. PENNY SHARPE: And I think it is. Those are definitely the reports that I get from children's lawyers, foster carers and a range of others.

Dr GRAY: Absolutely, and I think the intergenerational element of this is worth thinking about as well. My background before moving into the policy space was as a psychologist in the system. I am very interested in those developmental elements and the ways that our early experiences—and if that is an early experience of care—impacts our behaviours later in life and the way that in turn impacts our executive functioning, which is a really core part of being an effective parent. If we are not willing to intervene in the care and protection space more effectively, in a way that reduces the contact of families with the care space and some of the social determinants of that contact, then we are going to continue to see this intergenerational cycle of children and families coming into contact with systems that are not really achieving the outcomes that we want to see for them.

The Hon. PENNY SHARPE: Given the evidence around kids in out-of-home care coming into contact with the criminal system earlier, I know what your views are going to be around criminal responsibility and raising the age between 10 and 14.

Dr GRAY: Yes, of course. That makes sense for a whole range of reasons, not least around the outcomes that will be achieved for children and young people by taking on a more rehabilitative and restorative approach. As part of that, changing the age of criminal responsibility is just a commonsense approach.

The Hon. PENNY SHARPE: We have had a lot of discussions about whether having an Aboriginal person in the system is going to fix that. The Government's response to Family is Culture is to have an Assistant Children's Guardian. What are your views about that?

Dr GRAY: My colleagues made it quite clear that adding an Aboriginal staff member into the system, regardless of the level of that staff member, does not actually fix the fact that it is the system that is broken, and it also places a lot of responsibility on that individual to carry. It is equally true for the care jurisdiction as to the criminal justice jurisdiction, that the first task of any new role is going to be winning the confidence of the Aboriginal community. That is going to be a really hard task when there is a mismatch between the expectations of community about what that role could or should perhaps do for them and what the role actually has the power and the functions to do for them. In a way, I suppose that goes to the point: it is as important to involve Aboriginal communities and Aboriginal representatives in actually constructing the system in which those positions will operate as it is important to actually having those voices at the table.

Mr DAVID SHOEBRIDGE: My question is to Jumbunna. It flows from Professor Dillon's observation that bringing the families in earlier, whether it is in a town hall meeting with a large number of families or around a table with perhaps just one family, if that is going to work with Aboriginal families, with First Nations families, do you think it is essential that there be a First Nations-led advocacy organisation—like some of the work that your caseworkers do at Jumbunna—that they be funded and integrated into the system to actually facilitate that contact early on? So then it is not just a Coroner interacting with an Aboriginal family, but the Aboriginal family comes supported with a specialist advocacy group that actually knows and can navigate the system? Would that be something you could see Jumbunna or other Aboriginal-led organisations doing?

Professor BEHRENDT: In a way, we appreciate doing the work because it allows us to work with families and to do work that is really meaningful, but in an ideal system that work would not be done by a research unit at a university, it would be provided for within the system itself. We have seen both within the coronial inquest cases we have worked on in that capacity and in other ways we have been involved in that process, but also through our work with victims of crime, particularly with Bowraville. The absence of support services for families to navigate the system is a huge aspect of increasing the trauma they experience going through. There needs to be some kind of service that is both a support service and an advocacy service that is specifically for Indigenous victims of crime and for families going through coronial inquests.

That sort of service needs to be a standalone, Indigenous, community-controlled, Indigenous-led service to be able to provide that work. But in our experience across both the criminal jurisdiction and also the coronial jurisdiction, it is something that is sadly missing. As I mentioned earlier, whatever tinkering we do to the processes within the court, that piece for supporting families outside the court, with the complex needs of those families—we find ourselves doing everything from child protection matters to housing matters as part of that support. It is incredibly holistic. That is just what we are able to do without the expertise of being psychologists or providing other services in that respect. I feel like that is something that the system needs as one of the pieces of the puzzle.

Professor SCRATON: I think the point that was just made is really significant: the issue of tinkering with a system when we are dealing with such complex needs. They were the two phrases that I just picked out. It is so important that we understand that the process is not restorative or cathartic. Yes, we can all give examples of families where that has occurred, but that is not the real experience. Humanising the process, changing the style, bringing in people and sitting around tables, that is all fine. Of course, for some of us we have been doing that for years outside of the process. The important issue is that we cannot just change this in terms of style. The elephant in the room is quite clearly that the process is underpinned and underscored by institutionalised racism, institutionalised sectarianism—here in the north of Ireland—and institutionalised class and gender. Those are the combination of factors that we are attempting to deal with.

When Professor Dillon a few minutes ago raised an improved system, when he talked about certain sudden bombings in London, the issue is quite interesting because, yes, the families did feel that that process was cathartic and they did bring the families in earlier. Think about it for a second: what were the real issues there? The issues were an external force. It was a force of terrorism. That was what the process was. We are talking here about an internal system and an internal process where the interests are around policing, incarceration and health care. In other words, we are not talking about an external force, we are talking about our own State and our own State's institutions. That is the difference. And having at the forefront of an inquest, as I saw at the most recent Hillsborough inquest, a situation where families were allowed to give statements to humanise their loss; although they were not allowed at any point to make any statement that was relevant to the loss that might in any way impact on the jury.

Looking at Hillsborough is really quite significant. It has now become the primary case in UK history. If you look at the big difference between the first inquest, when there was no equality of arms and the families had to fundraise in order to get legal representation, in that situation they were up against very strong institutional legal interests. If you compare that to the most recent 2016 completed inquest, the longest inquest in legal history, they had full support. There was never a question in all of the time during those two years when we sat in the court, there was never a point at which that was not an adversarial process. I talked about it as an "adversarial wolf in inquisitorial sheep's clothing". But the issue at the end of the day was that the verdict was completely reversed. Not only was it reversed in terms of an accidental death verdict becoming an unlawfully killed verdict, but there were 25 substantive riders added, which demonstrated institutional failings in that process.

To me, that demonstrates a system that is flawed, because they were exceptional circumstances, given exceptional funding, given exceptional support, in probably the most expensive legal process now in history in the UK. So it is actually saying to that one family—not the families of the 96 who died at Hillsborough, but to that one family whose loved one has died in custody or in mental health care, saying that you will have the same priority at every level in terms of investigation, in terms of fairness of process and in terms of outcome. So we can all quote from those inquests which have been restorative and cathartic, and I do take exception ever to using the word closure. As families will tell you, closure is something that we invent to make us feel better about their loss. There can be no closure to the loss of a loved one in these circumstances, and so what I am arguing here is that there has to be a root and branch change. You have to have equality of arms, and one of the significant elements of our proposal, which we will develop further, is that it is absolutely important—imperative now—to have a charter for the bereaved that will fully endorse and support their case—somebody that they can turn to. That is my final point.

We have to remember that when we are talking about the bereaved—and Jumbunna will know this better than anybody—we are talking about people who are suffering the worst moments of their lives—the loss of a loved one at the hands of the State. It is so imperative to put ourselves in that position and say we are not just dealing here with a technical process, we are dealing with a process in which loss is right at the heart and people of that process, and the bereaved are suffering at that moment. Well of course they will accept almost any support that is given to them, and if it was not for organisations outside of the State—and we have heard that today so lucidly—those families would be doubly bereft. They would be bereft of their loved one and they would be bereft of a system that fails them.

The CHAIR: Thank you Professor. I thank the panel of witnesses for their evidence. Professor Dillon, I think you have got a subsequent paper that you are still working on. Would you be happy to supply that to the Committee on notice?

Adjunct Professor DILLON: Thank you very much. Yes, I would be delighted. Thank you.

The CHAIR: The Committee has resolved that answers to questions taken on notice be returned within 21 days. The secretariat will contact witnesses in relation to questions they have taken on notice. I will give the panel of witnesses the unusual opportunity to submit anything further they wish to say to the Committee arising from today's discussion—also within 21 days. Again, I thank all of the witnesses for their time, insights and evidence, which no doubt will prove invaluable to our deliberations.

(The witnesses withdrew.)

RAUL BASSI, Secretary, Indigenous Social Justice Association, affirmed and examined

FAITH BLACK, Spokesperson, Indigenous Social Justice Association, sworn and examined

GAIL HICKEY, Mother of TJ Hickey for Families of Deaths in Custody, sworn and examined

The CHAIR: We start by asking the bodies appearing before us to give, if they wish, a brief opening statement of no more than two minutes. In this case it would be Ms Hickey starting off, and I note that you have supplied the Committee with a number of documents which we have, and which have been circulated to Committee members. I invite you to make a brief opening submission to us.

Mr BASSI: Sorry, can I say something?

The CHAIR: Yes.

Mr BASSI: We have prepared stuff in the sense of the person for Indigenous Social Justice Association [ISJA], Faith is the one who will represent our group. The papers that you received are from all of us. ISJA has been working with Gail for 16 years already—no justice. That is why this is a group that is all the same and we ask to—

The CHAIR: Okay. So you want to give one opening statement?

Mr BASSI: Yes.

The CHAIR: Okay. I am happy for you to give one opening statement, that is fine, and whichever one of you wants to deliver it—we are in your hands. So, please, Ms Black.

Ms BLACK: Thank you for having us here today. We the Indigenous Social Justice Association are represented by myself and Raul Bassi, and also Gail Hickey—she is the mother of TJ Hickey. We are just happy to be here today to give you our evidence for the submission of the coroners. My name is Faith Landy-Ariel. I am a descendent of the Badtjala people of Fraser Island and the Meriam people of Murray Island in the Torres Straits. My father is of English descent. He was born in Newbury in Berkshire. As a sovereign woman and member of the Original Sovereign Tribal Federation I would like to acknowledge the Gadigal people on stolen land today for this meeting to take place. I have a declaration by the Original Sovereign Tribal Federation, which I am going to read to you:

> This is a tribal notice.
>
> The Original Sovereign Tribal Federation, the tribal members originating from the ground declare we have never ceded our sovereignty nor acquiesced our title in any shape, style, form or fashion and through our inalienable birthright and duty under tribal law "jurisprudence" rightfully uphold our autonomy to the world, as the sovereign, allodial title holders of our estate through our connection, kinship, law, songline, dance, story, culture, and bloodline connection to the country. Queen vs Campbell war 2861981. As a message to all … OSTF call for unity amongst all Tribal Sovereigns of this continent to reclaim our right to self-determination and freedom. Through unlawful governments, we have been subjected to genocide for 232 years. Through Social Engineering, we have been taken out of our natural capacity at law and forced—

into enslavement—

> to apply to fictitious colourable descriptions (Characters) i.e. Indigenous, aboriginal. in an attempt to usurp the natural capacity and estate and deny our Sovereign right which has been stolen.
>
> All aboriginal, Indigenous Agents, Land Councils, Delegates, Subordinates on behalf of your Government are not standing exclusively under Jukurrpa Tribal or and other Law purporting to have authority to act on behalf of the Sovereign(s), are unauthorised to act for or on behalf of the Tribal Estates under Tribal Law and are deemed imposters, we hereby revoke the usurpation of our Sovereign lands and natural capacity through the failure of the establishment of an International Treaty'….
>
> OSTF Tribal members abolish all acts and laws that claim authority over our Sovereign rights that are deceiving and oppressing us which have failed us and causing injury, harm, loss, damage and genocide as established in the high court of Australia (Unilateral mistake), including but not limited to the Australian Government, Quasi Corporations and all Religious Bodies regarding their failure of Treaty in regard to International Law.
>
> All assets, natural resources and lands that are held in any or all Trusts purported or otherwise held in administration by 'you' (As the Australian Government), acting as a public trustee, must be immediately released back to the Tribal Sovereigns.
>
> We extend a global invitation under the oldest ancient recorded history of International trade calling for a unilateral Declaration of Sovereign Tribal Treaties.

That is start of the actual meeting, to acknowledge that this declaration is made by the Original Sovereign Tribal Federation. I will say little bit more about ourselves. The ISJA—the Indigenous Social Justice Association—was founded by Ray Jackson. He was a child of the Stolen Generation and known as one of Australia's most prominent

social justice campaigners and advocates on the issues of Aboriginal deaths in custody. He has got quite a good history—I will not go into it because of the time—but Ray—

Mr DAVID SHOEBRIDGE: We heard in some detail from earlier witnesses about Ray's important role, Ms Black, and it was acknowledged earlier.

Ms BLACK: Okay, good. It is through his work that ISJA is, and what we do today is continuing that work. I pay respects to TJ today—his mum is here. I will pass you over to Ms Hickey in a moment, but I just wanted to say that the Hickey family, the Dungays, the Masons, the Reynolds, the Maher families, the Chatfield families, the Fisher and Whittaker families have received enormous support both internationally and across Australia. The Hickey petition alone gained 12,000 signatures from the Australian people. The families are the driving force for us to achieve the social reform in the Australian criminal justice system. I am going to introduce you to Ms Hickey, TJ's mum.

Ms HICKEY: First, I would like to thank the Legislative Council for the opportunity to put in the open the shameful history of this country in their relations with the Aboriginal people. But I have a question for this Committee, to be passed to the Legislative Council and all the other members of this Parliament. My son, TJ Hickey, was killed more than 16 years ago, on 14 February 2004. The desperate feeling, the deep pain and trauma that fell on my family, including myself, has never ceased. The loss of my son—a grandson, brother, uncle—never has been so clear than now. When a number of grandkids who I have illuminated my life, they have started to ask, "Who is Uncle TJ? Where is he?" The need for justice which came from the pain and trauma—particularly the terrible loss that TJ's death brought to us—has been the motor that has kept me and my family fighting for justice. I will never stop seeking the truth about what happened to my boy, and I hope this inquiry will help me. I deserve to know the truth. Help me find the truth. Stop the cover-up. Stop protecting people who are breaking the law pretending to protect us.

Mr DAVID SHOEBRIDGE: Thanks, Ms Hickey.

The CHAIR: Thank you.

Ms BLACK: Alright, so—

Mr DAVID SHOEBRIDGE: I think it is time for questions now, if that is okay.

The CHAIR: We might start with questions. Before we start, I note that in the documents provided there are 10 recommendations addressing the issues of deaths in custody. Is that also from Ms Hickey, or is that from—

Ms BLACK: That is from ISJA.

The CHAIR: It is from all of you. Okay, thank you.

Mr DAVID SHOEBRIDGE: I think the Chair said it earlier, but I just want all the witnesses to be clear: It is not the role of this Committee to reinvestigate TJ's death or to re-litigate the coronial inquiry. We simply cannot do that, we are not resourced to do that and it is not what our job is. But one thing I think is important, Ms Hickey, is to understand how you experienced the coronial inquiry and how your family experienced the coronial inquiry. I know it was some time ago now, but do you remember how you felt about the family engagement with the coronial inquiry at the time? Did you know what was going on?

Ms HICKEY: Well, the coppers should have got the—they should have put the police on the stand to tell the truth. They should have put them on the stand and let more witnesses get on the stand, which they never let a couple of witnesses get on the stand to tell the story.

The CHAIR: Ms Hickey, I think the question from Mr Shoebridge was how you experienced the coronial—did the Coroner keep you informed of developments? Was there adequate family liaison between the inquiry and your family.

Ms HICKEY: I am not sure.

Mr DAVID SHOEBRIDGE: I suppose, Ms Hickey—why don't we start at the beginning? When the hearing happened, where was it?

Ms HICKEY: Glebe.

Mr DAVID SHOEBRIDGE: At the Glebe Coroners Court?

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: Do you remember how long after TJ's death that was?

Ms HICKEY: About four months.

Mr DAVID SHOEBRIDGE: About four months afterwards?

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: So, the family was still grieving for TJ's death at the time?

Ms HICKEY: Yes. Me, my daughter and my grandkids will be grieving for the rest of our lives. My grandkids do not even know what that uncle looked like. I have got to show his photo to them all the time.

Mr DAVID SHOEBRIDGE: One of the issues in the course of that coronial inquest was—I think there were two police who were involved at the time.

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: The family wanted them to be called to give evidence and tested but they were not called. Is that right?

Ms HICKEY: Yes, that is true.

Mr DAVID SHOEBRIDGE: I might ask you first and then I will ask Mr Bassi. In the absence of their evidence—because they did not give evidence—how did that affect your confidence in the system?

Ms HICKEY: It failed. They were the main witnesses there. They failed, not getting them there.

Mr BASSI: I was in the inquiry, too, not knowing much. It was the first time I got close to a death in custody. But the story is a bit longer than that, Mr Shoebridge. The story is that the government changed the lawyers of the family. It put a lawyer that did not even open their mouth in the inquest. It is something that you have to understand. It is not just a question of, "How was the inquest?" The inquest was completely and absolutely rigged to stop any things about the police. Sorry—it is what happened.

Mr DAVID SHOEBRIDGE: Rather than jump to the conclusion, I suppose what we are interested in is what the experience of the family was during the coronial inquest.

Mr BASSI: They could not do anything. They were asking for the bike that was part of the accident; the bike was not there. They were asking for the police to give testimony; the Coroner said, "No." What do you think you can think about that inquest? Tell me.

Mr DAVID SHOEBRIDGE: And, Ms Hickey, you say the lawyers changed just before the hearing.

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: What happened, Ms Hickey, from your perspective?

Mr BASSI: The government—

Mr DAVID SHOEBRIDGE: We will go to Ms Hickey first.

Mr BASSI: The government decided that the lawyers the family had—no. It put a different lawyer on top of the wish of the family.

Mr DAVID SHOEBRIDGE: I do want to hear from Ms Hickey, as the mum.

Ms HICKEY: I know I had that many—a few lawyers, I did.

Mr DAVID SHOEBRIDGE: Do you remember them changing just before the hearing started, Ms Hickey?

Ms HICKEY: Yes, I think they did change. Yes.

Mr DAVID SHOEBRIDGE: Did they talk to you about why?

Ms HICKEY: No.

The Hon. PENNY SHARPE: Sorry, are these Legal Aid lawyers that were allocated to the family? That is what I am trying to understand.

The CHAIR: Who were these lawyers?

Ms HICKEY: It was Legal Aid, I think.

Mr DAVID SHOEBRIDGE: Was it a different team of Legal Aid lawyers? Was that what happened?

Ms HICKEY: Maybe why I am changing lawyers and that.

Mr DAVID SHOEBRIDGE: Were they all from the Aboriginal Legal Service, Ms Hickey?

Ms HICKEY: Not all of them. I know there was one from private, I think it was. I am not sure.

The CHAIR: We need a bit of clarity around this because I do not see how the government can change people's private lawyers.

Mr DAVID SHOEBRIDGE: Ms Hickey, what do you remember? Ms Black, maybe just let Ms Hickey answer.

Ms HICKEY: All I remember is that they changed my lawyers. I had about four different lawyers.

Mr DAVID SHOEBRIDGE: Was it explained to you why the lawyers were changing?

Ms HICKEY: No.

Mr DAVID SHOEBRIDGE: Would it be fair to say that the proceedings—did you understand what was going on in the court, Ms Hickey? Did you understand what was happening?

Ms HICKEY: Yes, I understand. Redfern coppers—I was just standing there. I was in the room. I understand that. Faith seen the coppers there that murdered my son. So, I was there.

The CHAIR: That is not quite the question you were being asked. We are just trying to understand what your experience was. Your lawyers changed. We have had an allegation that the government changed your lawyers. Do you remember who these lawyers were? Were they from the Legal Aid commission? Were they private solicitors?

Ms HICKEY: I think it was the legal.

Mr DAVID SHOEBRIDGE: The Aboriginal Legal Service?

Ms HICKEY: Yes. One was Aboriginal Legal—the first started off as one.

Mr DAVID SHOEBRIDGE: Because the Aboriginal Legal Service is independent of the government, the government cannot direct which lawyers are appointed from the Aboriginal Legal Service.

The CHAIR: Or from the Legal Aid commission.

Mr DAVID SHOEBRIDGE: But they changed?

Ms HICKEY: I am saying they changed, yes.

Mr DAVID SHOEBRIDGE: And that was not explained to you why?

Ms HICKEY: No, it was not explained.

Mr DAVID SHOEBRIDGE: I think at the time the Coroner said that there would be a judgement at the end of two weeks. Was that right?

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: But then there was a delay in the judgement. You did not get a judgement at the end of the two weeks of hearing. It was some time afterwards.

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: Do you remember how long that delay was, Mr Bassi or Ms Hickey?

Ms HICKEY: No.

Mr BASSI: More than one month, I am sure. Look, 16 years ago is very hard to remember. But I suppose more than one month, because I remember [inaudible] was very, very angry with us. Can I say something also?

Very important. In the history of the death in custody coronial inquiries, never, ever was a coronial inquiry in four months.

The CHAIR: No. That does seem to be very quick.

The Hon. PENNY SHARPE: Yes.

Mr BASSI: It is very quick. There is a reason for that—to stop any possibility of the family to respond. I know you are not going to like this but it is the real story. It stopped what happened. It halted what happened. That is why I mentioned the bike; the bike was a very important part and the bike disappeared. Why did it disappear?

Mr DAVID SHOEBRIDGE: Do you remember that, Ms Hickey?

Ms HICKEY: Yes. The bike was not at the inquest.

Mr DAVID SHOEBRIDGE: And did you ask for it?

Ms HICKEY: Yes, we asked for it. When I saw it at the police station, it was damaged. We asked for it back. It was not at the inquest. When I picked it up from Surry Hills it was all fixed up.

Mr DAVID SHOEBRIDGE: You have presented this list of 11 key points that you want to address, Mr Bassi. It says 10 recommendations but I think there are 11.

Mr BASSI: There is one more. That is right, yes.

Mr DAVID SHOEBRIDGE: One of them is to establish an independent body which investigates deaths in custody. Do you want to tell us why that is important?

Mr BASSI: It is very simple. All investigations for deaths in custody are coming from the police. Been in jails, been in the police, been in the hospitals—it is the police who investigate the cases. It is proved in many cases that—sorry. I have got to add—the other point is very important. The place where the death in custody happened is not a crime scene. It is absolutely key. It is not a legal crime scene. It is so proved because in the case of David Dungay it was washed. As soon as he was translated it was washed. In the case of TJ Hickey the fence where he was impaled—two hours later, there was someone to wash it with a hose. It is not a crime scene. No crime scene, police investigating themselves—we need an independent. You know in England and places they have got independent investigations.

Mr DAVID SHOEBRIDGE: So, Mr Bassi, I think this mirrors some of the concerns from the National Justice Project and the Dungays that wherever there is a death in custody, where the death occurred should be treated as a crime scene and the evidence protected.

Mr BASSI: Yes.

Mr DAVID SHOEBRIDGE: I think that is something that you would support, Ms Hickey. Where TJ died should have been treated as a crime scene and all the evidence protected—the bike, the fence and TJ's clothing.

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: If that had been done at the time of TJ's death do you think that would have improved your level of confidence, your belief in the system, if it had been treated like a crime scene?

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: And I suppose ever since you have been asked questions about what is missing. Is that right?

Ms HICKEY: Yes.

Mr DAVID SHOEBRIDGE: So even just for the sense of trust in the system that flows from that that is kind of critical, treating the scene of death as a crime scene, protecting and ensuring the evidence is protected, that is a kind of non-negotiable starting point. Is that part of what TJ's story tells us?

Mr BASSI: Yeah. One thing to what you are talking about, one of the things that happened was the clothing of TJ that he was wearing was hidden because the holes of the offence on their clothing did not coincide with the actual injuries. How can they believe anything?

The CHAIR: This goes to your point about the importance of an independent investigation.

Mr BASSI: Yeah, it is exactly the point.

The CHAIR: I just wanted to pick up on a couple of things from the submission. You have got one concern about how the coronial process engages with families and you outline, I think at point 8, the need for greater support for families, particularly when travelling long distances to attend the Coroners Court, and that, I think, is a point that is well made and is reflective of other evidence we have received. At point 9 you talk about the need for coroners to be encouraged to look at more systemic issues, particularly when you are talking about neglect, whether it is duty of care issues or mental health issues, the need perhaps to strengthen the mandate for coroners to make sure that they do look at systemic issues, not just the individual facts before them. Is that also what you would regard as an important lesson to be learned from the Hickey matter and it should inform reforms?

Mr BASSI: Yes.

Mr DAVID SHOEBRIDGE: To talk about TJ's matter, it would have been impossible to understand the truth of what happened to TJ without looking more broadly at the relationships between police and the Aboriginal community in Redfern at the time. That was something, from my understanding of your submission, you say was missing from that coronial inquest, that the complex relationship between the Redfern Aboriginal community and the police just did not form part of that coronial inquest. Was that one of your concerns, Raul and Gail?

Mr BASSI: Yes.

Ms HICKEY: Yes.

Mr BASSI: There was times that the kids could not walk in Redfern alone and the kids after the case of TJ would have been harassed by the police. Do you think it could be confidence with the police? No.

Mr DAVID SHOEBRIDGE: You talk about families travelling long distances, and particularly Aboriginal families, just the cost of travel—the petrol money, the accommodation—can be an enormous strain on Aboriginal families. Do you find yourself having to financially assist families? Tell me about that role.

Mr BASSI: Yes. The question is this, it is not like it is a terrible charge on the family. The family cannot travel. There used to be, in the old times, if you remember, there were places for other coronial inquests—in Tamworth, I think it was—various places for coronial inquests. Now for the Government it is only one place, it is Lidcombe. Everyone has to come from where they are. One of the things that we are trying to help the families is to be present at the inquest because it is very important to understand what happens in the inquest. It is not true many times because it is not true, but we try, and we help in any way that we can. We have found people that can help us to pay for their accommodation, transport, maintenance. It has to be that because it is not enough.

Aboriginal families in the country area are not precisely the religious people in the world and they have to be supported, and they need to be supported because of the trauma of an inquest. I do not know if you have been in some inquests, they start to talk about the death of a person you love and repeat it, and here the voice of the person is in the recording. You see the case of David Dungay when the guards are jumping on him and pushing him down and the guy saying he can't breathe. That killed the family. The family of Eric Whittaker, when he is dying with a brain haemorrhage, asking for support, asking for family and the guard in the office is saying, "You have to wait two hours", and they have to hear that. Put in your mind what is the outcome of an inquest.

The CHAIR: We understand this would be extremely traumatic for families.

Mr BASSI: Well, if you understand that, you understand the answer.

The CHAIR: Are you suggesting that the coroners should not hear that evidence? That would be very difficult.

Mr BASSI: I know.

Ms BLACK: Can I say something now please?

The CHAIR: Of course.

Ms BLACK: Just everyone chill out for a minute. I am just going to talk, and this is coming from me, just for a bit more background. Since the 1991 royal commission, over 400 First Nations people have died in custody. This equates to one First Nations people death in custody every one to two months over the last 19 years. Bearing in mind that this statistic is only for First Nations people, the total sum of deaths would be over 700. That

is First Nations people. We are not the problem. Let us be clear about the criminal justice system. It takes First Nations' lives roughly once every six weeks. These lives will continue being snuffed out so long as you refuse to take meaningful action and avoid taking the so-called professional working coronial court in Lidcombe, correctional services, Justice Health and the NSW Police Force into account when they violate the rights of First Nations citizens in custody.

The royal commission recommendations, the first one is to not arrest an Aboriginal person, the last resort would be prison. In our submission we have outlined some of these as well. We are saying that we are finding that there are indicators in the coronial inquest of foul play, neglect of duty of care. There is omission of evidence—for instance, CCTV footage—other evidence is being tampered with, and it shows a toxic workplace that violates and breaches the human rights of inmates in their charge without remorse. Coroners must begin to forward cases where they see signs of wrongdoing, such as the missing evidence, the clean crime scenes, even suicide. The DPP should automatically be referred to. We believe that those individuals working for correctional services must be held liable to the full extent of the law and in that way that these deaths will stop occurring.

I just wanted to point out also, this is just my last little piece, that we have found commonalities in the various coronial inquests that we have had recently such as Rebecca Maher, David Dungay, Eric Whittaker, Patrick Fisher, Tane Chatfield and at the moment it is Nathan Reynolds, which I have been attending for the last week. It is revealed that the commonality in correctional services and Justice Health practices have led to their deaths. Their lack of duty of care, physical and mental health were never taken seriously by correctional officers, the prison guards or nurses or the doctors working for Justice Health, including the governors in charge of the jails and the prisoners. In the case of Tane Chatfield, the Coroner's report said the prison system failed him and caused him to commit suicide after two years on remand of never having a health check but despite obvious signs of attempted suicide, no psychological assessment was given to him. He was found hung the day before he was meant to leave for home.

Another common behaviour is Corrective Services and Justice Health workers demonstrating insufficient knowledge in basic first aid or even the willingness to implement the appropriate emergency first aid techniques and strategies to prevent these deaths. Corrective Services and Justice Health are also unable to follow departmental prison and jail procedures to ensure people are safe, checked regularly and given medical attention when it is required. This type of unprofessionalism led to the death of Rebecca Maher, who was left unattended for hours in her cell. Instead of being given the medical attention she so desperately needed, CCTV footage shows the police officer on duty mocking Miss Maher by imitating an ape. All show collectively their mistakes in the denial of their dignity, their human rights and their psychological health, resulting in their deaths.

The CHAIR: Does any other Committee member have any further questions for the witnesses?

Mr DAVID SHOEBRIDGE: I have one question. Both Mr Bassi and Ms Black have raised the issue about the Coroner referring matters to the Director of Public Prosecutions and there is a very high test that the Coroner has to be satisfied of before a matter is referred to the DPP. The Coroner has to form the view that the evidence is capable of satisfying a jury beyond doubt that a known person has committed an indictable offence and there is a reasonable prospect that a jury would convict the known person of the indictable offence and the indictable offence would raise the issue of whether the known person caused the death, suspected death et cetera. Is that threshold too high? We have had a number of submissions saying it is just way too high.

Mr BASSI: The Coroner say specifically they cannot investigate. They take the investigation from the police or whatever and if the investigation does not say anything—and they normally do not say anything—they decide there is no more investigation. When we say go to the DPP it is because we use what the Coroner said. We do not have anyone to investigate, and because we do not have anyone to investigate what are you going to do—cut the inquest there? We are trying to find out the truth. That is why you have the DPP. You do not have to have—sorry, it is nothing to do with this but I want to mention one case. Some years ago a Brazilian student was killed by the police in the city. Remember? With tasers everywhere and six police on top of him, they killed him. The Coroner sent the police to the DPP.

The Hon. TREVOR KHAN: Indeed.

Mr BASSI: Without any doubt, what is the difference between what happened to the Brazilian with David Dungay? It was a Brazilian not an Aboriginal person. If it was an Aboriginal person, forget it. That is the reality. Sorry guys, but that is the way it is happening. Life is not perfect—sorry. It is very imperfect. For Aboriginal people, forget it.

Mr DAVID SHOEBRIDGE: One matter that I think all of you would have knowledge of is the situation of the new Coroners Court. It is at Lidcombe but it is kilometres from the railway station and next to impossible for families to get to unless they have a private vehicle. What has been your experience of that?

Mr BASSI: We have cars to pick up people from the railway station because there is only one bus every hour coming from the railway station to the university. So you either use the bus or walk.

Mr DAVID SHOEBRIDGE: And it is kilometres and kilometres from the station. It is about three kilometres.

Mr BASSI: Yes. Two or three kilometres easy.

Mr DAVID SHOEBRIDGE: It is about three kilometres and it is uphill and downhill. Do you think at a minimum there should be some kind of assistance for families to at least get to the court as well as counselling and others? Should that be part of what happens with the Coroners Court to make sure families can get there?

Mr BASSI: Yes, it should. I am going to say something else regarding that. With people from Asia, we have to organise food for the family in the Coroners Court because there is only a coffee shop on the ground floor that is very expensive. There are people—some of them are present here—who prepare the food for the families because what are they going to do? Go back to Lidcombe to get something to eat? It is absolutely organised to stop the family from coming. Sending them to Glebe, Glebe was at least more—and also trying to stop people like us who go to support the families.

Mr DAVID SHOEBRIDGE: Google Maps says it is 2.3 kilometres from the station to the court. It is only connected by that one bus route. It is a real issue in terms of access for families, isn't it? It is really hard for families to get there.

Mr BASSI: Yes.

The CHAIR: No other questions?

Mr DAVID SHOEBRIDGE: I do have one last question for Raul Bassi. Part of your submission is removing accident, suicide or police operations as a cause of death category for coronial inquests for First Nations peoples. Can you explain why you put that recommendation forward?

Mr BASSI: It is funny because this is to stop an investigation. The Coroner can say it is an accident and nothing happens. The Coroner can say it is suicide. The case of Tane Chatfield is incredible. He was in jail for two years without charges and he never had a health test. No mental test, no health test—none in two years. There were marks on his body from where he tried to commit suicide. Any doctor, any nurse would know what that means. Not one test—nothing. My question for you is if you want to know about the jail, how many people in that jail in Tamworth are in the same condition as Tane?

The CHAIR: Sir, you do not need to shout.

Mr BASSI: Sorry. I am Latino.

The CHAIR: That is okay.

Mr BASSI: The question is how many people are in that condition in jail? How many more suicides do we have to have?

Mr DAVID SHOEBRIDGE: So do I understand that the concern about it is if the conclusion is just seen as a ticker box, it is a suicide but it does not explain the complex cause of that suicide and that is why you say for First Nations deaths in custody, it cannot be just those one or two word conclusions? It needs to explain what led to that and what caused it.

The CHAIR: It needs to look at the systemic issues.

Mr DAVID SHOEBRIDGE: Is that right?

Ms BLACK: Yes.

Mr BASSI: Yes.

Ms BLACK: That is the thing, with the coroners we are finding—for instance, in the case of Tane Chatfield, Harriet Grahame suggested in a previous coronial inquiry that hanging points be removed. She was

actually quite shocked that that had not been done. Even their recommendations are not being adhered to, and that is legally something that you can be held accountable for apparently as well.

The CHAIR: I thank the witnesses for their time this afternoon.

Ms BLACK: I have a letter from the Australian public. I am sure that you would like to hear it.

The CHAIR: I think you can table it. I think that the time for reading things out has probably passed now.

Ms BLACK: That is fine.

The CHAIR: I do not think any questions have been asked of you on notice. I thank you for your time and attendance.

Mr BASSI: One of the questions that is important, because it is happening in your Chamber, the Legislative Chamber, and really concerns us, particularly Gail. We collected 12,000 petitions asking for a new inquiry into TJ Hickey. For a long time, it was on the list of the stuff that the Legislative Council wanted to deal with and suddenly it disappeared. The interesting thing about this story that I want to put to you—and you can do whatever you want with it—is that we twice received a letter signed by someone in the name of the Clerk of the Legislative Council. You have a copy that I have given you, and you can read it and see this. In this case, the Leader of the Government in the Legislative Council decided that there was no reason for an inquest for TJ. So he decided nothing else. You can read it, I have given you the piece of paper. The Legislative Council has an obligation to publicise the petition in its papers. It also has to recognise it. But suddenly, nothing happens about it and it disappears completely. My question is to you now—

Mr DAVID SHOEBRIDGE: There is no conspiracy behind what happened. The process is this: The petition was tabled. I recall tabling the petition.

Mr BASSI: Yes, and after that?

The Hon. TREVOR KHAN: You tabled it?

Mr DAVID SHOEBRIDGE: That is what I recall, yes.

Mr BASSI: Yes, it was tabled.

Mr DAVID SHOEBRIDGE: The fact that it was tabled is recorded in the minutes and in *Hansard.*

Mr BASSI: Yes.

Mr DAVID SHOEBRIDGE: Then the Minister to whom it is directed—in this case the Attorney General—is required to provide a response to the petition. The document that eventually came back to the Clerk is the Attorney General's response to the petition, and that was the one received on 27 November 2019. When I became aware of that, I am fairly sure that I provided that to you as the response that we had to the petition. It may not be the response that you want, it may not be the response that I wanted, but it is the process and it is the response from the Attorney General saying what happened and why he has taken the steps that he did. I am not here to defend the Attorney General's position, but the process that was followed is the process that happens in the Legislative Council.

The CHAIR: So there is nothing more in relation to the petition for the House to do? The Attorney General has made a decision about that?

Mr BASSI: Sorry, in the papers of the Council it says, "When a response is received it is then reported to the House". When was it reported to the House?

Mr DAVID SHOEBRIDGE: Well, it is reported to the House—

Mr BASSI: When?

Mr DAVID SHOEBRIDGE: —when the Clerk of the House indicates in correspondence received that the correspondence has been received from the Attorney General. Often there is a lot of correspondence received, and the Clerk will say—and in this case we would have got it in in late November 2019, so when the House commenced in 2020 the Clerk would have informed the House that this correspondence had been received. I can try and point to you when that—

Mr BASSI: My question is when did that happen?

Mr DAVID SHOEBRIDGE: It would have been when the House returned.

Mr BASSI: My second question is why, given what it says in here, the response was not published on the Parliament website? Was it published?

The CHAIR: Yes, it would have been.

The Hon. PENNY SHARPE: Yes, it would have been published but it might be hard to find. Sometimes on the website the Government response is with the petition, but sometimes it is just within the minutes which, can I say, is very difficult to find. Unless you actually know the date of when it was reported to the House—and this is a good question—it would be hard for you to find.

Mr DAVID SHOEBRIDGE: We all have trouble navigating that as well, Mr Bassi.

The CHAIR: In any case, we can pull out the correspondence and the records of these things.

The Hon. PENNY SHARPE: We can provide it to you.

The CHAIR: But I do not believe that there is any secret about this. The process appears to have been followed, and the Attorney General made his decision and informed the Clerk of the Legislative Council of that. That is the end of the process.

Mr BASSI: Okay. My last question to the whole panel is that we are simply saying—and I am not saying that this is right or wrong—two things: Anything that is contrary to the policies of the Government can be buried and can disappear. I am asking you clearly: Why can we—particularly the families—not be sure that whatever decisions the Committee takes are really kept out, not buried and not lost in the House of the Parliament? Because this is a very important thing for Aboriginal people.

Mr DAVID SHOEBRIDGE: I think that we will take that as a comment. I do not think that we are in a position to answer that.

Mr BASSI: No, it is not a comment, it is a reality. Not only does it happen in New South Wales, it happens even in the Federal Parliament every day. Do not say that it is a comment. But I have said that. Thank you for your time anyway.

The CHAIR: Thank you.

Mr BASSI: The last thing that I that want to mention is to make clear for all of you, with the situation with the deaths in custody—please follow what happened with Nathan. There is now an inquest into deaths in custody. Not two weeks ago, not three months ago, not last year—now. We have had three already this year in New South Wales only. It is not just to find out whether something is wrong. Something is wrong because people cannot die like that.

Mr DAVID SHOEBRIDGE: I know that there has been a lot, Mr Bassi, but this session has now ended.

Mr BASSI: I accept that it has ended but I do not accept that nothing happened with this, okay? That is my problem, and that is what I said.

The CHAIR: Thank you, Mr Bassi.

(The witnesses withdrew.)

The Committee adjourned at 17:54.