REPORT ON PROCEEDINGS BEFORE

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

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

CORRECTED

At Macquarie Room, Parliament House, Sydney on Thursday, 3 December 2020

The Committee met at 10:05 am

PRESENT

The Hon. Adam Searle (Chair)

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

The CHAIR: Welcome to the third hearing of the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet today and I pay my respects to their Elders past, present and emerging and extend that respect to other First Nations persons who are present. Today we will be hearing from a number of stakeholders including the NSW Ombudsman, organisations focused on supporting women and youth in the criminal justice system, health and medical experts and a family who has lost a loved one in custody. While we have many witnesses with us in person, some will be appearing via videoconference today, and I thank everyone for making the time to give evidence to 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 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. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses may say outside of their evidence at the hearing. I therefore urge all witnesses to be careful about comments they may make to the media or to other persons after they complete their evidence here.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If 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 by Friday 22 January 2021. If witnesses wish to hand up documents they should do so through the Committee staff.

In regard to the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. As we have a number of witnesses in person and also via videoconference, it may be helpful to identify to whom questions are being directed 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. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

PAUL MILLER, Acting NSW Ombudsman, affirmed and examined

DANNY LESTER, Deputy Ombudsman (Engagement and Aboriginal Programs), sworn and examined

MONICA WOLF, Acting Deputy Ombudsman (Projects and Systemic Reviews), affirmed and examined

CARLA WARE, Manager (Aboriginal Inclusion and Community Engagement), sworn and examined

JENNIFER AGIUS, Manager (Detention and Custody), affirmed and examined

The CHAIR: We have the submission from the NSW Ombudsman, submission No. 111. Would anyone like to give a brief opening statement, one or more of you?

Mr LESTER: We would, Mr Chair. We would like to begin by acknowledging the traditional owners of all the land and waters of New South Wales and we pay our respects to the Gadigal people of the Eora nation on whose land we meet today. We extend respect to all Aboriginal Elders past and present, as well as to the young Aboriginal people of today, who will be the Elders of tomorrow. The office of the NSW Ombudsman has been working with Aboriginal people and communities for decades. We have been oversighting, monitoring and auditing government service delivery and, until recently, we also had oversight of the policing of Aboriginal communities.

Reports tabled by us over many years have identified key changes that need to be made if there are to be real and lasting improvements in outcomes for and with Aboriginal people. Our reports have been echoed by others, including most relevantly in this context, the Law Reform Commission's Pathways to Justice report. A central theme of those reports—and what we hear every day from our Aboriginal communities—is that embedding the principles of healing, self-determination and community-led investment is essential. We welcome the work of the Committee and the important issues it raises. I will now ask the Acting Ombudsman, Paul Miller, to say a few brief words to complete our opening statement.

Mr MILLER: Thank you, Danny. I will only take a minute to quickly introduce the people at the table today, and in so doing will flag some of the specific suggestions we have made in our submission. To my left is Danny Lester. Danny is a proud Wonnarua man, and has been deputy ombudsman since 2014. Danny leads our work that monitors and assesses Aboriginal programs as well as our community engagement, inclusion and communication activities.

A suggestion we have made in our submission is that the Government's policy on reducing Aboriginal over-representation in the criminal justice system should be specifically prescribed as an Aboriginal program under our Act. Following amendments to our Act in 2014, we became the first, and still only, Ombudsman in Australia with a dedicated statutory Aboriginal deputy ombudsman role and an Aboriginal program oversight role. To date, the Government's Aboriginal Affairs policy, OCHRE, is the only program the Government has prescribed under that provision. We suggest there would be benefit in also requiring monitoring and assessment of the Government's Aboriginal over-representation policy. If that were to happen, it would be Danny and his team who would be primarily responsible for that work.

Next to Danny is Monica Wolf. Monica leads our teams responsible for systemic reviews, research and data analytics. Of particular relevance to this Committee, Monica leads our community services monitoring team as well as our work conducting child and disability death reviews, and convening the Child Death Review Team. Those functions are relevant to the second main suggestion in our submission, which is that an express function be established to allow for the external monitoring of internal investigations of inmate and detainee deaths. I should clarify at this point that our suggestion in this regard is different from the questions I know the Committee has been exploring earlier concerning the conduct of coronial investigations. We are aware of the proposal put by some stakeholders that the role of conducting those investigations for the coroner should move from the police to an independent body.

Our suggestion is not about the coronial investigation itself—we do not have oversight of the Coroner and we also no longer generally have oversight of police. The suggestion we have made is about the internal investigations that are conducted by Corrective Services, Youth Justice and Justice Health themselves. We think that internal investigation is important and that it is appropriate that the agencies themselves should generally conduct that, looking at things like policy compliance and gaps, potential systemic improvements and so on. At present though, those internal investigations are not actively monitored by any independent oversight body and we suggest that there would be benefit if they were.

Next to Monica is Carla Ware. Carla is a proud Mulalgal woman from the Torres Strait. Carla has been with the Ombudsman for 14 years and has been involved in most of the major reviews and audits done by this office relating to Aboriginal communities in that time. Carla manages our Aboriginal Inclusion and Community Engagement Unit. Next to Carla is Jennifer Agius. Jennifer is the manager of our Detention and Custody team and has worked in that area for over three decades. Jennifer's team is responsible for our front-line service to inmates and youth detainees as well as our day-to-day oversight of the correctives and youth justice systems. Jennifer and her team liaise closely with the Inspector of Custodial Services, including with respect to scheduling visits, sharing intelligence and receiving complaint referrals.

The third main submission we have made in respect of oversight is that consideration be given to bringing the Inspector of Custodial Services into the Ombudsman's office. We think that doing so would enhance the structural independence of that office, which is currently staffed and supported from within the same department that it oversights. It would also reduce confusion for inmates and detainees and improve intelligence sharing, resourcing and coordination. We think that this proposal has particular urgency at present given the need to commence the Optional Protocol to the Convention against Torture [OPCAT] at the beginning of 2022. In our view, the inspectorate, in its current form, lacks essential qualities that would be essential if it is to lead the OPCAT inspection functions. Finally, I am currently the acting Ombudsman, and have been in this role for three months, having been deputy ombudsman for a year before that. We welcome any questions the Committee may have of us.

The CHAIR: Thank you, Mr Miller. Committee members, are there questions for the witnesses we have?

Mr DAVID SHOEBRIDGE: I do. I might start backwards, if that is okay, on the optional protocol. Have there been any discussions amongst the different agencies—I suppose primarily with the Department of Communities and Justice [DCJ]—about implementation of the optional protocol?

Mr MILLER: There were discussions some time ago with the Ombudsman's office and other oversight bodies, I understand. We have not participated in any recent discussions with the department and are not sure of what the department's or the Government's plans are in respect of nominating national preventive mechanisms [NPMs] for that role. We have recently written, including in our submission on the statutory review of the Inspector of Custodial Services, to the Government to urge them essentially to quickly make a decision in relation to NPMs, noting that it is only 12 months until that regime has to commence.

Mr DAVID SHOEBRIDGE: It is 22 January, is it not?

Mr MILLER: That is correct.

Mr DAVID SHOEBRIDGE: And none of the existing measures that are in place regarding oversight would satisfy the obligations under the optional protocol for effective national preventive mechanisms in addition to nothing actually being nominated?

Mr MILLER: That is our view, yes.

Mr DAVID SHOEBRIDGE: Could that be satisfied by just simply nominating a body at the moment and then not changing their functions?

Mr MILLER: Essentially jurisdictions have two options. They can establish a new body that performs the functions of the NPM or they can nominate existing bodies, but our view is that in order to nominate existing bodies there would need to be changes both to legislation but particularly to resourcing and capability to enable them to perform that function.

Mr DAVID SHOEBRIDGE: Could I ask about your recommendation about independent oversight of the investigations of a death in custody and of near misses? You talk about near misses as well. Who is best placed to give us some detail about that?

Mr MILLER: Either myself or Monica Wolf.

Mr DAVID SHOEBRIDGE: You choose.

Mr MILLER: You can direct your questions to me and I will pass them on if necessary.

Mr DAVID SHOEBRIDGE: I am going to direct my questions to you, Mr Miller, and when you run out of puff, pass it to Ms Wolf. Can you give us some more detail about how that could work, the oversighting, when it would kick in in an investigation?

Mr MILLER: It might be easier to start with what we can do now and talk about how we are talking about extending it. We have jurisdiction over Corrective Services, and so if we become aware, primarily through a complaint but potentially of our own motion, of conduct that may be section 26 conduct—so conduct that is contrary to law, unreasonable, improper et cetera—then we have the power to make preliminary inquiries initially and, if required, to investigate. If there were a death in custody and Corrective Services were undertaking an internal investigation of that death in custody and we became aware through a complaint or otherwise of some suspicion of wrong conduct by Corrective Services, at that point we could step in. What we are saying in our proposal in the submission is that there is no express statutory mechanism for us to proactively monitor every internal investigation that Corrective Services now conducts into a death in custody.

Mr DAVID SHOEBRIDGE: So Ms Wolf, in practice, whether it was the Ombudsman's office or some other body, do you see the benefit in having an automatic immediate notification and then an independent body oversighting from that very inception? Is that the model?

Ms WOLF: Absolutely, yes. The death review functions we have at the moment, we have convening of the Child Death Review Team; we also, as the Ombudsman, review reviewable deaths, which are the abuse and neglect related deaths of children and children in care—that is quite a systemic function; we undertake focused research, so we report to Parliament, but in doing that we also look at individual matters and, as Mr Miller mentioned, we can use Ombudsman functions to look at the conduct related to individual deaths. In our view, it is really good to have agencies reviewing their practice and policy in how they responded to a person prior to a death in care or in custody. But to give confidence in that process, we also see it's really important to oversight that process. In addition to that, it would be really good practice to look holistically at deaths, as we do in children in care or reviewable deaths—look systemically at what could change in that system to prevent future deaths.

Mr DAVID SHOEBRIDGE: Whatever oversight body would have effectively two roles. One is ensuring that the investigation itself is credible and transparent and people can have confidence in it.

Ms WOLF: Yes.

Mr DAVID SHOEBRIDGE: But then the second role would also be getting a body of knowledge together by looking at all of the deaths in custody and then looking beyond in terms of policy, investment, build form and the like to have systemic oversight role as well.

Ms WOLF: That is right, and that is what we do now. There have been very good outcomes from doing that. So looking at an individual death may give you some insight, but looking holistically, you can really look at systemic change.

Mr DAVID SHOEBRIDGE: Your current role is on a complaints basis. Effectively, a complaint is what starts most of your investigations.

Ms WOLF: No.

Mr MILLER: I think when Ms Wolf says we are doing it now, she means in respect of our current death review functions.

Ms WOLF: Death reviews.

Mr MILLER: So child death review and disability death.

The CHAIR: Mr Miller, in your suggestions section, the Ombudsman's office says:

> Consideration could be given to conferring an express statutory function on the Coroner or other existing external oversight body to undertake systemic research and reviews of deaths in custody.

We have had evidence already that suggests that some coroners may do that when they deal with a coronial, but others take a narrower focus literally to manner and cause of death. Certainly, some representations and evidence we have had from First Nations people or on their behalf have said that an express statutory requirement to look at systemic issues in coronials would be welcome. Is that the sort of thing you were talking about there?

Mr MILLER: Yes, it is. I think Mr Shoebridge's analysis that they are, in a sense, two functions that we are talking about here—there is a monitoring of an investigation function, and probably the closest parallel is the Law Enforcement Conduct Commission's [LECC] current monitoring of police critical incidents investigations. I don't think that that is necessarily the perfect model that we would want to replicate in respect of monitoring of Corrective Services investigations, and I can talk about why if the Committee would like, but that's one function.

The second function is that systemic review, looking at the pattern of deaths over a period of time. The Coroner does publish annually statistics and reports on deaths that have been the subject of a coronial investigation over the year, and they look back over a period of time. But the Coroner is not resourced and doesn't have an express statutory mandate to do the sort of research-based work that, for example, the Child Death Review Team does, looking at not just the number of suicides but doing in-depth research on the pattern of suicides over a long period of time.

Mr DAVID SHOEBRIDGE: You said you do not think it is just the lift and shift from the LECC's current oversight of critical incidents. Do you want to explain that in more detail?

Mr MILLER: There are some limitations to what the LECC can do in respect of critical incidents, and I will just give three examples. The first is that even a death in a police operation is not automatically a critical incident that the LECC oversights. The LECC's jurisdiction to oversight critical incidents only kicks in if the police declare it to be a critical incident, and that seems to me to be a flaw in the system.

The Hon. PENNY SHARPE: What is the process for police declaring it a critical incident?

Mr MILLER: The legislation at section 111 of the LECC Act provides for the police commissioner to make that declaration. I understand the Committee has police appearing later, perhaps next week, but I think in practice that has been delegated down to the regional level. It has to be an active decision by someone within the NSW Police Force to declare it.

The Hon. PENNY SHARPE: All I am trying to get at is what is the process that gets to that? I understand who finally signs off on it.

Mr MILLER: There is a definition of certain—

The Hon. PENNY SHARPE: If an incident happens, what happens then?

Mr MILLER: There are certain things that can be critical incidents and they are prescribed. A death in a police operation, for example, or a shooting et cetera.

The Hon. PENNY SHARPE: So there are the automatic ones.

Mr MILLER: No, they are not automatic. They are the ones that can be critical incidents if they are declared by police to be critical incidents. But I do not have the answer to what is the internal process within police.

The Hon. PENNY SHARPE: We need to ask the police that.

Mr MILLER: That is right. I said there were three. The second one is in respect of the real-time monitoring of the investigation. The legislation gives LECC the power notionally to observe, for example, the examination of witnesses. In practice, though, that power can only be exercised with the consent of both the investigating officer and the witness. In practice, my understanding is that police witnesses never give consent to the LECC observing that. The third one is about reporting. My understanding is that the LECC reports on critical incidents when the critical incident investigation is over. Again, that is a matter, in a sense, for police discretion. Critical incidents are closed when the police say they are closed. Unlike when the Ombudsman had that oversight function where we could report at any time—and we did—the LECC only reports after the event, which may be some time.

Mr DAVID SHOEBRIDGE: Some years.

Mr MILLER: Some many years. The example is the Laudisio Curti matter, which in some respects—I was going to say kicked off but reignited debate around critical incidents where the critical incident investigation itself took many years, over five years, but the Ombudsman's first report on that was issued 12 months after the incident.

Mr DAVID SHOEBRIDGE: I think those are very valid issues with the LECC's oversight model, but in regard to an oversight model rather than an investigation model, you support the oversight model.

Mr MILLER: Yes. The principles would be the same and, whatever oversight body is doing it, the ability of that oversight body to determine the appropriate, if I can say, degree of monitoring of a particular investigation. To take an example of a death by natural causes that is not unexpected in any way—a prisoner who has been in palliative care for a year, for example—there should still be an investigation of that, but the degree of active monitoring by the oversight body may be less than a different type of death.

Mr DAVID SHOEBRIDGE: But the decision about the extent of oversight should lie with the independent oversight body, not with the individuals of the organisation being oversighted.

Mr MILLER: Absolutely.

Mr DAVID SHOEBRIDGE: There is the existing State policy—and I am just trying to remember the name of it. It is not OCHRE, but the one that DCJ has in relation to dealing with Aboriginal over-representation in the criminal justice system. Do you have any interaction with that? Do you know how it is being monitored? Is there a reporting mechanism? What is happening in that space?

Mr MILLER: I think the policy you are referring to is the one that is imaginatively titled *Reducing Aboriginal Overrepresentation in the Criminal Justice System 2018-2020*.

Mr DAVID SHOEBRIDGE: That is it.

Mr MILLER: I will hand that question over to Danny Lester, if I may. I should probably flag that my previous role was in—I was a deputy secretary in the Department of Justice and I was around when this policy was being developed, which is probably one of the reasons it is best for Danny to answer that question.

Mr DAVID SHOEBRIDGE: Give us a nice critical review of it, Mr Lester.

Mr MILLER: I did not say I wrote it.

Mr LESTER: As we said at the start, our prescribed part 3B function is very narrow at this present moment. It looks at OCHRE as the overarching regulation that gives us monitoring and assessment. The strategy that Mr Miller just referred to—whilst we do not have direct oversight, I can say that our office has made the intent to provide ways in which OCHRE can have some impact to work to reduce recidivism for Aboriginal people, pretty much. We do not have direct oversight in terms of that specific strategy at the present moment.

Mr DAVID SHOEBRIDGE: It does seem strange that you would not have significant efforts to make sure OCHRE and that strategy are working together. Do they work together?

Mr LESTER: At the moment, what we are doing in relation to that is doing our own project. We are looking at a specific special report that we are considering, and that very issue is what we are looking at, Mr Shoebridge, which is the impact of OCHRE as a result of this specific strategy and whether or not OCHRE initiatives have had a lasting effect in relation to things such as reducing recidivism, such as enabling Aboriginal people with a criminal history to gain meaningful and sustainable employment, to look at ways in which culture in healing can adapt to the way by which the individual can increase their self-esteem, their worth and, importantly, their engagement with society as a whole.

My office in particular—Ms Ware is leading that piece of work that we are due to hand down sometime next year in relation to measuring the impact of OCHRE to the alignment of that specific strategy per se. Furthermore, I would like to extend the fact that the reason that we have suggested for the part 3B to take into consideration this very specific work is because through our legislation we can then act on it more promptly and more directly. At the moment, we have got to go through the OCHRE process to enable us to discharge that specific piece of work.

Mr DAVID SHOEBRIDGE: Ms Ware, did you have anything you wanted to add about that?

Ms WARE: No, I agree with everything that Mr Lester said.

Mr DAVID SHOEBRIDGE: The last thing that I was hoping to get some assistance on is one of your suggested ways forward is to bring the work that the Inspector of Custodial Services currently does within the Ombudsman's office. For me, I see a welter of oversight bodies in this space, all with individual patches and it does not appear to be—you would not start with this, the current system, I think would be a fair summary. What would be the benefits of bringing the inspector's role and the Ombudsman's role together? How would that work?

Mr MILLER: Since the role of the inspector was created, the NSW Ombudsman has indicated that the fragmentation of oversight in this area is undesirable. Putting aside OPCAT, we would say that combining those functions is desirable in any event, but we think that in a OPCAT world it is essential unless you are going to create a new standalone OPCAT body, and that would be the alternative. But it would be desirable anyway on—the first ground is independence. I do not mean to impugn the independence of the person who holds the office of Inspector of Custodial Services; she is a statutory officer and she will say—and she is quite right—that she is an independent statutory officer. But the fact is that all of her staffing, all of her resourcing comes from the very department that contains Corrective Services and Youth Justice, which are the agencies that she is required to oversight. There is at least a problem of perception in that regard concerning independence, in our view.

The Hon. TREVOR KHAN: That is not the only reason, though.

Mr MILLER: No, I was about to run through them. The second one is overlap and essentially duplication. Ms Agius can elaborate on this if necessary, but we work very closely and cooperatively with the inspector. We would say that if you are going to have a bifurcation of those functions, we are making them work as well as we possibly can on both sides. We coordinate all of our visits, and there is good information sharing. The inspector will refer complaints to us, given that she cannot take complaints, but we would say that there is inherent diseconomies in terms of operating on that basis. There is confusion for Corrective Services and for Youth Justice but particularly for inmates and for young people in detention, knowing who is responsible for what—"If I complain to this person, what will happen to my complaint?" I do not know if Ms Agius wants to elaborate on that.

Ms AGIUS: I just can say that we currently do have, as Mr Miller mentioned, a very cooperative relationship with the inspector. As we have described it, I believe that could be enhanced and that it would make it easier for the people who are most concerned, which are the people in custody, to understand exactly where their concerns and issues are being addressed. We visit correctional centres. They can call us. They can write to us if they wish—anybody who is in custody. The inspector goes out and speaks to people who are in custody to gather information to inform her inspections. Those people think that they are making their complaint to the inspector, but in fact what they are doing is just giving information.

Obviously, the inspector can pick out serious complaints and refer them to us, but it has been the case where we could speak to somebody a couple of weeks later and they will say, "But I told you about this when you were here on the visit the other week," and we go, "Actually, that was not us that time. That was the inspector," and we try to explain it. They just want one door where they can raise their concerns. We go out and we see similar things that are of concern or that are good practice. We see them, the inspector sees them and we share those, but it is a duplication. We could do really well together, I think. Separate but together. I needed to say that.

Mr MILLER: That is the second reason. The third reason I would suggest is that one of the advantages of being in the Ombudsman's office is the different functions and capabilities that we have, including access to an Aboriginal engagement and inclusion unit and oversight of Aboriginal programs. My understanding is that, in terms of the inspector's permanent staff, I think she has one Aboriginal cadet. There are certainly a number of community visitors who are Aboriginal, and that is obviously a good thing, but I think the potential to leverage some of the competencies and capabilities across a broader office would be useful to the performance of the inspector's functions.

Mr DAVID SHOEBRIDGE: Potentially also having a single organisation dealing with complaints who can also have a direct connection with official visitors, like another set of eyes and ears going into the institutions, it seems to make sense that that information comes back to a single body.

Ms AGIUS: Yes.

Mr MILLER: Yes. Then, as I said, OPCAT adds another layer on that—

Mr LESTER: A layer of complexity.

Mr MILLER: —in terms of independence. I am not sure what, if any, the proposals may be around the use of the visitors in performing the OPCAT function, but that in itself would raise concerns for us in terms of the independence required under OPCAT, given that those visitors are appointed by Ministers and report to Ministers.

Mr DAVID SHOEBRIDGE: Whatever would happen in that space in the current role of the inspector, that is a discrete issue to the oversighting of deaths in custody, is it not?

Mr MILLER: Yes.

Mr DAVID SHOEBRIDGE: They would happen in different places.

Mr MILLER: Yes.

Mr DAVID SHOEBRIDGE: It is very rude talking about money, but at the end of the day I can understand how shifting over the inspector's role would obviously require that budget to come with it and that might not be a net budget concern. But if another body picks up the role of oversighting deaths in custody, obviously you would need sufficient budget to make that work, would you not?

Mr MILLER: That is correct. It is a point we make in our submission and in other forums as much as possible that if a function is to be conferred on a body, then the resources necessary to perform that function to a

minimum satisfactory level that will conform with the Parliament's expectation and the community's expectation should also follow that function.

Mr DAVID SHOEBRIDGE: Could you give the Committee on notice an indication—if you have it now, then fine—of what your current budget is in the space of Corrective Services and how it is allocated?

Mr MILLER: I will take that on notice, if I may.

The Hon. TREVOR KHAN: You are in an acting role at least at the present time, but that is a task that is determined by the Ombudsman, is it?

Mr MILLER: Yes. At the moment we do not have any area that has ring-fenced funding. If we were to get OPCAT within our remit then whichever body is performing the NPM functions—the resourcing for OPCAT under the international instruments and guidance would need to be ring-fenced. But, at the moment, none of our funding is ring-fenced, so we get one number, essentially. And, yes, it is for the Ombudsman to distribute that as best as possible amongst competing functions.

Mr DAVID SHOEBRIDGE: There is a whole other discussion about how that number is set, which we have had in other places.

The Hon. TREVOR KHAN: Not here, Mr Shoebridge.

The CHAIR: We will leave that for another time and place. Mr Miller, you have also prepared a report, which I think you have provided to the secretariat.

Mr MILLER: Yes. Mr Lester can speak to that again, if necessary. That is a summary of the reports that the Ombudsman's office has published over the last two decades that touch on issues of relevance to this Committee. As we said at the outset, we no longer have the police oversight function and quite a lot of those earlier reports related to our—we had specific statutory auditing functions of things that the police were doing.

Mr DAVID SHOEBRIDGE: We should accept that for tabling, I suppose.

The CHAIR: Yes. We accept that as a tabled document. I think that is an appropriate course of action. If there are no further questions then the Committee has resolved that answers to questions taken on notice be returned by Friday 22 January 2021. The secretariat will contact you in relation to those questions taken on notice. I thank you all for your attendance, evidence and insights. Thank you.

(The witnesses withdrew.)

(Short adjournment)

ROSALIND STRONG, AM, Convenor, Keeping Women out of Prison Coalition, affirmed and examined

HELEN EASSON, Keeping Women out of Prison Coalition member and Founder and Chief Executive Officer of Nelly's Healing Centre, affirmed and examined

ELENI PSILLAKIS, Keeping Women out of Prison Coalition member and Program Manager, Success Works, Dress for Success Sydney, sworn and examined

DEBBIE KILROY, Chief Executive Officer, Sisters Inside Inc., before the Committee via videoconference, affirmed and examined

TABITHA LEAN, Lived experience abolition activist, Sisters Inside Inc., before the Committee via videoconference, affirmed and examined

HEATHER NANCARROW, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, affirmed and examined

MICHELE ROBINSON, Director, Evidence to Action, Australia's National Research Organisation for Women's Safety, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would any of the groups present like to make a brief opening statement?

Ms STRONG: Thank you, Chair. I will do that. I would like to acknowledge that we speak on the land of the Gadigal people. Keeping Women out of Prison—KWOOP—is a growing coalition of 14 organisations and individual experts, ranging from organisations which provide direct services to women and their children affected by the criminal justice system to a diverse range of women's organisations, the latest of which to join our coalition is the Country Women's Association [CWA]. Our rationale, concern and focus is the continuing increase in the number of women in prison in New South Wales; the evident preponderance of women in prison whose lives have been greatly affected by their disabilities, their mental health issues, family violence; and the hugely disproportionate number of women from First Nations backgrounds in this number.

Our submission to this inquiry was based on our research profiling the population of women in prison in 2019 and we attached that research to our submission. We addressed only term of reference (a) and term of reference (e). We drew attention to our particular concern about the children of prisoners. We take from the 2007 UK Corston report our strong view that the solution to most women's offending lies outside prison walls, and this is particularly true for First Nations women. Culturally appropriate diversionary programs, rather than custodial sentences, will have better outcomes for the community, the women and their families. I would just like to underline four key points and will subsequently be happy to take questions, as will my colleagues.

The support for women leaving prison is grossly lacking. There are nine beds in New South Wales that are dedicated to women coming out of prison; 900 of the 2,760 women who left prison went into homelessness in the 12 months to August 2019. The special needs of children of imprisoned mothers are not addressed in a coordinated way by the range of government services with whom they have to interact. The Government has known forever that diversion is better than prison, but during the last years there has been a huge increase in funding for more prisons and scant funding for prison diversionary programs.

During COVID-19 there was a 20 per cent to 25 per cent decrease in the number of women in prison; in other words, the Government can decide not to send women to prison. It is our view that part of the reason for the over-representation of First Nations women in prison is over-policing and discriminatory policing of First Nations communities. My KWOOP colleague Helen Easson is the founder and CEO of Nelly's Healing Centre. She will add to our opening statement. Eleni Psillakis is also a member of KWOOP. She is the manager of Success Works, an employment program for women who have been in prison. She is here to take your questions and she would like to illustrate a current example of the issue of discriminatory policing.

Ms EASSON: My name is Helen Easson. I am a Gomeroi and Biripi woman and I would like to acknowledge the Gadigal land that we are meeting on today. I am a woman with lived experience. Prison is not the answer. I am a woman that has been to prison and was affected by the child protection system. I am a woman who also suffered from child sexual abuse and rape. I grew up with domestic violence and I also grew up with alcohol. Being a woman of Aboriginal descent, going to prison does not identify any of our childhood trauma. There is an ignorance. When we go into prison we are stripped; that is another form of abuse to us. How do we trust or work with a system that continually abuses us?

We are not engaged in any of our Indigenous services. We are always referred to white NGO services. We tend to fall through the gaps of those services. We do not have any culturally appropriate services inside for us. How we share as women is different to how you as white people share. We sit in a group. We yarn together. We lean on each other for strength. We carry each other through. There is a failure in educating us on the effects of domestic violence, childhood trauma and sexual abuse. That needs to change and prison is not our answer. We need healing centres so that we can identify and work with our women to educate them, support them and put that holistic approach around them. When you are sent out of prison you do not have a plan in place for you, your accommodation is not put in place, so there is no permanent accommodation and we are left in a continued cycle of destruction with no support.

The CHAIR: Ms Kilroy, did you wish to give a brief opening statement for your organisation?

Ms KILROY: I believe my colleague may have already undertaken the opening.

The CHAIR: She has not yet, but I am happy for either of you to do so.

Ms LEAN: I can do that. Ngata. Ngathuk-ngat leeyong. Budhin Minyaan. Ngathuk Gunditjmara. My name is Tabitha Lean, or, as my ancestors know me, Budhin Mingaan. I am a Gunditjmara woman and I am here today with my sista and colleague Debbie Kilroy from Sisters Inside. We both acknowledge the traditional custodians of the unceded lands that we call in from today. We recognise that our capacity to do this work in this space and place is leveraged off the continued dispossession of Traditional Owners from their country. I would like to specifically acknowledge my brothers, sisters and kin who are incarcerated in cages in their own country today. We both acknowledge the consistent frontline labour undertaken by Aboriginal families who have had family members die in custody.

Today we are here as unapologetic abolitionists, but nothing I say here will not have already been said by hundreds of my people before me. Both Ms Kilroy and myself stand here as women with lived prison experience. For me, I am black and I have survived, but more than 400 of my people have not. With that survival comes a responsibility: A responsibility to stand up, speak up and speak out so that no other family should endure the violent and deadly consequences of the criminal injustice system. The disproportionate rate of Aboriginal incarceration in this country is not a new phenomenon, so we will not be here today pretending that it is. Almost three decades ago the Royal Commission found that we were the most incarcerated group of First Nations people in the world. And while the Royal Commission into Aboriginal Deaths in Custody was a watershed document, it was actually part of a longer Aboriginal community discourse that had sought, since the violent invasion of this country, to reduce Aboriginal contact with the colonial criminal punishment system.

Of course, the delegates of the Uluru Statement from the Heart assert, "We are not an innately criminal people." And yet again we sit here today pondering what can be done to address this human rights issue. Please know that we have the answers. We have always had the answers, because the answers rest at the margins, a place we have dwelled since white man stepped on our shores. We know that colonisation criminalises our people. Our existence and survival have become an act of radical revolution. Colonisation abuses black minds, black bodies, black lands and black waters. It locks us out of housing markets, job markets and labour markets. Our grandmothers, mothers, sisters and aunties are left to grieve the loss of their sons and daughters to every kind of colonial frontier that exists in this country. When people ask us what we can do to stop black deaths in custody, we say: Stop locking mob up, stop caging our kids, stop chasing us down, stop exiling us, stop brutalising us, just stop killing us.

Crime and punishment are multidimensional problems. Prisons and police are a deliberate part of the arsenal of the settler-colonial war machine, whereby the criminal punishment system contributes in a real way to maintaining the economic and social hierarchy in this country. It is a crucial element to progressing and maintaining the colonial project through the consistent and persistent subjugation of Aboriginal people. The infrastructure of the prison industrial complex—those entire overlapping interests of State and industry that employ policing, surveillance, imprisonment and punishment—are just a means of controlling our people and furthering the colony. The tentacles of the prison industrial complex are literally everywhere. It is a parasitic beast that flicks my people off like fleas from a mongrel dog's back.

While the problem is complex, the solution is actually quite simple. We are not here proposing any reformist strategies disguised as softer options that ultimately expand the reach of the carceral State. We are not suggesting to you to cut the corners off a violent system designed to break black backs. Our submission to you is simple: Just stop locking us up. Let us breathe, let us live and stop wasting all of this time and money on more inquiries. There is no acceptable number of black deaths and there is no acceptable number of black people in

custody. If you are not working on decarceration strategies, real liberatory strategies, then you are all part of the problem. You are complicit in a system that kills us, and kill us it does.

The CHAIR: Thank you. Ms Psillakis, did you have something to say as well? I might have cut you off, I apologise.

Ms PSILLAKIS: Following Ms Strong's opening statement about over-policing, I have an example that happened two days ago. I work with women with a criminal record. I am not an Aboriginal woman, but I am a woman formerly incarcerated. I work with Aboriginal women who have been affected by the justice system. I have worked with one particular woman for over a year now, and she has done everything possible to get her life back on track. She obtained education and was in line for an interview yesterday, so I called her the day before to find out how she was feeling about her interview. She said, "I am so glad you called. I was at Parramatta station. I was just short on my Opal card funds." There were police at the station who noted that she was short of her funds and strip-searched her in public at the station on Tuesday. She said she was embarrassed and humiliated.

We heard in the previous hearing this morning that if we are to build the self-esteem of people and incarcerated black women to get back on their feet, how are we not working together when things like this happen in the community, when they are doing everything they can to do just that. I was distraught hearing her account. She was distraught. She managed to get to her interview yesterday, and I sure hope she gets that job to build her self-esteem like she is told by a system she is supposed to be doing. When things like that continue to happen to Indigenous people in the community—and she is not an isolated case—to have that happen two days ago shows that the system is not working.

Dr NANCARROW: I will try to be brief. I, too, acknowledge that we are on the land of the Gadigal people of the Eora nation and pay respect to Elders past and present. I also pay respect to First Nations women who are joining us on this platform today. Thank you for the opportunity to make a submission to the inquiry and also the opportunity to give evidence. There are well-established links between women's experiences of domestic, family and sexual violence and imprisonment. Internationally, the research shows that around 70 to 90 per cent of women in custody have experienced abuse, and studies of the Australian prison populations have estimated that 75 to 90 per cent of incarcerated Aboriginal and Torres Strait Islander women have been victims of sexual, physical or emotional abuse, with most First Nations women experiencing multiple forms of abuse

Women and their children can become caught in cycles of imprisonment and experiencing violence, with the violence exacerbating the risk and effects of imprisonment, and the imprisonment increasing the risk and effects of violence in a never-ending cycle. Our submission focuses on strategies to reduce incarceration of First Nations peoples, particularly women; to effectively respond to trauma, including intergenerational trauma associated with the impacts of colonisation in rehabilitation and post-release support; and provide the social supports needed to address criminogenic factors. The specific strategies we have proposed and I would like to highlight here are, first, the need to place more emphasis on whole-of-family and whole-of-community approaches to family violence interventions, including early intervention for teenagers in recognition of the effects of intergenerational trauma. For First Nations women who have been incarcerated, this focus should facilitate reconnection with children upon release and support around parenting. Second, to implement better screening and health coordination within the prison context, including screening for complex trauma, other mental health conditions, fetal alcohol spectrum disorder and acquired brain injuries.

We also recommend the need to ensure that police and judicial officers have the skills and resources required to make accurate assessments when applying for or granting protection orders as research—my research included—illustrates the way in which women and particularly Aboriginal and Torres Strait Islander women are being brought into the criminal justice system by a civil domestic violence protection order system. The final point I want to highlight is the need to recognise gender differences when designing and implementing prison policies and programs including post-prison support to reduce the risk of reoffending. There is one more point I wish to highlight that has come up in other submissions as well. It is something we have made a particular point around in numerous inquiries, including to the parliamentary inquiry on domestic, family and sexual violence; that is, the need to increase the supply of public housing for Aboriginal and Torres Strait Islander communities.

The Hon. PENNY SHARPE: First of all, I want to thank all of you for your submissions. I particularly want to thank Ms Lean, Ms Kilroy, Ms Psillakis and Ms Easson for your rage and telling of truths to this Committee in relation to what it is like for people with lived experience within our prison systems and how much more work we need to do to make it better. I thank you very much for that. I share your concerns, Ms Psillakis, about what happened to that woman yesterday. What a step backwards when there has been so much progress. All of your submissions have fundamentally made the point that deaths in custody happen because people are in custody and the best way to prevent that is to decrease that.

I will go to Ms Lean and Ms Kilroy first. You have made a lot of recommendations within your submissions. I wonder if there are any recommendations that you particularly want to speak to the Committee about? You have a list. I am particularly interested in the resourcing of Aboriginal community controlled organisations, which identifies possible contributors. Basically, you have made quite a lot of suggestions that are quite different from some of the others we have had, so I wanted to give you an opportunity to speak to us about those.

Ms LEAN: I can. [Audio malfunction] We were just saying that the incarceration of Aboriginal people is directly linked to our deaths, so the easy way to prevent those deaths in custody is to stop incarcerating us. The way we see those things happening is by reinvesting into communities. We are not just talking about justice reinvestment; we are talking about transformative justice models which actually empower community to determine what safety and wellbeing looks like for them. I see that as funding Aboriginal community controlled services, where the services and programs designed for community are being run by community. And when I say "community", I do not just mean really big local areas; I mean small little areas where they can take a more nuanced approach to justice and wellbeing and safety. It gives the community an opportunity to identify what wellbeing and safety looks like for them, rather than the State saying to Aboriginal people, "This is what it looks like to be well and safe in our communities." Sisters Inside is a really good example of a service that works on a transformative justice-type model. I guess Ms Kilroy can speak to that.

Ms KILROY: Sure. Thank you for the question. I agree with Ms Lean's response. I think we need to think about it and unpack. This is an inquiry of the New South Wales Parliament, so you have been elected as members of Parliament to undertake a role in the New South Wales community. Within that role and within that framework, it is very much a racial capitalist framework, and until we can unpack racial capitalism and really develop different modes of safety and security for communities, it is only then that we will see a change. Otherwise, we are going to see the same old, same old. Like we say, nothing changes if nothing changes. For myself, for someone who was criminalised at the age of 13—and I am about to turn 60, so I have a number of decades of experience of being in prison and being an activist outside in the free world—the prison system is actually worse, not better, but it is also the same and has not changed.

If we are complacent to keep doing the same old and producing reports with the same types of recommendations that never get implemented or, if they do, it is a reformist net-widening agenda, we are going to see more First Nations people criminalised and incarcerated, and more First Nations people die in prisons. New South Wales is a classic example in this country about the prison industry explosion. The New South Wales Government has just opened a Serco-run privatised prison and thousands and thousands and thousands of people are going to be incarcerated in those prisons in northern New South Wales, decade after decade under the management of a private corporation. We know that private corporations are about making money.

When we talk about net-widening and when we talk about and know women who are actually criminalised and in prison, these are the women that will be released from those covered prisons as well as those private prisons in a worse situation. We need to shift the language about making women feel hyper responsible for everything that happens in their lives. It is not a First Nations woman's responsibility or fault that this country was invaded and genocide was the policy of action by the white invaders. It is not a First Nations woman's fault or responsibility that there is no social housing in communities across New South Wales and this country. It is not a First Nations woman's fault or responsibility that her mental health is deteriorating drastically and even more so when she is in prison because she is kept in solitary confinement and is given medication to restrain her so that she is not a behavioural problem inside the prison and then when she is released is told she has no mental illness but she was being medicated to restrain her while in prison.

The list of traumas goes on. To blame a woman by using blaming language of rehabilitation is a huge issue. We do not see that the woman is at fault. The State is at fault for not providing the resources and services in the community. Those of us who want to reform the criminal justice system are those of us who are still interested in earning money on the backs of the most marginalised First Nations people in this country and it must end. The way that it ends is we end imprisonment; we stop locking up First Nations people from the time they are born throughout their life and then we will see no deaths in custody.

The Hon. PENNY SHARPE: Almost everyone who has come before us says that a number of reports have been done over many years and that it is failure of implementation at the harder end of justice reform that has failed to decrease the number of people coming into custody. Are there particular things out of either the royal commission—you did not mention it in your submission—or the Australian Law Reform Commission's recent report, which has been pointed to a lot as having some of the answers. Are there key things that you think keep

falling into the too-hard basket that need to be dealt with and is there anything that you particularly want to highlight?

Ms LEAN: I will just quickly say something here. I absolutely agree with you. As an Aboriginal person I have seen reports and inquiries come and go. My old people are dying before they realise any benefits out of all these reports and inquiries. Every time you hold an inquiry or do some research it hurts our community. We have to relive our pain and share our stories with you of survival in all these colonial frontiers. The thing about the royal commission and the things in it that have not been implemented is that we are not fronting up and facing that colonisation is doing this. The reality is it does not matter. We can put more black faces in the police force, we can employ Aboriginal offices in the correctional services. We can do all of that but the reality is that people are still being imprisoned so people will still die.

That is the thing. All that these inquiries want are neat little explanatory solutions because no-one wants to look at the big white elephant in the room which is colonisation because colonisation demands the imprisonment and subjugation of Aboriginal people because that is the only way to further the colonial project. So I would agree with Ms Kilroy. We cannot tell you these nice little neat things that are going to make a difference because it is racial capitalism and colonisation that is killing Aboriginal people. Until we break it down and face that fact people are still going to die in custody. In another 10 years we are all going to be sitting around, just a little bit older, having the same inquiry and the same yarns about what we can do to stop black death. There always seems to be some magical number that the Government is happy with because they talk about unacceptable numbers of Aboriginal deaths in custody. In my view, there is no acceptable number.

The Hon. PENNY SHARPE: Great, thank you.

Ms KILROY: Can I just say something in regard to reports and recommendations—decades and decades and decades of them—that usually are dust gatherers on bookshelves. Yes, those inquiries, the research documents and everything else—a lot of money and time and energy are put into them—do change people's lives. Those people are the people that are employed within the inquiries—all the researchers, all the lawyers who are actually at the bar table. They never change First Nations people's lives out here in the community. If we bolster ourselves up as white fellas with privilege—and myself as a lawyer now, I understand this—the whole legal system is an absolute joke in the sense that it is never going to serve justice to any First Nations person in this country.

We need to go back to basics on the ground, talk to communities and First Nations communities—and individuals for that matter—about what is it that they want and they believe they need to change their lives. Surprise, surprise, most of the time the broader issue is, "Yes, give us back our land. We are the custodians, the First Nations people of this country, so give us back our land so we can care for our land." But I do not understand why white people are so threatened by that. I do not hear First Nations people say anything but that they want to care for their land which is rightfully their own. And then other things: they want a job, they want a home, they want to live the life that we all have the luxury and privilege to do. How difficult is this to do when we live in a First World country that is very, very wealthy but we are so bitter and twisted about our past that we do not want to own it, that we actually cannot open it and then share the resources for everyone so everyone has a great start in life to move forward.

The Hon. PENNY SHARPE: I refer to one issue in the Keeping Women Out of Prison [KWOOP] submission which is the interests of children of prisoners. There have been reports—over 20 years ago now—that made 93 recommendations in relation to this. I wanted to give you an opportunity to speak about that and what, again, has not changed that needs to change beyond the obvious, which is fewer women in custody?

Ms STRONG: As you would be aware, Shine For Kids is one of our member organisations and we learn from them. The restoration of children to their parents is an underlying principle and so many of the women in prison have lost their children perhaps before they have gone to prison. Certainly when they come out of prison it is extremely difficult for them to get their children back. Ms Easson could speak to that personally. This is a multigenerational thing that happens also. Children in care then go into prison in a much higher proportion than other children in the community.

There is no accurate knowledge within the community or within the government services of the number of children of people in prison. The mothers in prison who have children, it is much more likely that their children will have gone into care than men. The need for facilitating continuing contact between parents and their children when they are in prison this year has been, as everyone knows, a most exceptional and ghastly year and it is only now that prison visits are being restored. It is unbelievably difficult for prison visits to be maintained even in a normal year. The sudden and unreasonable moving of prisoners around New South Wales means that sometimes

a longed for and long-arranged prison visit—which has involved the children, the parent and all the volunteers associated with it, not to mention the funding for the transport and all the rest of it—can be turned off from one moment to the next because of some arbitrary decision within the prison.

All of these are issues that cannot be handled well but those children are living in the community. They are not in prison even though they are serving the same sentence as their parents. Most of them have multiple interactions with government services. All of those interactions are independent of each other. So we believe that senior officers within all of those government departments should sit down, put their heads together and come up with a better way of handling that. We certainly do not want those children to have a star on their forehead saying, "My parent is in prison" but we do want their needs to be met in a more thoughtful and coordinated way. It is right from the beginning of their lives to the end of their lives and it is certainly during the time they are at school and during the time that they are likely to encounter juvenile justice.

There are so many different ways that their needs are not being met. Right since we formed the group back in 2013 we have thought that this high-level Committee should happen. In the UK we are very pleased to see at long last—mind you, it took them a long time from the Corston report—a government directive that has come out that says, "No woman with a sentence less than 12 months should serve that sentence in prison" and that the needs of the children of anybody should be considered by the sentencing judge or magistrate at the time of sentence. We believe that the second of those things should be here. It is already the case that sentences less than 12 months need not be served in prison.

We already have the provision in the legislation; we do not need to change the legislation. But what we do not have is the provision in the community, community-led, Aboriginal community-led or other services for diversionary programs. So the very skimpy funding that goes to the diversionary programs that are there is just outrageous in the face of, as our colleagues have said, the huge expenditure on new prisons. Our fundamental question is, "Why does the Government not act on the knowledge it already has instead of building more prisons?"

The CHAIR: Ms Ward, I think you had a question.

The Hon. NATALIE WARD: Yes I do, thank you Chair. Can you hear me all right?

The CHAIR: Yes, we can.

The Hon. NATALIE WARD: I am going to stop the video so that it does not interfere. I hope that helps. Thank you to each of you for your submissions. I very much appreciate the critical work that you are doing. Thank you to those people with lived experience for coming forward and being so brave today. My question, which is for Dr Nancarrow, relates to the research work that you have done for Australia's National Research Organisation for Women's Safety [ANROWS]. Thank you for that, and for your submission. I am interested in your recommendations regarding domestic and family violence [DVF] and recognising the link between that and imprisonment.

I note that you refer in your submission to evidence about the growing inappropriate and increasing use of domestic violence against women who are victims of DVF. I wonder whether you might speak to the Committee about that further, particularly in relation to coercive control. You may be aware that we have another joint select committee which is looking into that. I am interested in this particularly in relation to Indigenous incarceration and your recommendations, in particular, on page 6. Could you speak further to the Committee to elaborate on the coercive control element. I know that the research is not finalised but you have provided ANROWS' views in confidence to the Committee. Could you elaborate on that?

Dr NANCARROW: Thank you very much for your question, Ms Ward. Actually, since the submission was made the research has been completed and is now public. In fact, it was launched just last week at a webinar that was co-presented by me as the lead researcher and also the inspector in charge of the Queensland domestic violence unit within the Queensland Police Service, as well as the State Coroner and a magistrate. So the research has been well received by the Queensland Government in terms of looking at the recommendations. We will continue to work with the Queensland Police Service to implement training, or the Queensland police to respond to those findings. But to come back specifically to your question, this is not the first research that has highlighted the problem of the misidentification or the inappropriate application of domestic violence law against women who are victims of violence.

But because of a range of intersecting factors and particularly unrealistic expectations about what an ideal victim is, police culture has been, to some extent, the feeling that they have to take some action and, if there is evidence of abuse, they must apply for a protection order. This research was specifically in Queensland but I know that there is also research being conducted by the Australian Institute of Criminology in New South Wales that

also highlighted the problem of women who are victims of violence being inappropriately identified or misidentified as perpetrators because of their use of violence in response to violence perpetrated against them, or—particularly in the case of Aboriginal and Torres Strait Islander women—resistance to the violence and their use of weapons in self-defence and resistance to violence perpetrated against them. But also a lack of cooperation with police and with authorities because of that history of colonisation and the role of police particularly played in the enforcement of colonial policies aimed at subjugating Aboriginal and Torres Strait Islander people.

So there are very good reasons and it is very understandable why often there is a lack of cooperation with authorities who are intervening in cases of violence. I think it is important that my research, not only this particular research that is referenced in the submission but also my prior research has highlighted the importance of distinguishing between coercive controlling violence and acts of aggression that may be a consequence of trauma or of resistance and that resistance may be to direct violence against them and also resistance to racism and resistance to the circumstances, or a rejection of the circumstances in which those women find themselves. As I have argued in a number of places now, the civil domestic violence laws across Australia—some more explicitly in some jurisdictions than others—the intention of those laws and the exceptional powers given to police and courts in civil domestic violence law were designed to overcome coercive controlling behaviour.

Where you have police powers to make application for a protection order without the consent of the victim, that was premised on the basis that women would be coerced or would be bullied into withdrawing an application. So the police were given the power to make applications against a perpetrator of domestic violence without the consent of the victim for that very reason. What we are seeing now though—we have seen it over the 30 years that these laws have been in place—is that we have lost that connection I believe. We are seeing now that police are using that power to manage all sorts of situations where there is inappropriate and abusive behaviour and so on.

But it is not necessarily coercive controlling violence and it may be a circumstance in which the victim does not want police involvement but has no choice in that regard. Because of the history of colonisation that others on this panel have articulated much better than I ever could, those women often feel that they have to take the circumstance into their own hands because they cannot rely on, or do not trust, police and courts to act in their best interests.

The Hon. NATALIE WARD: I am sorry to interrupt you. If I may, can I just follow up on that point precisely—that you recognise that policing, you say, tends to be incident-based and retrospective rather than pattern-based and future-focused.

Dr NANCARROW: Yes.

The Hon. NATALIE WARD: Which means that police often make fast assessments on who is the primary aggressor in a single incident rather than considering the pattern of behaviour carefully and protecting the person at risk of future harm.

Dr NANCARROW: Yes.

The Hon. NATALIE WARD: Could you speak to that and, in particular, to that point—as a preventative?

Dr NANCARROW: Yes, absolutely. Consistently the research across Australia and internationally shows that the problem of incident-based policing, that is what police are trained to do. That, typically, is what policing is about. It is unusual for police to be required to act under civil law with a standard of proof that is on the balance of probability and that is future-focused rather than looking at punishing past behaviour, but it is actually looking forward to what are the needs in the future? Who is the person most in need of protection? That problem is recognised across Australia, including here in New South Wales. What we are arguing for is the need for police to have better training and a better understanding of the dynamics of coercive control and also their powers under the civil law and why they have those powers, and how those powers are to be exercised with a future focus rather than a restrospective incident-based approach.

We recognise this also in the research. When you get a copy of the report, which is available on the ANROWS website, you will see that we are also acknowledging the complexity of identifying coercive control. In fact, there is no best practice example anywhere in Australia of how to go about identifying or distinguishing in these ambiguous situations, as they are often referred to, where women and men are both using violence. It is not easy to identify, particularly in the heat of the moment when police are called. Often they are not called by the victim. They will often be called by neighbours or someone else, or in some cases the police see fights in public places on CCTV and go to intervene and use these powers. It is complex and it is difficult. We are also

recommending consideration of co-responders—people with the particular expertise in regard to identifying patterns of coercive controlling behaviour—to assist police decision-making in applying civil domestic violence laws.

The Hon. NATALIE WARD: I will finish on this: I think that is an important point for the Committee to consider, because surely part of our role should be to be assisting and equipping police to be able to make those decisions. Equipping them with the tools to be able to assist is, as you say, extremely complex and very difficult. If our justice system and our legislation are programmed, in a way, to be incident based then that is what they are attuned to responding to. I am interested in that aspect of your work. Would you be able to provide that report to the Committee on notice?

Dr NANCARROW: Absolutely. I am very happy to do that.

The Hon. NATALIE WARD: Thank you, and thanks to each of you for your work. I very much appreciate it.

Mr DAVID SHOEBRIDGE: Thank you all for the work you do, and for your evidence. Ms Psillakis and Ms Easson, one of the things that you see when you look at the data in New South Wales is the appalling rate of recidivism for women when they leave. If you can, through your own personal experience or just from what you have observed with your work, can you tell me about the experience of being spat out of the jail system? What support is there? What is not there?

Ms EASSON: As I said, Mr Shoebridge, there is not a plan for us when we leave prison. To walk out of them gates, it is really scary. You are left on your own. You are given a little blue piece of paper and a train ticket and sent on your way. We have no plan put in place when we are sent back to our community, or wherever we are sent. To try to manoeuvre that on your own is very scary. To try to fit back in to society and get used to it takes a little bit of time within itself. The change of job is scary. To get out there on your own—how scary is that, not to have a service even put in place for you for someone to walk alongside you? It is scary. How do you make that change?

Ms PSILLAKIS: I can give so many examples. But the key things that stand out for me, for the women I work with and for myself—I have had an extensive work history but never had a criminal record before; it was my one and only time. But it does not leave you once you leave the prison gates. It follows you. To get employment was extremely scary. One incident particularly is that nearly every application now has a criminal history check, which puts a barrier of fear for the person to even apply to start with. But from what Ms Easson said as well, women coming out of prison do not have a plan. They are expected to go to Centrelink, to provide doctor reports. If they have been incarcerated for a number of years they have not had a doctor who they can provide those reports to. They need to get on specialist programs. There are wonderful organisations in the community, but there does not seem to be a coordinated effort.

When we are told to get a job, to contribute, to be a contributing member to the community, the women want to do this. But the barriers are not with the women. They are with the tick in the box. They are with housing, when there is a five-year housing waiting list and they do not have a rental history and do not have the funds to get a house. There are all these little things. People go, "That's behind you now. Move on". You are trying every effort and trying to use services you can. Sometimes when you have got mental health issues, which a lot of the women have, how can you put your frame of mind to go to each of these separate organisations that you need to in order to start to even have a roof over your head, as the first example? Transitional housing does not work. You might be given a night here—or there or three nights here or there—for 12 weeks, but then you are on the housing list, which is a minimum two-year wait. I have had many women say prison is easier. That is a sad state of our society and our systems when people are saying that.

Mr DAVID SHOEBRIDGE: You could look at the data: the overwhelming majority of women in our jails have histories of deep trauma. To what extent, do you think, is any of the criminal justice system trauma informed—understanding of that deep trauma that informs the behaviour of so many women and informs why they are in front of police in the first place?

Ms PSILLAKIS: I think the example I gave of two days ago shows very little trauma-informed practice, and that is outside of prison. Just an example—I am only speaking on my behalf: In the judge's sentencing comments I was to continue having weekly psychological sessions within prison, as I did for the 10 months with a forensic psychologist pre-sentencing. I had two individual sessions within the 11 months of my incarceration. What is put on paper as "this is what must happen" does not happen.

Ms EASSON: Being a woman who has lived with mental health, it can take us three weeks or more to even access to see a doctor to have our medication prescribed to us. Being a woman in there you are nearly wanting to smash your head against a brick wall because of what you are going through. You are on medication prior to going in there, so that is something that is needed. How can a system make you wait a month or more before you are accessed to see the doctor to be prescribed your medication?

Mr DAVID SHOEBRIDGE: Some 60 per cent of women in jail are mums. They are mothers. The removal of children is an inevitable part of putting women into jail. What kind of acknowledgement is there in the system, if any at all, about what is happening to your kids?

Ms EASSON: There is nothing, Mr Shoebridge. Being a mother who had her children in care when I was in prison, I was actually dragged to a governor's office and told I was a pain in the arse. I thought I was being proactive going to what we call a "SAPO"—the social worker. We do not have contact with the department. We do not have contact with a lawyer. You are getting all these orders made about your kids; there is no engagement with the mother. How do we come out as a mum and engage with a service? When our kids are taken, child protection do not work with us as mothers. There is no preserving us as a family. We are not supported in restoration of our children.

What was passed down by Ms Pru Goward within the time frame for us to even do our section 90s—it is a waiting list to access a service, to access a program. You could be on a three-month waiting list just to access to do a parenting program. This two-year time frame given to us to get our children back with a section 90—there is no support. It is ignorant. There are no phone calls for us, Mr Shoebridge. Being a mum who was only accessible to my son four times a year for two hours, supervised, I can guarantee you I did not see that child when I was in prison. I did not get phone calls to my child. How do we, as mums, have someone work with us in there on accessing our children? How do we get support in there to continue this visit? How do we fight for our children when we are in the prison system?

Mr DAVID SHOEBRIDGE: I suppose there is SHINE, which I know is a part of your organisation, Ms Strong.

Ms STRONG: It exists quite independently of us and has done for a long time.

Mr DAVID SHOEBRIDGE: But SHINE is a bandaid on a gaping wound, is it not?

Ms STRONG: Yes.

Mr DAVID SHOEBRIDGE: It is not the answer to increase the resourcing in SHINE. The answer is to stop putting women with kids in jail.

Ms STRONG: Absolutely. Some systems have managed to achieve that, and we have signed the Bangkok principle, et cetera, which states, "Don't do that".

Mr DAVID SHOEBRIDGE: Sometimes this looks impossible, because we have seen a one-third increase of women in jail in the past seven or eight years—so it seems impossible on one level. But then we have something like COVID, we change our criminal justice system, we change some of the assumptions about who does or does not go into jail and we have seen a 20 per cent reduction of women in jail. How much can we learn from what has happened in the past nine months?

Ms STRONG: We do hope that we can learn from it and we certainly will be advocating on that basis. Governments can decide not to send women to prison—they just did—and it has improved the lives of 20 per cent of the people who would have otherwise gone into jail. We believe that the number of women in jail in New South Wales is small enough as an issue to be addressed. I was a school teacher—principal etc.. The number of women in prison at any one time is as many as would have been in the assembly hall and I would have known every one of their names. The issue of the short sentences is such that many more children are being traumatised and re-traumatised with people coming in and out of jail; it is perfectly possible to address this. If there were 2,760 women in prison in the 12 months up to our research, we could speak to each of them. We could deal with it and so could all of the systems that are engaged in trying to help them. Reference has been made to the academics' research reports—there is such a lot of activity around this number of women.

The CHAIR: Let us suppose government was willing to take that in-principle step. People are of course sent to prison because of certain criminal activities. What would be the steps that would need to be taken to address the behaviours that would otherwise lead them to go into prison? What would need to be done to ensure that the community expectation about offending was addressed while keeping women with children out of prison? How would that look in practice?

Ms STRONG: I agree that most people who think about a woman in prison are pleased she is there and that the State has done its job, and that is because there is a lack of information around this.

The CHAIR: Please educate us.

Ms STRONG: I think the fact of the 20 per cent of people who did not go to jail—20 per cent of women who did not go to jail who would have done last year—is proof positive that there has not been any increase or decrease in community safety, and those stories should be told more widely. I think there are circumstances of wraparound services that most of these women need; they are mostly the marginalised and traumatised women at the edges of society who end up in prison. If we had the diversionary services that they are beginning to build in the UK and that they had for a long time in Scandinavia and Holland, those sorts of services will help those women get their lives on track, keep their children with them, keep their children on track and those things can be done with community support.

This is why, as a community set of coalition organisations, we are very pleased to have very mainstream sets of women, like the Country Women's Association and the National Council of Women, join us in trying to offer support within the community, but it is not the amateur hour type of support that is needed. It is a very professional sort of network of sustained services, such as the Miranda Project—another one of our organisations. As Ms Psillakis said, you need help with all of these issues of housing, courts and whatever is going on in your family life.

The CHAIR: Housing, health supports—

The Hon. PENNY SHARPE: Child protection.

The CHAIR: Child protection.

Ms STRONG: Housing, child protection, addiction—

The CHAIR: But work.

Ms STRONG: All of these things and work.

The CHAIR: Access to work.

Ms EASSON: That is right—and education.

Ms STRONG: Access to work, and so you need to support that—and of course education, as Ms Easson says. Where we began was a group of rather ordinary women worried that women did not have the same access in prison to employment and education as men and most of the services were directed to the men—7 per cent of course to the women in such little bits of time that there was nothing consistent or sustained that could be done while they were in prison. That is where we began. We have gone now to realise that it is much more than that sort of issue, but many of the women, in fact, have not completed their education before they got to where they are.

The CHAIR: So access to training, education and skills is invaluable to being able to support themselves.

Ms STRONG: Support, but in a community-based and, in the circumstances of First Nations women, in a community owned and managed organisation. We are very pleased that Deadly Connections is one of our member organisations and I know they have made a submission to you. Those sorts of services—Nelly's Healing Centre sort of service—that is what is needed.

The Hon. TREVOR KHAN: I have heard a lot of the figure of 20 per cent. You may not be able to answer but I will ventilate this for the sake of the other members. I am interested in knowing as to whether that 20 per cent figure is reflective of simply a delay in the finalisation of matters—I suspect that some of it is because the courts have not been doing some stuff during the period—or whether it relates to people who have been diverted on to intensive correction and community correction orders, and if so whether you are aware as to whether additional funding was provided for programs under those intensive correction and community correction orders.

Mr DAVID SHOEBRIDGE: Mr Khan, can I just put one other thing in the mix which is different decisions on bail?

The Hon. TREVOR KHAN: Mr Shoebridge, that is pretty clear. If the matter has not been finalised then bail has probably been used as a mechanism, but I am, at this stage, just interested in the intensive correction and community correction orders.

Ms STRONG: I am not able to give you that advice, but I know that Kelly-Anne Stewart, who is the principal women's advisor within Corrections and who is a member of our coalition, would be able to provide that. She has given us the figure of 20 per cent at our most recent meeting—

The Hon. TREVOR KHAN: I am not doubting the 20 per cent.

Ms STRONG: —and so she would have the detail of that. I am sure the Committee will be able to get that exactly. The issue on bail—this big increase that began in 2013, notwithstanding the provisions in the legislation of not sending people, it seems to be the presumption against bail that came in around a number of additional offences in 2013 that has caused this huge spike. That is where we began; I mean, many others have been working on it for longer. Intensive correction orders of course are better than going to jail, but what we are talking about is community owned and run and supported services in the community.

Ms LEAN: Could I just contribute to that?

The CHAIR: Of course.

Ms LEAN: Actually, community orders and imprisoning people in the community—all it has done is expand the carceral net into Aboriginal people's homes and communities. It would be really useful for the panel to focus on how Aboriginal people are feeling through this time. These reports that come out that say that we are seeing a 20 per cent reduction in women in prison—they are a furphy. Because the reality is that the COVID virus has been weaponised against Aboriginal communities, and if you speak to Aboriginal people on the ground, we are feeling over-policed and over-surveilled during this time. So this is not a time of relief for Aboriginal people, it is actually time of fear. We are the ones being over-fined under the COVID provisions and over-surveilled into our communities. So actually this idea that there has been a reduction or that COVID has been a blessing for Aboriginal people to keep us out of the system is not true.

The other thing it has done is put Aboriginal people sitting behind bars and in cages right now at direct risk of COVID. They are literally sitting ducks for the COVID chaos that can rain down upon them. I would really like the Committee to reflect on that because this is a panel to talk about black deaths in custody and right now we have black lives sitting behind bars with no access to good health care or to good hygiene. They are unable to socially distance because they were all put in cells that were originally built for one but now house two or three. COVID has not been a relief for our community and I think that the Committee would be well-placed to listen to Aboriginal people on the ground. The last thing I want to say is that today we were thanked for being brave, but it is not actually us—Debbie, myself or other people here with lived experience—who need to be brave, it is going to be the Committee and the Government. Because we actually need you to be brave and bold because our mob are dying behind bars, so this might be an academic exercise for some or just an inquiry, but for me, it is about saving the lives of my brothers and sisters who are behind bars.

Ms KILROY: If I could just add, sorry, about the 20 per cent reduction, because its being couched in this jurisdiction and other jurisdictions because of COVID. Sisters Inside have staff that are in our watch house—so the biggest police watch house in this State—and over the COVID period there were maybe three to five women in that big watch house on any week during the beginning. When I say the beginning, mid-March when the Prime Minister decided to say to the country, "COVID is an issue." Then what we saw was that it is policing; it is how police are policing. They are actually not arresting people—women—and putting them in the watch house. They are giving them here notices to appear, so to appear at a court at a later date. It is about their own health that they are concerned about—the police officers and the staff in a watch house—not First Nations people coming into the watch house. And then, we have staff supporting those women that come in there, to get them bail and to secure bail in whatever way that works out.

If it looks like she may need an address or she may need mental health support—whatever it is, so we can assist the court and secure bail for her. If bail is not secured at that time and she is remanded in custody, we have a Supreme Court bail program that I run. We see every woman in every prison in this jurisdiction who is on remand. This afternoon I will be in the prisons again, speaking to another 30 or 40 women who have been remanded in custody, to assess their eligibility for the program so that we can apply for Supreme Court bail before a Supreme Court justice. We have had a 100 per cent success rate in having women released, which really shows that at a Magistrate level—a lower level—where women are being remanded in custody they are not considering the factors in a way that a Supreme Court justice does, and they are granting them bail.

What I have seen over this COVID period from March until now is the number of women, particularly First Nations women, who are remanded in custody now, who would not necessarily be remanded in custody and definitely not receive a term of imprisonment if they were found guilty. Because the police were giving them notices to appear or bringing them to the watch house and giving them watch house bail, if the women were

feeling unwell, on the court website it says, "If you're unwell with COVID symptoms, don't come to court." But because they do not have the resources—they are homeless—to email the court or ring the court to say, "I'm sick and can't appear," warrants were issued.

What I am seeing more than I have ever seen in my life during this year of COVID has been women with, on their verdict and judgement records—that is the bit of paper that a prison is given from the courts to hold a woman because that is what she is remanded in custody for—three, four, five, six pages of low-level, street-type survival offences. So public nuisance, stealing food, obstructing police—those types of minor offences where she would never go to prison ever in the first instance. But because she has been getting notices to appear, or released from watch houses and not processed through the courts when she is first arrested and having lawyers support her, these offences have accumulated into warrants. Eventually she is denied bail and refused bail because she keeps committing offences whilst on bail. So it has actually become a quite horrific, negative process of how the police are policing and what we are seeing.

Yes, we are seeing a reduction for a minute in the prison population—as you said, 20 per cent in New South Wales, which would be similar to here. But we are actually seeing the explosion of low-level offences that women are being held in prison for, where they would never be held before and where they usually would not get a sentence of imprisonment. But now they will, because they have got five or six pages of low-level, survival types of street-level offences that have accumulated and where her time may be served when she fronts the court to have it finalised. It is a huge issue. COVID has not been a positive experience for criminalised and imprisoned people. We have called across this country with other groups internationally for the release of all people in prison because of COVID. We know in other countries that once it gets in the system it is going to explode and people will die.

We do not have the death penalty in this country, so we must not allow anybody to die. We must manage that. We have seen governments manage other people very well in the community by putting them up in hotels and paying for that—maybe not now at the end of this year, but early on. The call could have been to release, for example, all First Nations people on remand into a hotel, where they have conditions like another person would—and be resourced by the Government in that hotel and in that accommodation, because they do not have accommodation anyway, to actually be supported. But we never saw that, at all. We saw other people saved who were more worthy than criminalised Aboriginal women and First Nations women. It is an indictment on us all.

The CHAIR: Okay. Thank you, Ms Kilroy—

Ms KILROY: I just wanted to—the other thing about mothers and children is a huge issue. We actually are not treated as adult women when we go to prison. Again, the same reformist and power-over language—we are called girls. We are not called women. We are not identified or respected as mothers who have children and who have raised their children. The State deems us as criminals, as offenders, as no good, as bad mothers, and that criminal history and that label carries on forever after. Even myself now, as a lawyer and many other things in my life—I still am caught in that cage of offender and no-good mother, et cetera. It is really interesting because I go to prison—for example, the last time was drug trafficking and I am a bad mother. But if you are an MP and you are violating your children under your own roof of your home, you are never deemed as unworthy as I am deemed because I was a drug trafficker. You are seen in a very different light.

The CHAIR: Ms Kilroy, I am going to stop you there. Ms Kilroy—

Ms KILROY: We are all human beings and we are so much more than the worst thing that we have ever done in our lives. We must be treated with respect, to understand and be acknowledged and supported—

The CHAIR: Ms Kilroy, we are over time.

Ms KILROY: We can transform ourselves, just like you can.

The CHAIR: Thank you, Ms Kilroy. That was not helpful. We are out of time now. Mr Shoebridge had a couple of questions he wanted to ask people to take on notice.

Mr DAVID SHOEBRIDGE: Look, there are two. We have run out of time. It would be good to explore it in the Committee, but there are two issues that this panel could maybe provide some useful reflections on, on notice. One is that we have had some evidence and some recommendations about greatly reforming the Summary Offences Act, particularly offensive language and offensive conduct. Either abolishing or greatly reducing the scope of those, so there is less of that interaction with police that can be the trigger that eventually sends a woman into jail—particularly Aboriginal women. The other is whether or not there is a benefit in firmly stating a presumption in favour of bail where a woman has the care of children—whether or not that should be legislated

as a measure. If you had the chance and you thought you could contribute to those issues on notice, I would appreciate it.

The CHAIR: Okay. I would like to thank the panel members for their time and their insights and for coming to give evidence here today. The Committee has resolved that answers to questions taken on notice be returned by Friday 22 January 2021. The secretariat will be in contact with you in relation to the questions you have taken on notice. The issues we have canvassed are very important and we could spend a lot more time with this particular panel investigating those issues, but time is against us. We may put some further questions on notice to you through the notice provision. Again, thank you for your time.

(The witnesses withdrew.)

ELIZABETH WATT, Senior Policy and Research Lead, Yfoundations, affirmed and examined

ZOÉ ROBINSON, Acting Advocate for Children and Young People, Office of the NSW Advocate for Children and Young People, affirmed and examined

The CHAIR: I would like to welcome our next witnesses. Would one of you like to give a brief opening statement? You do not have to; it is optional.

Ms ROBINSON: I would like to start by acknowledging the First Nations people, their Elders past and present and the emerging leaders of today. We are on Gadigal land today. Across the State there are a number of young people who find themselves in Youth Justice facilities that are also on the land of our First Nations people, on the land of their ancestors and Elders. The New South Wales Government has continued to work hard to reduce the number of young Indigenous people who are in Youth Justice. At April 2020 there were 99 young people. There are a number of programs that focus on prevention, intervention and diversion. We know we can do better.

As the Acting Advocate for Children and Young People, and as a passionate advocate for the rights of all children and young people, we must do better and we must include the voice of children and young people in our work to understand what supports they need, when they need them and how best to serve children and young people. We need to focus on early intervention and prevention, but we also need to focus on both the individuals and the family unit. We need to address the underlying issues of poverty and inequity. My job is to bring the voice of children and young people. Let me tell you what young people say. A 19-year-old male, when talking about his case, said:

> ... found a second a second lawyer, and she was a woman, and she was really happy for my education, and who I am. And she took me serious. Her husband was a barrister, and he said he really wanted me to win. He wanted to do it as a justice. So he let me get him for free. And I was so happy. And he just me gave an opportunity. But, after that, I just felt happy. I felt trusted. And I knew that, "I'm going to actually win this." But I got told constantly by other children, or other people, young people, that I wouldn't never win. Because I'm Aboriginal. And it kind of ... pushed me downwards.

A 16-year-old female said:

> I feel like when I get out, I don't really want to get out because I know I'm always going have to go back to care. And I don't really want to go back to care, I just want to be the family member. I feel like every time I go back to care, I just keep making the same mistakes, over and over. Because I get put with workers I don't like, don't know, and I like being with more permanent workers which you can call uncle, Nan, dad, like that. If there was this place for me to get put that's not care, then yeah...

The Hon. PENNY SHARPE: Thanks very much for coming in. You have a lot of recommendations in your submission. I was interested that in recommendation 2 you talk about Youth Justice exploring greater use of restorative justice alternatives, which take into account cultural background. My understanding is that the numbers of kids who are actually incarcerated has gone down, which we are all very happy about. In 2020 we got down to 90.

Ms ROBINSON: Yes.

The Hon. PENNY SHARPE: That is extraordinary. I am just wondering what you understand the latest stats are, particularly on the use of restorative and diversion programs for Aboriginal children and young people, rather than non-Aboriginal children and young people. Are you able to give us some information about that?

Ms ROBINSON: Partly that recommendation is obviously what children and young people themselves said in the juvenile justice facilities when we spoke to them. In terms of those exact numbers, I can filter through the Bureau of Crime Statistics and Research [BOCSAR] data, but I might take the numbers in terms of—

The Hon. PENNY SHARPE: No, it was not a test, but more whether or not you knew.

Ms ROBINSON: There has been greater investment in diversion programs and, in a way, in terms of the Behaviour Strategy, which Education recently released, that is also demonstrating the link between suspensions and crime. We are also seeing that there is a different way of looking at diversion in an earlier way.

The Hon. PENNY SHARPE: I wanted for you to explain to the Committee the issue around driver's licences. In a previous life I spent some time with Aboriginal communities, particularly in northern New South Wales. Essentially, before kids even get to the age of getting their licence they already have bans and fines that they have not paid. I know that quite a lot of work has been done to understand and address this issue. Can you tell the Committee where you understand that is up to?

Ms ROBINSON: Yes. One of the things that is in our report, which young people have said themselves, is the fines that they can receive without having driver's licences, but also children and young people understand

the need to have a driver's licence to cover distances and to be able to attend to the things that they need to attend. I sit on the steering committee that looks at the fines and the fine system that is going on right now around driver's licences. There has been work done around that. I also have the interesting fortune of working with a program that is looking at helping get Indigenous young people their licences in Griffith. That is a pilot.

In terms of the issues around it, obviously we all understand how useful it is to have your driver's licence and the opportunity it can afford you, but there is huge inequity in terms of access to that. This school is an example. Some 95 per cent of the students at the relevant age will get their learners licence [Ls], but 5 per cent go on to get their provisional licence [Ps]. That is partly because they cannot access driving hours, they might have a family member who also does not have a licence, so they cannot help, and the cost of driving hours and also access to a safe car is a crucial part of that. This program is actually looking at helping those young people to get their hours up.

The Hon. TREVOR KHAN: This is the Griffith program?

Ms ROBINSON: This is the Griffith program, yes. It is not the first of its kind; a number of efforts have been made where councils have tried to access council cars and work with volunteers in the community as well.

The Hon. TREVOR KHAN: Lions clubs do it in some country towns.

Ms ROBINSON: Yes, absolutely. But when I met with this school and the young people there, they talked about the fact that they wanted to get it because they wanted to make their family proud, they wanted to be able to go on to different education and they wanted to be able to get to their employment on time. All of those issues can be addressed through the driver licensing program. It would be a good thing to continue to invest in.

Mr DAVID SHOEBRIDGE: But there are Aboriginal-led organisations that are providing those services. There is one on the North Coast, though the name escapes me, and they seem to be the obvious place to devote resources to at the moment, because they have connections with community and they provide empowerment and self-determination. Is that where we should be looking in that space?

Ms ROBINSON: We would always advocate that Indigenous-controlled and Aboriginal-controlled organisations should deliver programs to First Nations people.

The Hon. PENNY SHARPE: I have one particular question that I do not know the answer to on the data around transit officers and police and their use of warnings and cautions versus fines. There seems to be a lot of discretion there. Is data collected around the age profile and the Aboriginality profile of people, or of different groups, so that we know how it is being applied?

Ms ROBINSON: I imagine that data is collected. I do not have it to hand, but I can take it on notice.

The Hon. PENNY SHARPE: That would be great. Even if you just point us in the direction of it. I would be quite happy to ask the transport Minister and the police Minister.

The Hon. TREVOR KHAN: I am interested in this concept of restorative justice. Are you advancing that a restorative justice model is the way to go? If so, what statistics show that it actually works?

Ms ROBINSON: We have seen it work in other jurisdictions. Certainly, in New Zealand the restorative justice has worked well. I do not have the statistics to hand. I am happy to find out statistics.

The Hon. TREVOR KHAN: I have heard of the situation in New Zealand.

Ms ROBINSON: Yes.

The Hon. TREVOR KHAN: The restorative justice model is actually a two-way model. You not only need the offender to participate in the program and understand what is expected of them in the program, but you also need the participation of the victim. It is a two-way thing. I sometimes hear people talk about restorative justice without necessarily dealing with the multifaceted side that the model requires.

Ms ROBINSON: In New South Wales you have seen the success with the Youth Koori Court. That requires both parties to be present, but it also requires the community to be around that person as well, to go to your point in terms of being engaged in it. But also, the community part of that is so important to work with that young person and to provide support. We have seen success with the Youth Koori Court in New South Wales.

The Hon. TREVOR KHAN: I am not entirely certain whether the Youth Koori Court necessarily obliges the victims involved, but I think it encourages the victims involved. It is sort of a restorative model, without being a restorative model. If it is to go further, I just wonder how you necessarily implement it; particularly if we talk in terms of First Nations views, I see a potentially abusive component if the victim is non-Indigenous. There

may very well be an interesting power imbalance in the confrontation that is involved in the restorative approach. It may actually work in the negative sense, as well as a positive, but I am open to being convinced.

Ms ROBINSON: The children we have spoken to in juvenile justice facilities will always talk about the importance of culture to them, so recognising that culturally there are different ways of dealing with such activity is really important. They talk about the need for that—obviously before and being connected to their community, but while they are in there, and then very clearly when they are exiting as well—being wrapped around the community. To that end, it is worth exploring it. What we would say is that we should design that and work with children and young people, both victims and those who find themselves in that scenario, to design it in such a way that it works and in such a way that people feel comfortable to step into that. It would be fair to say that most victims who are young children or young people would have a discomfort in any form of process like that, but if we design it with them, then hopefully we can have some better traction.

Mr DAVID SHOEBRIDGE: One of your recommendations is about prohibiting the use of the Suspect Target Management Program to anyone under the age of 18 years. When you speak to young people, what are they saying to you about being surveilled by police, particularly Aboriginal young people?

Ms ROBINSON: It is a theme that comes up in our consultations in terms of them feeling targeted. We have recently just finished 50 further interviews with young people who are exiting juvenile justice facilities. It is a theme that comes up in terms of them feeling targeted. When we talk to children and young people about what is working well and what is not working well, the balance is that some will say the relationship that they have had with police is working well, and then there is also the flipside that says the relationship with police is not working well. We have heard that young Indigenous people do feel like they are targeted.

Mr DAVID SHOEBRIDGE: A lot of the assistance you are giving—

The Hon. TREVOR KHAN: Sorry, but that perception is not necessarily related to the suspect management program.

Ms ROBINSON: That is the truth according to the children and young people who we asked those questions of.

The Hon. TREVOR KHAN: I am not doubting that, but that is independent of whether they are on the suspect management system or not, is it not?

Ms ROBINSON: Yes.

The Hon. TREVOR KHAN: The question of their relationship with the police is an historic problem—whether or not they are on Mr Shoebridge's theme is going to continue to be a difficult one.

Ms ROBINSON: Yes.

Mr DAVID SHOEBRIDGE: Ms Robinson and Dr Watt, a lot of what you are giving us is distilling what young people have been saying to you. I assume you have structured engagement with young people to assist getting these messages across. Maybe it is something that the Chair and the secretariat could explore with you later but I wonder whether there might be an opportunity for you to assist by helping us have a discussion with a panel of young people directly who could give us their direct feedback? Will that be something you might be able to assist the Committee with?

The CHAIR: Is that a practical suggestion?

Ms ROBINSON: Yes, and I think that young people would welcome it.

The Hon. TREVOR KHAN: Mr Shoebridge, that should be discussed by the Committee before you make generous offers.

Mr DAVID SHOEBRIDGE: Before we discuss it in the Committee—and it is a Committee decision, not my decision—I want to be clear.

The Hon. TREVOR KHAN: In a public hearing you raise a proposal which creates an inevitable outcome. I think it is unfair.

Mr DAVID SHOEBRIDGE: I want to be clear: It is not inevitable. I just want to know whether or not that would be something that would be possible before we devote time to discussing it in the Committee.

Ms ROBINSON: Yes, I think it is possible.

Dr WATT: I second that.

Mr DAVID SHOEBRIDGE: I do not want any presumptions to be put in place because it genuinely is a Committee decision.

The Hon. ROD ROBERTS: Too late.

The CHAIR: Let us move on.

Mr DAVID SHOEBRIDGE: What about transport offences? Young people are coming into contact with police because they have not got their Opal card with them, they have not topped up their Opal card, or they have just been identified by transit police. Is that a discrete area that you have some knowledge about?

Ms ROBINSON: It has come up in terms of the transport offences. Coming back to, Ms Sharpe, your question before, in distances as well there is a cost associated in some of these towns to travel from one place to another place. If you are thinking about even Coffs Harbour to go to university, it can be an $18 one-way trip. Partly, it is—if we go back to what I originally said in my opening statement—that inequity and the poverty that exists. We obviously make a recommendation in our submission around the Opal cards and the need for free Opal cards. It does come up, but again I would say that it comes back to a greater issue around poverty, and also for young people there is a need to get to places that you know you have to get to.

There was a pilot that was recently run in New South Wales with young people who are interacting with the criminal justice system already and for them to get to their appointments in Parramatta if they were in Penrith, as an example. One of the things we talked about was giving them free Opal cards so they could make those appointments. Some of the people who sat here before we were here talked about the fact that trying to get to those appointments and getting to them on time, having access to the funds to do so can be prohibitive, so there was a pilot that was running in New South Wales to try to make that part of it, the access, easier for young people.

Mr DAVID SHOEBRIDGE: This is a policy in relation to young people which is littered with successful pilots that end up crashing into mountains. Do you know if there was any write-up about that pilot on Opal cards?

Ms ROBINSON: It was done by a service. Again, I can take that on notice and see where it got to.

Mr DAVID SHOEBRIDGE: In order to prevent young people from coming into contact with the criminal justice system, and particularly Aboriginal young people coming into contact with the criminal justice system, we need to think outside the box. One of the options might be young people having effectively an entitlement to free travel with an Opal card attached to them.

Ms ROBINSON: Yes. When you talk about thinking outside the box, as I said at the beginning, there are a number of things. Even the behaviour strategy is a good step in a direction that means we are not looking at the moment that you have come into the interaction with the justice system or police. But actually we understand that a lot of these things, if we are doing true intervention, we should be doing things earlier.

Mr DAVID SHOEBRIDGE: I asked the previous witnesses if they would take on notice the benefits or demerits of reforming summary offences, particularly offensive language and offensive conduct. In your engagement with young people, can that sometimes be a trigger event of how they get caught up in the criminal justice system? That they are pulled up for offensive language or offensive conduct?

Ms ROBINSON: It is not a thing that, as I think back to our reports, has come up. They talk more about suspensions than they do about offensive language.

Mr DAVID SHOEBRIDGE: And how do suspensions play in?

Ms ROBINSON: One young person that we interviewed last year had 20 suspensions in a year. They did not have an alternative place to go, so they were often just found wandering in a street and would be picked up. That was the start of it. There is one young person that we have recently spoken to who said that they got through year 6 and then were suspended in year 7 and did not go back to school and did not feel comfortable. A lot of people will talk about the fact that, if they have been suspended, when they go back they have missed so much work that they start to disengage. That comes up more frequently than offensive language.

Mr DAVID SHOEBRIDGE: And their interaction with police happens because during school hours they are in a public space and they are picked up for purported truancy and that is how the interaction with police starts?

Ms ROBINSON: Yes.

The Hon. TREVOR KHAN: They are actually picked up for truancy?

Ms ROBINSON: Not necessarily, sorry. Not picked up for truancy but they are in a public space. It might be that they start there and then—

The CHAIR: Just explain how that works.

The Hon. TREVOR KHAN: I am concerned that a question is put that people are picked up for truancy—

The CHAIR: And you are right to explore it.

Mr DAVID SHOEBRIDGE: I wondered what triggered the interaction. I assume police are interacting with young people because they are not at school.

Ms ROBINSON: They are not at school.

The Hon. TREVOR KHAN: Yes, that is slightly different than a perceived truancy.

Mr DAVID SHOEBRIDGE: That is what I meant.

The CHAIR: I have asked the witness to clarify how it might unfold.

Ms ROBINSON: It is because they are not at school.

Mr DAVID SHOEBRIDGE: And then police interrogate them or ask them questions about why they are not at school. That is the introduction?

Ms ROBINSON: That can be the first interaction with police, yes.

The Hon. PENNY SHARPE: Dr Watt, I was drawn to the part of your submission that talks about the profile of young people in detention because it paints a very scary picture of kids who find themselves in detention. I wonder whether you could speak to that in relation to what we found? I am particularly interested and I know that Mr Shoebridge is also very interested in the interaction between Aboriginal kids, more likely to be in out-of-home care, who also find themselves in detention. Many witnesses have talked to us about the pipeline of child protection to incarceration so I just wondered whether you wanted to make some comment about that.

Dr WATT: Absolutely and thank you for the question. For those of you who do not know Yfoundations is the peak body representing young people in New South Wales who are at risk of or who are experiencing homelessness as well as the services that represent them. We did highlight some of the very alarming statistics not only about Aboriginal overrepresentation but also the profile of young people who are in detention. Some of the particularly alarming facts, for example, is the study from Western Australia with 99 young people, which showed that 89 per cent had a severe neurological development—these are young people in Youth Justice—including fetal alcohol syndrome, ADHD, learning disabilities, intellectual disabilities, language disorders, anxieties, depression or trauma. So that is the vast majority.

You raised the point about the relationship between out-of-home care and juvenile justice. Obviously those systems are concerningly linked. Another system in New South Wales that overlaps with those two is the specialised homelessness services. Some of the research we have done recently highlights not only the number of young people being kept in remand despite being released on bail for the simple fact that they have nowhere else to go. Under section 28 of the Bail Act that means they are not allowed to be released. There is also a concerning number of people leaving Youth Justice who actually are not being classified as having safe and secure accommodation. It was at 9 per cent in the 2018-19 period. That basically means they are entering primary homelessness so they are not entering a youth refuge, they are not entering a rehabilitation centre and they are not going to stay at a relative's house. They have no fixed abode.

The Hon. PENNY SHARPE: These are young people who are mostly under 18?

Dr WATT: Yes, all under 18.

The Hon. PENNY SHARPE: Walking out the gates, nowhere to go.

Dr WATT: Yes. That obviously dramatically increases the likelihood of reoffending. Our research shows that this is simply because they do not have the kind of supported housing facilities that these young people with complex needs need. Our Specialist Homelessness Services [SHS] cannot deal with the kind of necessarily the overcapacity and do not have the staffing requirements to deal with the particular high needs of a young person leaving juvenile justice. Child protection are often unwilling to take responsibility for these young people. They are often unable to return home because they have apprehended violence orders out against them, they might have

a sex offender status, which means they cannot return to their home because it is too close to a school, so they are basically being released out onto the streets.

Obviously we know the stats about out-of-home care and there is a report from, I think, the Australian Institute of Health and Welfare which shows the intersection between those three systems and it is the kids in the middle who are both involved in the out-of-home care, Youth Justice and juvenile justice system that are really struggling and being let down by all of the systems.

The Hon. PENNY SHARPE: If we had the department before us they would be saying they have all this excellent exit care planning and kids are leaving without a plan. Can I ask you specifically about the National Disability Insurance Scheme [NDIS] because there is an opportunity while young people are incarcerated to actually work through the issues of NDIS. Do you see that happening? Do you see any active work occurring? Given the statistics you gave us previously, we know that a lot of the young people who end up in care would qualify for NDIS support but I fear many of them do not have anyone to take them through what is quite a difficult and challenging process. The system itself is very challenging, requiring doctors' diagnoses and a whole range of checkups. Do you get any sense within the juvenile system that they are actually starting to address that NDIS as part of the exit support for young people?

Dr WATT: I might have to take that question on notice because I know in our interviews we focused largely on their supported housing options. I do not think we had anyone who raised a specific question about NDIS but it is certainly something that is worth exploring or it might be something Ms Robinson could add.

The Hon. PENNY SHARPE: Ms Robinson, it might be one for you because there seems to me to be an opportunity to do that work with the young person. It surely would be picked up. If they are recognised with a disability surely someone within Youth Justice would say, "Have you got an NDIS plan" and then does some work with them to do that.

The CHAIR: Well does that happen?

The Hon. PENNY SHARPE: I worry that it does not.

Dr WATT: The young people themselves have not raised it in the most recent interviews we have done.

The Hon. PENNY SHARPE: If they do not know that they qualify for NDIS or recognise that they have a disability, they may not. I am not surprised by that.

The Hon. TREVOR KHAN: Ms Sharpe made the obvious point that if we had juvenile justice before us they would say that no young person who is leaving a facility is not going to have some form of plan in place.

The Hon. PENNY SHARPE: That is what they would say.

Dr WATT: The reality is a different situation.

The Hon. TREVOR KHAN: That is what I am asking.

Dr WATT: We have done extensive interviews with both Youth Justice workers and people in SHS services. It just seems, particularly when kids are in remand so they have a very short time frame when it comes to the court turnaround, it is easier when they have a kid and they know what day they are being released because they have got some planning time. But when it could be tomorrow that they are out and they do not have a place for this young person to go that is when it is basically getting on the phone and calling every single youth refuge.

The Hon. TREVOR KHAN: Can we just unpack that little because that does clarify it. You would not have a plan in place for somebody who is being released on remand. So often it will have been a bail refused, circumstances change, an application is made probably to the Supreme Court, bail is granted at that stage and they are punted out almost directly onto the street. Is that where that figure comes from in the exercise? Both are concerning.

Dr WATT: The figure of the 260 who are kept in because they do not have anywhere to go—that is like the section 28—the 8 per cent is actually people who are in Youth Justice not on remand.

The Hon. TREVOR KHAN: Well that is concerning. That is really concerning.

Dr WATT: That is a reflection not of that they have not tried to put a plan in place; it is simply a reflection of the services that are available, particularly in regional areas, and particular housing options for people with very high needs who cannot return home.

The CHAIR: Is that the key missing ingredient—housing options? Is that why a lot of people are kept on remand even though your report said only 6 per cent end up getting a custodial sentence? What are the reasons they are being kept on remand?

Dr WATT: I know that is one but I do not know if it is the key one. Obviously it is a significant reason. Some reports look more broadly. Obviously we focus on the housing question because of the interests of our organisation. But I am not sure about what other reasons a young person would be kept on remand. Obviously we would advocate that a young person would be kept on remand only in exceptional circumstances.

The Hon. TREVOR KHAN: The problem is you grant bail to somebody on a series of conditions, whether or not the conditions are reasonable. They may be place restriction, they may be contact restrictions. There are repeated breaches of them for whatever else. Whether it is right or wrong eventually the magistrate feels that they have lost the option as to what they are next to do. That is a reality in these circumstances is it not? Residence is one but it is the repeated breaches that seem to leave magistrates with few options.

Ms ROBINSON: Also safety. One of the concerns for a magistrate is that a young person is going somewhere that they will be safe.

The Hon. TREVOR KHAN: Yes.

Mr DAVID SHOEBRIDGE: One of the things we have heard repeatedly is that even though it is lawful to do so almost never are there multiple bail addresses given for young people, in particular, Aboriginal young people who might have broad family connections which they are used to bouncing around. If they have just one bail address given very often they are bail breached because they are at their auntie's place. Have you had any of that feedback from young people you have spoken to?

Ms ROBINSON: No, not directly that I can think of from the notes in front of me now. One of the themes that does come out in terms of that understanding culturally is that there are various places where a young person will find comfort or safety. But no, nothing that I can think of right now. But I am happy to take it on notice and see if there is anything.

Mr DAVID SHOEBRIDGE: Well, one of the changes that does seem to have worked was about four or five years ago. There was a change to allow for bail conditions to be amended in chambers by registrars at the Local Court for young people.

Dr WATT: I think it has been raised by some of the SHS providers that we spoke with—the difficulty they had with bail conditions because they already had a lot of things they had to monitor with young people in their care. It added an extra layer of complication helping a young person when they also had a lot of bail conditions that they had to ensure they kept up with.

Mr DAVID SHOEBRIDGE: So less is more when it comes to bail conditions for young people.

Ms ROBINSON: They have got to be able to understand the bail conditions. I do not know whether Legal Aid is coming before you, but I am sure that they might talk about the need for young people to truly understand what bail conditions mean for them. And I mean in practice—the language we actually use and demonstrating with them. Sometimes they do not understand the bail conditions.

Mr DAVID SHOEBRIDGE: My last question is about Youth on Track. Whenever we have the police Minister or the Secretariat of the Department of Communities and Justice—

The Hon. TREVOR KHAN: Do not put them in the same sentence.

Mr DAVID SHOEBRIDGE: No, in this regard there is some commonality. When they are in front of us, they will repeatedly refer to Youth on Track and say that that is the shining success program and it has been a wonderful program. What is your view about Youth on Track? What are its limits and should it be extended?

Ms ROBINSON: I think Youth on Track does have some success. I have got here that 700 suitable young people were referred to Youth on Track with 325 voluntarily engaging in the program. Ninety-seven per cent of all young people who completed Youth on Track reduced the risk of reoffending and 75 per cent who participated reduced or stabilised formal contact. I think it has had some success. Expanding it would be good. I acknowledge that Youth on Track—there are other programs that work well in the community as well. You have got to design a program that suits that community as well. To give you an example, you have Youth on Track in Armidale, but you now also have BackTrack. That is a successful program and forms of BackTrack exist everywhere. Lake Cargelligo, for example, has Down the Track, but they do not necessarily have Youth on Track. So I acknowledge that it should be expanded and we should obviously respond to the needs of children and young

people to ensure that they will engage in those programs and that they feel comfortable to do so. I also acknowledge that in some communities there are other programs that are having great success.

The Hon. PENNY SHARPE: Yes, but they are not necessarily given funding by the New South Wales Government.

Mr DAVID SHOEBRIDGE: That is the difference.

The Hon. PENNY SHARPE: BackTrack is a fantastic program, but it is very underfunded. When we ask a question, "If Youth on Track works", I think just saying that, because Bernie is running something in Lake Cargelligo, it means that things are okay is—

The CHAIR: Problematic?

The Hon. PENNY SHARPE: That is the point that I wish to make.

The CHAIR: Thank you for coming and for your evidence and insights. Any answers to questions taken on notice are due to be returned on Friday 22 January 2021. The secretariat will be in touch with you about any of those matters. Committee members may have further questions they wish to place on notice. These will also be forwarded to you.

(The witnesses withdrew.)

(Luncheon adjournment)

DANIELLE McMULLEN, General Practitioner, President, Australian Medical Association, affirmed and examined

CALUM SMITH, Chair, the Royal Australian and New Zealand College of Psychiatrists NSW Forensic Subcommittee, sworn and examined

The CHAIR: Would you like to give a brief opening statement?

Dr SMITH: Thank you, Chair. The Royal Australian and New Zealand College of Psychiatrists [RANZCP] welcomes the chance to give evidence to this select committee. Our committee believes that the best way to understand this longstanding problem is by splitting it up into three sections. The first point is that—as has been pointed out many times before—Indigenous people experience high rates of social disadvantage. These are generationally entrenched and are intertwined with trauma, dispossession, and disruption of kin. Second is the longstanding—and seemingly worsening—disparities in levels of Indigenous incarceration rates compared to non-Indigenous populations. A vicious and often inescapable cycle of incarceration, homelessness and re-arrest occurs, often complicated by drug use and mental health issues. This is for all prisoners, but Indigenous people are over-represented in this cycle, often having multiple short sentences.

This links to the third strand, which is something that I particularly want to speak to. The college has been concerned for some time about the general situation with mental health care in custody. The rates of psychosis, depression, personality disorder, alcohol or other substance abuse are all extremely high. The environment in prison is in itself injurious to mental health and wellbeing, making any issues with mental health worse. Resources to deal with this are inadequate. Whilst these alarming prevalence rates are not only found in Indigenous patients, they appear to be even worse in this group. A 2015 survey showed that Aboriginal participants reported higher instances of schizophrenia, psychosis, alcohol abuse or dependence and post-traumatic stress disorder. Lack of culturally informed practice makes the impact of the existing shortfall exponentially more dangerous. In our submission, we make a series of suggestions that we think can improve the situation. We note the discrepancy between arrest rates and bail awards. We note that Indigenous women in prison are less likely to have been at psychiatric hospital. These represent a series of missed opportunities for early intervention and diversion away from custody.

We note also that one of the current Government's targets is reduction of reoffending. We believe that there is clear evidence that untreated or under-treated mental illness contributes to crime levels and that good mental health care in appropriate settings prior to, during, and post-contact with the criminal justice system reduces reoffending. We want to quickly specifically comment on court diversion schemes. There is now persuasive evidence here and elsewhere that court diversion schemes reduce reoffending. They also produce clinical improvement for patients and are cost effective. We note the Federal Productivity Commission has recently made recommendations to enhance court diversion schemes throughout the country on this basis and we endorse this in New South Wales. We note also that, as it stands and for whatever reason, being of Indigenous background makes someone less likely to receive a diversion from court. Any investment in court liaison schemes would have to be done with input from the Indigenous community in order to be culturally aware and safe.

We are aware that the New South Wales community has faced multiple crises this year. COVID-19 has brought extreme difficulties, not least to our Indigenous community. However, we have seen since the start of COVID-19 our society's ability to pull together and respond promptly and in an evidence-based manner to an urgent public health emergency. We see this as another modern challenge and we think we can make progress if we look at the data and embrace modern, evidence-based practice. We do not see this as an either/or—either we spend money on helping people get the treatment they need or we spend money on prisons, police and courts. The evidence suggests that investment in early, effective and safe treatment for mentally unwell people in appropriate settings means patients get the treatment they need and helps keep our community safe. This change in emphasis should particularly benefit our Indigenous community, who for too long have been disadvantaged and criminalised by the current system.

Dr McMULLEN: I would like to first acknowledge that we are meeting on Aboriginal land belonging to the Gadigal people of the Eora nation. I pay my respects to their Elders past, present and emerging. On behalf of the Australian Medical Association [AMA] (NSW), I would like to thank the Select Committee for the opportunity to comment on this inquiry. We are concerned by the increase in imprisonment rates over the last decade and the disproportionate representation of First Nations people, particularly the alarming increase in the imprisonment of Indigenous women. This problem requires immediate action. While the factors contributing to growth in imprisonment rates are many and varied, as a professional association representing doctors, the AMA

(NSW) would like to highlight the correlation between imprisonment and poor health and make that the focus of our response. Both First Nations people and prisoners are more likely to suffer socioeconomic disadvantage, marked by high levels of unemployment, low educational attainment and insecure housing, as well as more likely to be victims of violence or abuse. These factors have a significant impact on health.

These people are more likely to suffer serious physical health conditions, poorer dental health, and a higher prevalence of disability, communicable diseases, substance use disorders and mental illness. Many of those incarcerated have fallen through cracks and not had access to community-based health and social services, including services for housing, mental health, substance use, disability, and family violence. Imprisonment can exacerbate and entrench the social and health disadvantages that contribute to imprisonment in the first place. Lack of community-based treatments are key factors in driving the growth in prison populations and its disproportionate impact on population groups including Aboriginal and Torres Strait Islander people, who are over-represented in these patient populations as well. The AMA acknowledges the complex drivers of imprisonment in any individual's case but considers the imprisonment gap as symptomatic of the health gap between Indigenous and non-Indigenous Australians. With regard to Indigenous deaths in custody, lack of access to appropriate healthcare is a significant factor in many Aboriginal deaths in custody. AMA (NSW) recommends there be independent oversight into all Aboriginal deaths in custody.

We have several recommendations to make that we believe will positively impact imprisonment rates of Indigenous people. Firstly, we recommend improving health service provision to Aboriginal and Torres Strait Islander people, specifically targeting mental health conditions, substance use disorders and cognitive disability, which are significant drivers of their imprisonment. Secondly, AMA commends the commitment by Federal and State governments to meet a justice target for closing the gap. We must stick to this commitment and regularly report on progress to ensure we meet the targets set for 2031.

Thirdly, we recommend the age of criminal responsibility be raised from 10 to 14 years old. Imprisoning children creates a cycle of disadvantage. The AMA is advocating at all levels of Government to support developmentally and culturally appropriate health, education, and rehab-based alternatives to the criminal justice system for children. We also recommend governments adopt a justice reinvestment approach to fund services that will divert Indigenous people from prison. The AMA recommends that diversion programs be prioritised for people with mental health, substance use and cognitive disability problems.

To reduce incarceration rates, the AMA recommends support of culturally safe and comprehensive primary care and other health services, including those provided by Aboriginal community-controlled health organisations. Access to culturally appropriate health care will not only to improve the health of Aboriginal and Torres Strait Islander people but will also prevent many from coming into contact with the criminal justice system. Lastly, recognising the increased health needs of prisoners, AMA recommends that New South Wales adopts workforce targets to increase the employment of Aboriginal health workers and Indigenous health professionals in prison health services to support them to deliver a culturally competent health service.

The CHAIR: Thank you, Dr McMullen. I think we also have Dr Robyn Shields on the line, is that correct? Dr Shields, are you there? It seems she is not there at the moment. We might proceed now to questions from Committee members.

The Hon. ROD ROBERTS: Dr McMullen, on page 5 of 6 of your submission the last paragraph states:

> Not a single police officer or prison officer has been held accountable for the deaths in custody.

Above that, you quote a figure of 435 Aboriginal deaths in custody. Your submission continues:

> AMA NSW recommends there be independent oversight into all Aboriginal deaths in custody.

Would you care to elaborate on that?

Dr McMULLEN: I would have to take that on notice, but I think it aligns with, as it states there, that we think Aboriginal deaths in custody should have specific oversight and investigation into how and why those deaths occurred. That process should be transparent and inquisitive, rather than necessarily from an accusatory perspective, but that there needs to be a full and frank investigation of deaths that occur in custody.

The Hon. ROD ROBERTS: You are aware of the coronial inquest system?

Dr McMULLEN: Yes. In terms of the coronial inquest system and how it relates to Aboriginal deaths in custody, we think there could be improvements in terms of ensuring that an Aboriginal liaison officer is always included, particularly in discussions with families, as part of that coronial inquest process. Again, that coronial inquest should be an inquisitive process rather than accusatory at that stage of inquiry.

The Hon. ROD ROBERTS: I think you will find it is an inquiry process.

Dr McMULLEN: If so, then it should maintain an inquiry process.

Mr DAVID SHOEBRIDGE: Thank you, doctors, for your submissions. Dr McMullen, page 5 of 6 of your submission also states:

> Tragically, lack of access to appropriate healthcare was a significant factor in many of these deaths—

Referring to Aboriginal deaths in custody. It further states:

> In 38 per cent of these deaths, medical care was required but not given.

Do you want to elaborate on that, in terms of the adequacy of health care given, especially to Aboriginal people in custody?

Dr McMULLEN: There was a reference given in that paper. I would point you to that for that statistic.

Mr DAVID SHOEBRIDGE: Yes, I saw that reference.

Dr McMULLEN: As Dr Smith has highlighted, mental health care in particular in prison environments could be improved. I might defer to him to answer the question about specifically how mental health care could be improved in prison environments. But we have heard from a number of our members who work in Justice Health that there needs to be broad scale improvement in both the physical and mental health care of patients in custody.

Mr DAVID SHOEBRIDGE: Dr Smith, did you have anything to add in response to that?

Dr SMITH: I can certainly confirm that all the data and all the studies done on the prevalence rates of mental illness in custody show a really quite significant, disproportionate prevalence—up to 10 to 15 times higher in the prison system that in the general community. It is very clear that our stance is that these people need to be given the help that they need. Obviously resources within the prison are inadequate at the moment and we need more of them. But, broadly speaking, our model is one of early intervention and diversion away from custody. We note that the Federal Productivity Commission has recommended the use of Police Ambulance Clinician Early Response [PACER] teams, or police teams that go out with mental health nurses. They note a rollout of court diversion systems. At the moment, we have 177 local courts in New South Wales, and they are only manned by the court liaison service in New South Wales in 22 of those. Obviously we think that is quite inadequate. Really a quite significant number of the people who come in to prisons in New South Wales are acutely mentally ill—easily up to 20 per cent, 25 per cent. These people need to get the help that they need.

Mr DAVID SHOEBRIDGE: You can look at case after case after case where there has been a death in custody and there has been acute mental illness. The Dungay case would be a case in point. There was clearly some acute mental illness in the lead-up to and during the circumstances that led to David Dungay's death. Is any other State doing it better than New South Wales in terms of providing mental health services, particularly for acute mental health?

Dr SMITH: Obviously the college does not comment on specific cases, but definitely it is the case that in general—I add also that the issue with high prevalence rates of mental illness in custody is not just a New South Wales issue; it is an issue throughout Australia, New Zealand and back in the UK. In terms of doing that part in general, the rates are still very problematic. In terms of transferring people out to hospital, acutely, the college has a longstanding stance that if people need what gets called "enforced care"—that is, treatment against a person's will if they are acutely unwell—then that should happen in a hospital and people should be transferred to a hospital for that. Again, I draw the Committee's attention—it is not all plain sailing in other jurisdictions. The Victorian submission by the corrective services down there noted a 17½-day wait period for people who were acutely unwell to be transferred out to the secure hospital. Nevertheless, down in Victoria or up in Queensland they were being transferred to the secure hospital—admittedly after a wait, which does not happen in the community, generally. They were still being transferred to an acute hospital outside the prison system. In New South Wales we have the Long Bay Hospital, which is a gazetted facility where treatment can be enforced. The committee and the faculty has a longstanding stance against enforced care within criminal justice jurisdictions and in prisons.

Mr DAVID SHOEBRIDGE: In that regard, New South Wales is out of the ordinary. New South Wales is perhaps one of only one or two jurisdictions that allows non-consensual medication in the jail system.

Dr SMITH: It is the only State in Australia.

The CHAIR: I think we have Dr Shields on the line. Dr Shields, can you hear us? Apparently not. Mr Khan, I think you had a question?

The Hon. TREVOR KHAN: Just a couple of questions. I will just go to that last point, to which I think Mr David Shoebridge went as well. We visited—

The CHAIR: Mr Khan, can you speak into the microphone? I think everyone needs to speak more clearly into their microphones.

The Hon. TREVOR KHAN: We visited the facility out at Long Bay on another inquiry. Just looking at the board there of the various inmates who were within that facility, looking at the descriptions of the problems and the warnings that existed on that board, it struck me that there are a range of inmates with very problematic behaviours. Some were, "No female prison officers to go into the cells" and "Concern with regards to the throwing of faeces and other items"; in every one, it was more than one prison officer. There seemed to be a gamut of pretty extraordinary and confronting behaviours. If they are not held in a facility like the one at Long Bay, who is capable of dealing with that style of inmate behaviour?

Mr DAVID SHOEBRIDGE: Which facility at Long Bay are you talking about?

The CHAIR: The Forensic Hospital?

The Hon. TREVOR KHAN: Yes.

Dr SMITH: No, I do not think we are talking about the Forensic Hospital.

The Hon. TREVOR KHAN: Oh, right.

Dr SMITH: I do not mean to correct you, but I believe you might be talking about Long Bay Hospital.

Mr DAVID SHOEBRIDGE: The problem is they are both at Long Bay and I was talking about Long Bay Hospital in the prison system and I think the Hon. Trevor Khan is describing the Forensic Hospital—

The CHAIR: The Forensic Hospital next to the jail.

Mr DAVID SHOEBRIDGE: Which is where, I think Dr Smith you were saying, if someone is going to have to have forced medication—

The Hon. TREVOR KHAN: It is there.

Mr DAVID SHOEBRIDGE: —the only place it should happen would be in the Forensic Hospital.

Dr SMITH: Not the only place.

Mr DAVID SHOEBRIDGE: Or community.

Dr SMITH: If you do a risk assessment and you believe that that person has particularly problematic behaviours, is potentially violent or has a history of violence, there is data to suggest that people in prison who are acutely unwell can be transferred to local health district hospitals with no increase in restrictive practices. We have heard anecdotally from our colleagues in local health districts who are saying, "We know our patients, who are usually under a community mental health team, are ensnared in the justice system and we would happily have them out to have them treated on our inpatient unit."

What we—with a very broad brush— would suggest is you can do some sort of risk assessment. If this patient has somehow come into custody but is not known to be particularly violent or have a particular history or presenting with particularly problematic behaviours, then they can potentially go to a local health district. But broadly speaking, if we think the person is high risk, and as it happens in other States, the person can be then transferred to the secure setting where they have long experience of dealing with people who are potentially violent or aggressive or high risk.

Mr DAVID SHOEBRIDGE: But I recall that visit very distinctly. The very high intensive needs or detention part of that facility is a very confronting facility—nothing in the cells, 24 hour observation and extremely high-needs patients in The Forensic Hospital. But then there are other units in that hospital where you have different gradations of care and different gradations of medical treatment being provided. It is not a one size fits all, even in The Forensic Hospital.

Dr SMITH: Sure, and certainly in The Forensic Hospital there is a high level of attention to detail. The risk is managed by, obviously, physical security, in the sense that there are walls and systems like locked doors, but generally the most important part of the security is about relational security. It is about understanding the patient and understanding the risks. It is still the case that even though it may seem quite restrictive compared to, say, a normal local health District Hospital, the patients can still get out of their room at night, even on the most acute unit, to come and speak to a nurse, come and ask for as-required medication.

Whereas, obviously, in a prison that is not the case. The prisoners are locked in their cell overnight; in certain parts of the prison system they can be locked up in their cell for 22 hours a day. So if you are thinking about someone who is acutely psychotic, is paranoid or is in distress, that is obviously going to be making the situation worse. That is before you get into the general environment not being particularly therapeutic in terms of lack of access to open air, lack of access to open spaces, natural light etc.

So I understand that perhaps a forensic hospital might seem fairly restrictive compared to say a general rehabilitation-focused unit, but obviously The Forensic Hospital here in New South Wales is a fairly modern progressive facility. It has lots of green spaces, it has a recreation hall, it has access to a multidisciplinary team, but it uses high levels of training and a high level of procedural and relational security to manage high-risk patients.

The CHAIR: I think you have both recommended the age of criminal responsibility should be lifted to 14 years.

The Hon. TREVOR KHAN: That is where I was going.

The Hon. PENNY SHARPE: It was one of mine, too.

The CHAIR: Is there a sound medical basis for this view? I know it has often been put forward by advocates for law reform as being more socially just, but I just wanted to know if there was a strong medical basis for that proposition.

Dr SMITH: The science is quite clear. Increasingly, there is a consensus in the scientific community that if you do neuroscientific studies and look at the parts of the patient's brain that is required in what is called "executive functioning"—i.e. decision-making, understanding right from wrong, planning actions and understanding the consequences of those actions. Those are not developed by 10 years old and frankly they are not really developed by 14 years old either. So the studies seem to show that actually they develop, particularly for men potentially, in the mid-20s. The other—

The Hon. TREVOR KHAN: I do not think we are going to succeed in raising the age of—

Dr McMULLEN: No.

The CHAIR: That may be a stretch too far.

Dr SMITH: Indeed.

Mr DAVID SHOEBRIDGE: Observations would suggest in some cases even beyond that.

Dr SMITH: The other thing to note with that is that there does seem to be this suggestion in the scientific literature that trauma further delays the development of these areas, so I think that is an important thing to think about. Without the brain there is no behaviour and if we look at people's brains and look at the development of the parts of the brain that helps people make decisions and how they conduct their lives, which is obviously what the legal system is designed to decide on, you really start to struggle to see how people who are 10, 11 or 12 years old have an idea of exactly what it is that they are doing wrong.

The CHAIR: Would lifting the criminal age of responsibility to 14 make an appreciable difference to the criminal justice system, given what you said about the development?

Dr McMULLEN: We think that if that was paired with adequate improvements and offerings of social, educational and rehabilitative support, that it would. You cannot just sit back and do nothing with 10-year-olds showing difficult behaviours, but recognising that that likely reflects a significantly challenging home or school environment and using that opportunity—

The Hon. TREVOR KHAN: Probably both.

Dr McMULLEN: Or both.

The CHAIR: Or other syndromes as well.

Dr McMULLEN: Developmental disability, domestic or family violence—there a whole lot of contributing factors to young people committing offences. Our view would be that, yes, we should increase the age of criminal responsibility but also recognise that these young people are at risk, and if people are coming to the attention of authorities, that we should be providing them and their families and their communities with increased support across those socio-economic factors that contribute both to ill health and to incarceration.

The Hon. TREVOR KHAN: My understanding is that in at least one or perhaps more Scandinavian countries, their age of criminal responsibility is much higher than 14; it is either 16 or 18.

Dr SMITH: Yes, that is in Denmark.

The Hon. TREVOR KHAN: Sorry?

Dr SMITH: It is in Denmark—at 16[1]—I am pretty sure.

The Hon. TREVOR KHAN: But there is arguably a downside to simply raising the age of criminal responsibility, and that is you then use, what I will call, the child welfare system in a way that almost incarcerates children—young people—in what is not said to be the criminal justice system but, in a way, works in a similar way in terms of restraints upon behaviour and the like. Have you got any views about that? Because it seems to me, Dr McMullen, that what you identify is quite right. Simply raising the age of criminal responsibility full stop actually does not really address what is the underlying issue and that is that some of these kids have serious problems that are going to manifest themselves in one way or another in the criminal justice system—if not at the age of 14, then at the age of 18 or 21. It seems to me there needs to be some sort of set of systems, some of which may, in fact, be fairly intrusive on the child.

Dr McMULLEN: I am not sure why you think they would be intrusive on the child. We would suggest that these systems should be supportive of the child and their families to access the care and supports that they need. Obviously, ideally the view of child services is that for as much as possible the children remain with their families and with their communities of origin—where that is safe to do so—but that we should be supporting them in accessing the health and social supports to not enter the criminal justice system.

The Hon. TREVOR KHAN: I accept all that you say. But if you have got a kid at 12 who has fallen out of the education system for whatever reason—it may be some mental health issues, for instance—and is exhibiting very problematic behaviours of one sort or another, simply offering does not always produce an outcome, does it? The kid and the family may not be responsive to those entreaties. What do you do then?

Dr McMULLEN: I am sure social services comes across challenging cases like this all the time. Our view is that you work with them to engage them in—

The Hon. TREVOR KHAN: I am not in favour of keeping the age of criminal responsibility where it is, but there is still a problem.

Dr McMULLEN: You work to engage that child with a regular general practitioner and, if needed, a psychologist or a psychiatrist. You get housing support so that they have got housing there. If there is a need to force some of that treatment, we would see that as a better alternative than forcing incarceration at a young age. That does nothing to further support the family and the community.

The CHAIR: Do other members have questions on this issue of criminal responsibility?

Mr DAVID SHOEBRIDGE: I do, yes. Does the Hon. Penny Sharpe, as well?

The Hon. PENNY SHARPE: Well, no. I was going to ask the question about the medical science, which I am a little bit familiar with, and I think you covered it. No, I am fine.

The Hon. TREVOR KHAN: There is no science that says 14 is the cure-all, is there? It seems to have become the go-to age, but I do not think there is any more scientific rationality to 14 than 15 or 16, is there?

Dr SMITH: That is my understanding. I hope I mentioned that there is a detailed document. I hope we referenced it but, if not, I am happy to provide it to the Committee. It is the RANZCP review of the age of criminal responsibility. But, that is right; it is not some magic cut-off where suddenly at 14 everyone's part of the brain is developed enough to understand. Equally, I think the point we would take is—if I take your point correctly, I understand and it is a point well made. It is about creating other models—early intervention, potentially even as early as prenatally and postnatally, throughout when kids are in single-figures age—and then hope you do not get to the stage where you are having to make this kind of choice between different forms of restriction. That is what you are worried about, right?

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[1] In correspondence to the committee received 22 December 2020, Dr Calum A Smith, Chair, the Royal Australian and New Zealand College of Psychiatrists NSW Forensic Subcommittee, clarified his evidence advising that the age of criminal responsibility in Denmark is not "16", but in fact "15".

The CHAIR: But it is about lifting the game, is it not? At the moment, because of the age of criminal responsibility being where it is, when children present with challenging behaviours and criminal acts it is easier for them to be dealt with in the criminal justice system than in a health or care way. And so, by lifting the age of responsibility in the way that is recommended, it puts the focus back on redoubling efforts in relation to health care and other forms of intervention, rather than criminal justice. Is that a fair reading?

Dr SMITH: Yes. I do not know if it is necessarily about raising the game, but certainly working on different evidence-based models is the thrust of the royal college submission on it.

Mr DAVID SHOEBRIDGE: In much of the debate there is an understood position that 14 is the minimum age at which you can start suggesting that someone would have the age of criminal responsibility, rather than the age where kids do have criminal responsibility. That is the minimum point at which you could start expecting to see it in even a subset of children. Would that be a fair description, Dr Smith?

Dr SMITH: I refer you to the detailed document because I am not sure I necessarily agree or disagree with that. I will refer you to the document.

Mr DAVID SHOEBRIDGE: I did just look at your submission. It is not referenced, so maybe you could provide it on notice.

Dr SMITH: Yes, I am happy to. Sure.

Mr DAVID SHOEBRIDGE: Assume that I am super persuaded of that. It may well be that other members of the Committee are. What is often not included in the debate is more detail on what the alternatives are, yet we all know there are alternatives for nine-year-old kids, eight-year-old kids and seven-year-old kids. Can you talk more about what it would mean in terms of the alternative care or the alternative arrangements that would be made for 10-year-old, 11-year-old, 12-year-old and 13-year-old kids?

Dr McMULLEN: We would suggest that it is the same as what is offered to seven, eight and nine-year-old children at the moment. We recognise that social services are stretched and we have at many times called for increased resourcing of social services so that they have the capacity to manage the complex issues that many of these families face. But we do not think there is any difference between what one should offer a six-year-old or an eight-year-old exhibiting criminal behaviours and what they should be offering a 10-year-old.

Mr DAVID SHOEBRIDGE: I do not mean to put words in the mouth of the Chair, but my understanding of what the Chair's question was—if you have got a 13-year-old child and they have displayed repeated, deeply problematic behaviour, currently one of the options is to put them through the criminal justice system. Lock them up for a period of time and you have dealt with the problem, at least for a period of time. If that is off the table, then that might be a game changer in terms of requiring the additional resources to deal with the child in the community and to provide those services in place. Is that one of the benefits of raising the age of criminal responsibility—to take that option off the table?

Dr SMITH: Broadly speaking, the college supports early intervention models. Without getting into specific details about what any intervention would be in a child developing problem behaviour, it would certainly be the case that—the document makes it clear that it is not as simple as just changing the age of criminal responsibility. Additional early intervention services would have to be developed alongside that. For example, with respect to the recent Federal Productivity Commission, what it seems to be endorsing—which a lot of psychiatrists have felt for a long time—is that with a lot of these problems it is the "a stitch in time saves nine" thing. These services, models and interventions have a cost. But that should be viewed as an investment because down the line, once you start having to incarcerate 13-year-olds, then that is problems for life. There are very high rates of adult incarceration for people who have been to juvenile justice. So, we see it as thinking again about early intervention and evidence-based intervention. Ultimately, that is probably economically beneficial for people.

The Hon. PENNY SHARPE: It is a slightly different question. So, there is the age of criminal responsibility, which you have said is fuzzy in terms of exactly where—but 14 is where we land. Does the college have a view about the appropriateness of having 10 and 11-year-olds actually in custody and incarcerated? They may have committed a crime, but whether it is actually appropriate to have 10, 11, 12 and 13-year-olds incarcerated at all in relation to where they are at developmentally and the ability for them to overcome that—do you have a view? Can you point us to something that is looking at that issue?

Dr SMITH: The college has a view against it. That is why it supports raising the age of it.

The Hon. TREVOR KHAN: I think you will find most people in the juvenile justice system think you should not have 10, 11 and 12-year-olds in—

The Hon. PENNY SHARPE: Correct, correct. But everyone talks about criminal responsibility, which is the way in. I am talking about—

Dr McMULLEN: The harm caused.

The Hon. PENNY SHARPE: —the harm caused. That is correct.

Dr McMULLEN: You referenced before, Dr Smith, the impact of trauma at a young age having lifelong impacts. I think we can draw inference from the fact that people who are incarcerated into the juvenile justice system have high rates of incarceration in the adult system later. I do not have a reference to back that, but it would suggest that being in the juvenile justice system is not helpful and, in fact, may be harmful. We see in other studies that childhood trauma does lead to significant impacts on physical and mental health in adulthood. I would put forward that being incarcerated at the age of 10 would be a rather traumatic process.

The Hon. TREVOR KHAN: Yes. Look, I do not think anyone can disagree with that proposition. But it may also point to the fact that those who are falling into the juvenile—and I am not talking about 10 or 11-year-olds. Let us talk about 14, 15 and 16-year-olds. Those who are falling into incarceration at that age may well be reflecting a whole series of very complex problems in their background—neurological and mental health issues—

The Hon. PENNY SHARPE: Disability.

Dr SMITH: Trauma.

The Hon. TREVOR KHAN: A whole range of complexities that make them more susceptible to recidivism later anyway. It might be almost a "chicken and egg" situation that arises.

The CHAIR: An early indicator.

Dr McMULLEN: Yes, but that is why we are so strong on thinking that early intervention is key. We must support these children, families and communities, as Dr Smith said, before the child is even born, potentially, and supporting families and communities particularly when today we are talking about Aboriginal and Torres Strait Islander communities. We have a huge health gap there with significantly higher rates of mental health, substance use disorders and domestic and family violence. We think that acting in that space, particularly for our Indigenous communities, should help reduce their rates of incarceration both as children and as adults.

The CHAIR: Moving onto that slightly different topic, we have had evidence, including today, that one of the challenges for people in custody or in the prison system and certainly leaving the prison system is access to a whole range of services to help support them. Obviously, access to the skills to get employment and housing are key, but also access to quality and responsive health care. Given the linkage between some of the deaths in custody and poor health care, are there systematic screening and health assessments of people when they enter the prison system to work out what their mental health care needs may be? Many people in prison have either undiagnosed or untreated conditions. Is there a systematic way in which this is assessed and then treated while people are incarcerated?

Dr SMITH: There is. I know there is because I have worked in prisons, but beyond that, I will either take that on notice or refer you to the Justice Health people who would obviously conduct that screening.

The Hon. PENNY SHARPE: What does the screening actually involve? How long does it take and what is actually examined?

The CHAIR: Tick and flick.

The Hon. PENNY SHARPE: Or is it literally, "This person is showing signs of psychosis, possibly depression and anxiety. We will just put on their form and off you go to your cell." Is that it?

The Hon. TREVOR KHAN: And make sure there are two-up in a cell rather than on their own, I would assume.

Dr SMITH: To make a detailed submission on exactly what the screening for mental health is for those who are incarcerated, I would have to take that on notice because I do not want to go into detail and get bits of detail wrong.

The Hon. PENNY SHARPE: No, but just generally, how long does it take to do a screen?

Dr SMITH: Again, I would have to take that on notice. I know everyone gets a mental health screen. That is a policy. Exactly how long that takes, for example, is not something I am sure of. So I am happy to take that on notice.

The CHAIR: Sure, but what about their treatment? It is one thing to be screened and to be assessed. One of the witnesses we had earlier today said her plan required her to be seen by a psychiatrist on a number of occasions but she, in fact, only got to see the psychiatrist twice.

The Hon. TREVOR KHAN: I think what happened is that in her sentencing, which I think was in the District Court, there were some remarks. I do not think a District Court judge can make such an order.

The CHAIR: No.

The Hon. TREVOR KHAN: In fact, I am certain he cannot.

Mr DAVID SHOEBRIDGE: It was probably a recommendation.

The CHAIR: The question is: What processes are in place to make sure that people get the treatment once they are assessed?

Dr SMITH: That I can speak to a bit more from personal experience. The point to make is that resources are completely inadequate. We are talking about a significant increase in the overall prison population in the past, say, five to eight years, particularly Indigenous people with respect to this Committee. Largely, resources have not increased in terms of, say, psychiatric nurses or psychiatrists. So of course there are going to be difficulties in terms of review, monitoring, et cetera, and that is before you start getting into some of the inherent problems. Prison is a place for security and punishment, and hospitals and healthcare settings are places for health care. We do our best to work in clinics and deliver as great healthcare people. I know that a lot of the staff are very passionate and tireless in their work to deliver the best health care as can be provided. It is simple systemic issue that if you have lots of unwell people and not very many resources in an environment that is not designed for healthcare delivery, but designed for security, then you are going to have difficulty delivering it. It is as simple as that.

The CHAIR: What can we do to improve that? It seems reasonably accepted that a lot of those poor health outcomes, particularly mental health outcomes, may well be key contributors to the behaviour that leads people to being incarcerated. Therefore, the period of incarceration represents an opportunity for diagnosis and proper support and treatment in the hope and expectation that when they leave they might not come back.

Dr SMITH: I am happy to take a broad answer about things that can be done, but on the last point I would pick you up on that. The college is not particularly keen to think of prison as a place where people's mental illness gets picked up and treated. The college believes that health settings and people should be getting picked up prior to going into prison and that community services should be able and have the capacity to manage these people.

The CHAIR: But it often does not happen.

Dr SMITH: It does not happen. We are realistic. We get that obviously some people are going to fall through the cracks, but in Victoria it was one-third of people who came into contact with police were actively in psychiatric care, whether it be medication from a GP, seeing a psychologist, seeing a community mental health team. That is one-third. It was two-thirds or 70 per cent that had some form of previous contact with the health service or had some form of previous diagnosis. That suggests that clearly something is going wrong in holding onto these patients and getting them the treatment they need.

The Hon. TREVOR KHAN: That may simply be some form of assessment done in accident and emergency when they rock up in the middle of the night.

Dr SMITH: Sure, but again, we would argue that that is a sentinel event. That is a great opportunity for a full assessment for potential intervention. Again, the Productivity Commission's methodology and view they were embracing is that these nodes of intervention should be seen as opportunities. That is the time to get a good assessment, to get a full understanding of what happens. It is understandable—everyone is busy in an emergency department [ED] on a Saturday night, I get that. But what happens is that in two weeks they come again and they maybe do not get an ideal assessment, and then something significant happens a month later. We are saying that that is right. Everyone is very busy, everyone is trying hard, but if we start trying to capture these people—

The Hon. TREVOR KHAN: I am not being critical. It just seems to me that it is a very transient interaction.

Dr SMITH: I want to be very careful. It is all very easy to have lofty ideals and to say, "What we do is once they come to ED, we give them a five-hour assessment." I get that it is going to be difficult, but the overall philosophy we embrace is quite clear: We think things like that are an opportunity. We think that there is clear evidence that people are getting lost and are in play with community services. It is a matter of investment in community services; it is a matter of investment in-patient beds. If we are saying that we want to roll out a court liaison service for acutely psychotic people to divert them away from court we are going to have to have beds and community services so that they can manage them away from the criminal justice system. If we are talking about acutely ill people who are, say, high-risk, and people are worried about going to the local health unit then we need more secure beds to transfer these people out of the criminal justice system and into the secure beds.

Mr DAVID SHOEBRIDGE: In the First Nations space, you do not just expand the unit at St Vincent's or expand the unit in Canberra Hospital. If we are going to deal with mental health concerns for First Nations communities it has to be culturally appropriate. I would imagine it should be led by First Nations teams and First Nations organisations. Are there any you can point to? First of all, is that right or wrong? And if it is right, where do we look?

Dr McMULLEN: We, of course, think that all the care provided to our Indigenous populations should be culturally appropriate. We need increased involvement of the Aboriginal community controlled health centres, and that they should have an active role in helping their communities to maintain best physical and mental health before entering the justice system, engage with both of those and then other community general practice spaces. We have to remember that everyone, particularly these people with chronic and complex physical and mental health needs, should have a regular GP; whether that is through their local Aboriginal Medical Service [AMS] or their community controlled health centre, that should be happening. We see the same at release from prison. There needs to be increased activity in linking people back to community centres so that the care that they have been receiving in prison, as you say, if that has been an opportunity for increased mental or physical health care, that there is adequate handover back to community health services.

Mr DAVID SHOEBRIDGE: What about in the mental health space? If you have got a really critical crisis mental health situation, is it realistic to suggest you can have a kind of parallel health system for First Nations peoples, given where we are at today?

Dr SMITH: I am not sure I understand the question.

Mr DAVID SHOEBRIDGE: Assuming you want Aboriginal-led, Aboriginal-controlled health services for Aboriginal people—that is one of our goals—if someone has got a critical mental health condition and we might be looking at a really intensive mental health unit in a large public hospital, is it a realistic goal to say we should have near that or at some other place that mental health service being provided by an Aboriginal-led, Aboriginal-controlled organisation separate to the existing mental health facilities?

Dr SMITH: I am not sure I know the answer to that and, given my cultural background, I am not the best person to speak on this. I am aware that in other jurisdictions like New Zealand there are Maori-led, let us say, culture as therapy. But I am not sure exactly the acuity if you like. I know there are services in New South Wales and elsewhere in Australia for Indigenous distress and even programs led by Indigenous people. But I feel you are talking about acutely unwell people potentially in prison. No reason why it could not necessarily happen is coming to me but I do not know of any—

Mr DAVID SHOEBRIDGE: I suppose that I am really asking you from your medical point of view if there is any disqualifying reason. It seems to me that if you want to understand intergenerational trauma, if you want to have culturally appropriate services, if you want to really get to people in the space that they are, we should be having First Nations-led health services at all points. I am asking whether or not—

The Hon. TREVOR KHAN: If you go into country you do not have good services for anyone.

Mr DAVID SHOEBRIDGE: You are sort of pushing into an open door there, Mr Khan.

Dr McMULLEN: We would suggest that people at all acuities of illness and in all locations should have access to a culturally competent workforce, including access to at least Aboriginal liaison officers or Aboriginal health workers should be embedded into mental health systems where a separate service does not exist and that even mainstream services do have a responsibility to maintain their cultural competence for our Indigenous peoples. So in terms of your question, "Do we start a whole other health service that is Aborigine-controlled for severe mental illness", as Dr Smith said, I cannot see a reason that is not possible. But expanding that across the entire State is likely to be a long-term plan at least and difficult to be practical. A potentially more

achievable goal is making sure that we get together and improve the cultural competence of the services that currently exist.

The Hon. TREVOR KHAN: And have competent and accessible services available to everyone. If you are in Moree or Bourke and you do not have any competent service at all that is a serious problem, is it not?

Dr McMULLEN: Do you mean culturally competent?

The CHAIR: I think he just meant medically competent.

The Hon. PENNY SHARPE: A service.

Mr DAVID SHOEBRIDGE: As Ms Sharpe said, just a service.

The Hon. TREVOR KHAN: Yes, that is right, but it has to be a competent service.

The CHAIR: Was that your question?

The Hon. TREVOR KHAN: No, it was not actually. I wanted to move off the mental health area. If we go back to juveniles, we got evidence from a young woman who was not giving evidence on this point but she made a point that she would never have got anywhere in school if she had not got grommets. It seems to me that one of the issues with a lot of the kids going into the juvenile justice system, not necessarily into custody, is they have poor hearing.

Dr McMULLEN: Yes.

The Hon. TREVOR KHAN: There are a number of those practical issues that may make a significant difference. If we look at juvenile justice engagement as being the end product of failures in our system so—

Dr McMULLEN: We agree entirely and we would suggest, particularly with ear, nose and throat problems, that early intervention across the health, education and social services type space is how we think we will get the best results in the long term in reducing incarceration rates overall but particularly for our Aboriginal and Torres Strait Islander people. In the childhood population they have a higher burden of infectious disease, communicable diseases and particularly ear, nose and throat problems. We know those impacts on loss of hearing during early childhood have significant impacts on their learning and development, the ability to engage in school, and sick days from school if you are more unwell. So yes.

The Hon. TREVOR KHAN: Behavioural issues—

Dr McMULLEN: Behavioural issues. There are also—

The Hon. TREVOR KHAN: —that arise out of non-engagement in the classroom setting and the like. If that is one area where in a practical sense we could say something needs to be done, what do we do about such things as fetal alcohol syndrome and other mental health issues? How do we address those? It is no good finding out at 14 when the kid goes into custody that there is a problem because you have missed the formative years.

Dr McMULLEN: That is why we think the gap in incarceration rates is reflective of the health gap for our Indigenous populations and addressing that health gap will have flow-on effects to social services and the criminal justice system. We need to be looking after our Indigenous women and families so that we can reduce rates of alcohol and other substance use that can be linked with domestic and family violence. The alcohol use and other violent behaviours can lead to childhood trauma, can lead to things like fetal alcohol syndrome and other mental and physical health problems, and learning disorders. So really a focus on Aboriginal and Torres Strait Islander health, particularly the health of women and young children, should be a priority of governments.

The Hon. PENNY SHARPE: Just to pick up on that, we have not really talked about it mainly because you are here, Dr Smith. I refer to mental health but I am interested in your view. I accept all that you say about early intervention and we need to do that. One of the things that I am concerned about is with the rollout of things like NDIS. There is some work around that shows there is a big gap between First Nations people accessing packages even though they are overrepresented in relation to disability. It seems to me it is a juvenile issue but I think it is an adult issue as well. People now have access to support that they have never had before if they are able to succeed in getting an NDIS package. While ideally we would prefer that that happens before, which means that they never get incarcerated, are you aware of work that is happening? Should there be a bit more attention on people's exit planning and working? If they have a disability that perhaps has been undiagnosed, particularly young people but also adults, the ability for them to be supported through the process of getting an NDIS package prior to exiting custody I would have thought is a reasonable thing. Do you have a view about that?

Dr McMULLEN: Dr Smith may know more about what actually happens at exit from custody but certainly we would be supportive of strong exit planning in the same way we advocate for strong discharge planning from hospitals into the community. Certainly the time of exit from incarceration is a risky time for a deterioration of their health and other socio-economic factors. So we would be supportive of a quality handover to services outside of the justice system or some carryover support so that these people can engage with a general practitioner and the other health and social supports they need, including, as you say, if they are eligible for an NDIS package or similar social supports that they should be supported to do so. The NDIS in particular is a complicated pathway and there is a high degree of health literacy needed to be able to access that system and people do need support to do so.

The Hon. PENNY SHARPE: While people are in jail through Justice Health, I know it is already overburdened. If someone, say, a young adult comes into jail, has been through a few times and clearly has a cognitive disability and a range of other factors, is Justice Health able to support them getting the diagnosis and the reports that would be required for them to then be able to walk out and get an NDIS package, or is it simply not set up for that?

Dr SMITH: It is not set up for that. The reality is that, for example, NDIS is based on functional assessment. Functional assessments in mental health are often done by an occupational therapist [OT]. There are no OTs in the prison system. Justice Health does not have any psychologists. The psychologists, for whatever reason, are under the corrective services. A cost-neutral thing that might help is if you transit the psychologists over to Justice Health. They have more workforce. They have closer to a multidisciplinary team for mental health treatment. It is transferring budget from one place to another. With specific respect to NDIS, that is right. You struggle to organise. I had a story of someone who got given a beautiful support package on discharge—an Indigenous person—but he could not read. That is right. The NDIS, if you can navigate the system, is a wonderful system, but people who are going through prison are going through it in a way and in circumstances that make it very difficult. I know we have great NDIS coordinators in Justice Health. But they are overwhelmed. Of course, it has nothing to do with their responsibility. It is just the number and need.

In mental health with all prisoners, we talk about equivalence. Prisoners are allowed or ethically entitled to the care that they would get in the community. At the moment, they are not getting anywhere near that and actually a lot of authors in this area go a step further and say that you need more than equivalence because of their complex health needs—the grommets that they did not get when they were three years old, the foetal alcohol syndrome that they had et cetera. I know that increased funding per person beyond what people are getting in the community is not a popular political message, but again the idea is that they need it because of the complex interacting needs that they have. Hopefully that would ultimately save money, time and resources in the long term, because you are setting things up, say, in prison or before prison to try and sort these issues out so that you are not having to just spend time after trying to clear up all the problems that have happened.

The Hon. PENNY SHARPE: I was struck by your figure that said that between 20 and 25 per cent of people coming into jail are acutely mentally ill and that it could take weeks or days before they will get a screening that ticks them and says that they are very unwell. Are the management options for people in that situation simply an empty cell with 24-hour supervision to make sure they do not harm themselves or others? What are the options while you are waiting for proper treatment?

Dr SMITH: The 20 to 25 per cent is reported psychotic symptoms in a Justice Health survey. The actual rate of any mental health disorder is higher than that. On one survey it is 43.

The Hon. PENNY SHARPE: I know. I am thinking about even at that first point.

Dr SMITH: But if we focus on that one—

The Hon. PENNY SHARPE: Yes. People coming in.

Dr SMITH: The first thing to say is—and in some ways I make no apologies for labouring this point. There is now evidence—a very big study done in this State—that says that people with psychosis, if they get diverted, are 12 per cent less likely to reoffend. That is if they get diverted. Even if they do not get diverted, those that have subsequent health follow-up in the community are also less likely to reoffend. Intervention for psychosis seems to be associated with reoffending. We would again say this is an early-intervention, keep-out-of-prison model. Within prison, there are clinics that a patient would be referred to. If the patient is acutely unwell, they will be put in front of a doctor reasonably promptly. I do not want to get into the weeds of exactly how long that is because I do not have those stats with me, but then they can be referred to a mental health screening unit. Now, say they are at a regional jail. There is a wait to get to the mental health screening unit for any psychotic person.

The Hon. PENNY SHARPE: This is where I am getting to. We are talking about deaths of people in custody. Suicide is a significant part of all of the deaths that happen. It seems to me that, in terms of risk assessment, when the people first come in highly distressed—

The Hon. TREVOR KHAN: Or being transferred from one facility to another.

The Hon. PENNY SHARPE: Or being transferred. People are not in a good way. My question goes back to the original thing, which is that, while they need all of that, they might not get in front of a doctor. Is the only therapeutic intervention at that point putting them in a bare cell with 24-hour oversight until something else can be arranged?

Dr SMITH: And medications. But that is right. The overall point is—and there are probably some other small ones. I agree that the interventions you can do at that point are quite limited. These people can be acutely mentally unwell. We would very much support prior diversion but, even if that person is acutely mentally unwell at a regional jail or in, say, Long Bay or the Metropolitan Remand and Reception Centre, getting them out for treatment at a local hospital—because we think that is best delivered there. Even if they are receiving care—I will not say that it is resolved but we have had good ongoing dialogue with the executive in Justice Health. They have agreed. They are progressing the situation and working towards cessation of enforced care in custody, so that is good. But that is right. There are delays. Say a person is acutely mentally well and they get reviewed reasonably promptly. There is still a delay before they go into a mental health screening unit, sadly. That is not equivalent.

From the mental health screening unit to the Long Bay hospital, if they need enforced medication, there is a delay there. That is not equivalent. This is not about pointing fingers or blaming. That is the reality of the situation. You have got acutely mentally unwell people. You have got potential intoxication or withdrawal syndromes. You have potentially got a history of violence or self-harm. These people are very high risk. Trauma is over-represented amongst the Aboriginal and Torres Strait Islander community. You have got a lot of risks and then it just seems to me structurally clear that you are going to have a lot of deaths in custody. That is both for Indigenous people and the non-Indigenous cohort, because you have an injurious environment, a lot of mental illness and lot of risk factors for suicide.

Mr DAVID SHOEBRIDGE: But the mental health screening unit itself is just 43 or 45 beds when you have 12,000 to 14,000 adult prisoners—a high proportion of whom are highly traumatised.

Dr SMITH: Highly traumatised and potentially acutely psychotic or depressed. That's right. Then we are very clear on this. The overall picture is one of a significant number of acutely mentally unwell people in the prison. That is both Indigenous and non-Indigenous people, but Indigenous people seem to be even worse affected by it. The important thing is that they are treated prior to custody and diverted away from custody. We very much view that there are some people who are very dangerous. The RANZCP is not in the habit of trying to get people away from their legal obligations, but I think it is important to think of this: A lot of these crimes and a lot of the things people are getting incarcerated for are not particularly serious offences. It is very much a case of "but for". But for this person's mental illness, this person's intellectual disability, their drug and alcohol abuse problem, the lack of education and job opportunities, this person would not be in jail.

Mr DAVID SHOEBRIDGE: I have a question on notice. There is a provision in the Crimes (Sentencing and Procedure) Act, sentencing legislation or the mental health legislation, which allows people to be detained inside the prison system in New South Wales. I think the hospital at Long Bay is a designated facility under one provision—

The Hon. TREVOR KHAN: It is certainly not under the Crimes (Sentencing and Procedure) Act.

Mr DAVID SHOEBRIDGE: I think it is a designated facility under one of the mental health forensic provisions. Could you take on notice any specific recommendations about what law reform is needed to prevent having people detained?

Dr SMITH: Well, as it stands, there is still nothing preventing transfer of a custodial patient out to another gazetted facility. I am happy to take it on notice. I believe a mentally ill person can be transferred to a declared facility under section 55. It does not specifically state, as far as I am aware—and I apologise to the Committee if I have got this wrong—that that person must go to Long Bay. In fact, there are times when they do not go to Long Bay. Say, women or children—

Mr DAVID SHOEBRIDGE: But could you give some structure to that? If we wanted to adopt something like that as a recommendation, what would it look like?

The CHAIR: Our questioning time has now concluded. I would like to thank the witnesses for attending and giving us their insights. The Committee has resolved that answers to questions taken on notice will be returned by Friday 22 January 2021. The secretariat will contact you in relation to questions that you have agreed to take on notice.

(The witness withdrew.)

(Short adjournment)

NIOKA CHATFIELD, mother of Tane Chatfield, sworn and examined

COLIN CHATFIELD, father of Tane Chatfield, sworn and examined

LESLEY VALE, grandmother of Tane Chatfield, sworn and examined

NULLA CHATFIELD, sister of Tane Chatfield, sworn and examined

MERINDA CONNOR, partner of Tane Chatfield, sworn and examined

PADRAIC GIBSON, Senior Researcher, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, and friend of the family, affirmed and examined

The CHAIR: I welcome this round of witnesses. Would one or more of you like to give an opening statement regarding what you want to tell the Committee about these matters?

Mr CHATFIELD: I will start. We, the Chatfield family, would like to respect and thank the traditional owners of the land, the Gadigal people, past, present and future, and our ancestors. We would also like to start by giving thanks to God for our moment in Parliament. I would also like to say the Serenity Prayer:

> God, grant me the serenity to accept the things that I cannot change, the courage to change the things that I can, and the wisdom to know the difference.

Amen. I would like to address the Parliament. I am Colin Chatfield, a Gamilaraay warrior and the father to Tane Chatfield, our beautiful son, who became a victim of black deaths in custody. I am also the father to 10 other children and a grandfather to 10 grandchildren, with another one on the way. Politicians sitting before us today, thank you for allowing us to speak on behalf of all Aboriginals. We have been through so much trauma, heartache and pain. Our lives have changed, and the nightmares that continue to this day do not help heal our suffering. We as a family have not been the opportunity to have grief counselling. A lot of people have offered, but not one has come back with an appointment time and place for our family.

My wife, Nioka Chatfield, said from the start that we have been locked in a dark room; I believe it was from the moment we approached our son laying in the hospital bed, with Tane attached to a life support machine with ice bags around his body, a fan blowing and nothing but a pair of hospital socks on and a wet sheet laying on his body. Tane also had bruising and cuts on his body, blood and skin under his fingernails and a broken nose. We believe our son was already dead, from the suspicion of the Corrective Services NSW officers and the hospital staff. Their body language was highly intense and their nervousness brought suspicion to our family that Tane did not do this to himself. We believe that the investigation into Tane's death was appalling and outrageous.

From all this trauma and suffering, we now as a family are calling for an independent investigation into black deaths in custody and for all First Nations people who are sitting in prison on remand to be released immediately. Tane sat on remand for just under two years without a court date set for his trial. For two years our innocent son sat behind those prison walls. When he finally got his moment in court, Tane proved his innocence in a two-week trial. On the day he was to be released he was found dead, hanging in his cell. We believe that he did not inflict this upon himself, regardless of the Coroner's findings, which we found very appalling. We want all of the families that go through the NSW Coroners Court from a black death in custody to be involved from day one with the investigations, and for a fresh royal commission to investigate the failures of all major parties.

We need to fix this law where they investigate their own. We need to fix the corrective services system to protect our lives and others at risk. Tane's second chance offers this solution. I have been in the prison system the majority of my life. The system is a complete failure. All medical staff for Justice Health need to have regular and professional training. It needs to be addressed, so that they know what they are doing when emergencies arise so they can save lives. The coronial shows the lack of duty of care in the justice system. It did in son's case. We also need all hanging points statewide and nationwide to be removed immediately or abolished in some way.

I ask all Parliament members to find it in their hearts to listen to what I have said today and make a truthful decision—one that counts, that helps make a change and saves lives. As quickly as three days after Tane's death, Corrective Services NSW was giving themselves a clean bill of health, saying, "There is nothing suspicious here. Nothing to see". How can a system that put them there in the first place ever be fair? How can it be, when it is a big conflict of interest—investigating their own? I find that it is a monster's loophole. How could our son Tane get a chance? He never could.

I find that there is a lack of facilities to rehabilitate inmates from behind those walls. We need to train, educate and employ more Aboriginal workers from in the prison system to fulfil the need of First Nations people

and to help stop black deaths in custody, so families like ours do not have to suffer and have to wait three years to get a coronial insight and painfully wait for the fight for justice. It is the fight for justice that is killing our people. Only an independent investigation will bring the truth. We need to save lives and keep our people out of prison. Who will help us to stop black deaths in custody? If our Government will not, who will? There are more deaths than there are recommendations. We need to address the political will to implement the recommendations to stop the massive over-representation of Aboriginal people in jails, Aboriginal people being refused bail, Aboriginal people getting longer sentences or getting a prison sentence when a non-Aboriginal person in the same circumstances would not. There is prejudice written all over it. It is a prejudiced criminal system; I have lived it—two years without a trial for my son.

His death should have been prevented. If people were not put away for long periods of time, this tragedy we face today could have been avoided and we would have our son back at home. Jho'Arryn, Tane's six-year-old son, would have his dad. Our parents would have their grandson. His aunties and uncles would have their nephew. His siblings would have their brothers and sisters with him alive. Australia's political system is broken. As Aboriginal people, we never really get a chance. We will continue to say the system killed our son. We are not born to die in prison. Thank you.

Ms NULLA CHATFIELD: My name is Nulla Chatfield and I am Tane's second youngest sibling. I would like to acknowledge the Gadigal people, past, present and emerging on whose land we stand on here today. Since Tane passed my family has not really been smiling that much and it shows something is missing, and that something is Tane. It is hard that I lost Tane so young; it is hard for all of us. He went too soon. Arryn, Tane's son is always asking, "What does my dad sound like?", and I cannot really answer that because I am forgetting what he sounds like, and that really hurts me.

I am here speaking today for my brother because I know he would be proud of me. I felt lost when we lost Tane. It was hard hearing people talk about him around me. It was hard going back to school after his death because I had people running up to me asking if I was okay, and then I would just walk away and cry. It is hard saying this right now because I cannot even talk to my family about it. I am meant to see a counsellor but I will have to let it all out at once. It is hard being around my brother Mervin because he sounds a lot like Tane—looks as well—so I kind of stay away, and it hurts me because he is my best friend and keeping away from him is affecting our relationship.

Throughout these past three years it has been rough for our family. We are all going through things that nobody ever should go through. I do not want to see any mothers or fathers crying, I want to see smiles and joy. Nothing can bring Tane back but he is always going to be with us no matter what. We will always hang on to our memories; I do not have as many memories with Tane as much as my older siblings but that is okay. We all have had fun times with Tane and that is what counts the most.

I feel lost inside and it is like something is burning me deep down. It is hard seeing photos of Tane around but it is good, so I will never forget what he looks like. I was only 11 when we lost Tane. He has missed three birthdays of mine and around about four of his son's, Jho'Arryn. It is sad seeing Arryn not have his dad around and knowing that all of the other kids around him do. He gets really sad and lost and then he starts to ask questions, like when he asked his grandmother, what does his dad sound like? It is hard hearing these words come out of such a little boys mouth—that his dad has passed away.

Ms VALE: Firstly I want to thank God for this opportunity to speak here today. My name is Lesley Vale; I am the grandmother of Tane Chatfield. I would like to acknowledge the Gadigal Elders, past, present and emerging, on whose land we stand here today. On 20 September 2017 all our lives changed. There is an empty void in all our lives and gets even more empty when we look at Tane's son Jho'Arryn, knowing that he will never see his father again. Tane has never seen Jho'Arryn start preschool or primary school. He will never see him receive an award or play sport and will never see Jho'Arryn graduate from high school, go on to get a job or grow up and get married and become a father himself. Jho'Arryn's grandmother, Nioka shared a story with me that he asked her, "Does wishes really come true?" Because every day, every year he has wished for his father to come home because he wants to hear what his voice sounds like. Because he was too young to fully grasp what was happening but as he has gotten older he is realising that his dad is not coming home.

I would like to talk about the importance of why a healing centre is vital for Aboriginal people and the outcomes that could be achieved if a solution is resolved by Aboriginal people in government. Aboriginal people have been affected by intergenerational trauma for generations because of the impact of colonisation—being classed as flora and fauna, not even recognised as human beings, denied our identity, were not allowed to speak languages, pushed off our lands and put on missions with mission managers watching our every move, not to mention all of the massacres that have occurred throughout our country. You go to a lot of towns and you will see

three things on the outskirts: your dumps, your cemeteries and Aboriginal people. We need alternatives for Aboriginal people that are being incarcerated. They need to be able to connect to culture and to the land. I have three birds that tell me three different things. The magpie tells me we are losing a loved one. The willy wagtail brings me visitors—if he comes close to me, I know it is a close relative. The plover lets me know that it is going to rain. This knowledge was passed on to me by my parents.

The year 1788 is a long time to 1954, when I was born, and I would like to tell you a personal story of the impact of intergenerational trauma. When I worked in Armidale for the Women's Domestic Violence Court Advocacy Service, I came to Sydney for a workshop. I cannot remember what it was, but they put us into two groups and asked us to draw a map of Australia and what we thought it looked like before colonisation. As I walked around that table, I had no control over what happened to me. I fell to my knees crying uncontrollably. When I finished, I thought to myself, what power did drawing that map have and what did it unlock in my life? And if that was in me, what is in my mother? Then when I did my diploma at the University of New England in Aboriginal family and community counselling, this day when we were in the lecture room learning about learned helplessness, I then saw the whole impact of colonisation. Learned helplessness cares when an individual or a race of people feels helpless by something that has been caused by a traumatic event.

Another reason why a healing centre is needed is because of the implementation of assimilation policies by government with the intention of breeding us out—that we would all eventually become white—and is quite evident with the Stolen Generation, which was very traumatic for the families when the authorities came to remove the children. How are people expected to cope with that trauma? My father's older sister was taken and they never saw her again. They talked about her to us; she was always in their hearts. But where could they go? They could not go to the police to say she was kidnapped or make a missing person's report, but it is expected of Aboriginal people to just get over it. This is one of the reasons why Aboriginal people will not access services where there is no Aboriginal people employed. Thank goodness for a Prime Minister like Kevin Rudd who realised the pain and suffering of all the trauma that the Stolen Generation had gone through and had the decency to say sorry. That we thank him for. No one is born a racist, it is taught.

I want to share some of my memories of the 1950s and 1960s of being served last when we went into shops, sitting in different sections when we went to the movies, being called "black" all the time after school and then fighting the bullies who said it to protect my younger siblings, always having the fear of the welfare coming to take us for no reason. I still carry the trauma today, always looking over my shoulder. My sister told me a story of a day where mum and dad had gone to get some work which they had to walk over five kilometres. She was looking after us younger siblings and the welfare came and asked where mum and dad was. When she told them, they said they would come back. She then took us and hid us in the bush until mum and dad came home.

We are very thankful for Charlie Perkins and the Freedom Riders who made change, and the ones that continually do so before and after him. Throughout the trauma over the years, our mum and dad taught us what sacrificial love was all about. She helped her sister with her 10 children, and her brother who lost two wives with their 12 children. My final reason that a healing centre is greatly needed is the ongoing oppression our people still continue to suffer. Oppression is a prolonged, cruel, unjust treatment of the exercise of authority. Oppression is a word that Aboriginal people know and still live. It is something we have learnt to normalise. I have heard in many meetings and workshops that prevention is the best cure. We do not see this happening with our young people who continually get harassed by the authorities, which is very traumatising for them. Tane was sent to juvenile detention at the age of 14 for writing "Tane. C" on a wall. Where was the prevention and justice in that? There is nothing in our towns for young people, but there are is a pub on just about every corner.

In Tane's last time in custody, he was on remand for two years. When he attended court for his trial—he was going to be acquitted and was coming back to court—he told his sisters to buy him a red shirt and tie. That was the last time they heard him speak or saw him. He was very happy about getting out and coming home to his partner and little boy. That is why I will never believe that a person who knows they are getting out of prison would purposely hang themselves. Tane had everything to live for and the family needs to know: Why was he discharged from hospital without discharge papers? Why was he put in a cell by himself? As a worker in domestic violence for over 20 years, through Safer Pathways we are able to get a safe bed for pets, but where was Tane's safe cell? And why was he put in a cell by himself with a hanging point? They are two of the recommendations of the royal commission into black deaths in custody. Is anybody going to be held accountable for it? As far as I am concerned, it is a lack of duty of care.

But then, a recommendation does not carry as much weight as law does; it is only a suggestion whereas a law is a binding document. And if there cannot be an independent investigation into corrective services, what are we doing with a prime minister in this country? Even politicians such as Barnaby Joyce can be investigated.

A positive step in the right direction would be to support us in the establishment of a healing centre. We need you to listen to what we all have to say here today, and that is: Black lives do matter. Everybody needs a second chance, so give us Tane's second chance. I want to finish by saying this for Tane: I wrote your name in the sky, but the wind blew it away. So I wrote it in the sand, but the waves washed away. So I wrote it in my heart and that is where it will stay. Rest in peace, our grandson.

Ms CONNOR: Firstly, before I proceed, I would like to acknowledge and pay my respects to the traditional owners, the Gadigal people past, present and future, on whose land we stand on today. My name is Merinda Connor. I am the partner of Tane Chatfield and the mother of Tane's son, Jho'Arryn. I would like to thank the politicians seated before me for enabling us this day to sit in front of you, for allowing us to show you a glimpse of what we feel inside of our heads and our hearts, and what we go through after losing Tane. Before Tane passed, we were together for five years and had a son together.

We met in 2012 when I was 16 and he was 17 in Tamworth at his brother Alister's eighteenth birthday. Tane's cousin Jeremy had introduced us and from that moment on we were struck. In June 2014 we welcomed our son Jho'Arryn into the world. It was both mine and Tane's happiest day of our lives. Watching Tane be the dad that he was and seeing how much his love grew for his son over the next year after Jho'Arryn was born is one of the things I will cherish the most, and will always tell my son how much his dad loved him. Tane got locked up a little after Jho'Arryn first birthday and was on remand for almost two years before he died.

I am not going to sit in front of you here today and say that mine and Tane's relationship was perfect, because it was not. We had our ups and downs like every other couple, but the time he was incarcerated was the hardest for us both because I was out here trying to raise our son by myself, and because all Tane longed for was to be out here with us and his family. Regardless of what happened between Tane and I, we always pulled through and stuck by one another. When Tane passed, he was nearing the end of his trial and looking at being acquitted. He was so happy that he was looking at finally coming home that he asked his sister to get him a red shirt and a red tie. His Aunty said, "Is it so you can come home red-hot blazing?"

But on the morning of Wednesday 20 September 2017, I received a phone call that changed not only mine and my son's lives but also our whole family. From that day on, none of us have ever been the same. When Jho'Arryn seen his father laying on the hospital bed, he was scared to get too close because of all the tubes that he seen hanging out of Tane. Even though Jho'Arryn knows Tane is gone, he still cries, hoping and asking if he can see his dad at the hospital again. Instead, he has to sit at Tane's gravesite telling us how much she wishes his dad was still alive, and how much he wants to see his dad again, and asking if we wish heaven had a phone because he wishes he could talk to his dad.

There are no words to explain how I feel to see how much hurt and pain is in my little boy's eyes, especially when he sees other kids with their dads, knowing he will not get that opportunity with a dad; to have him asking if dreams and wishes can come true because he wishes to have his dad back and dreams that his dad is coming home to him; to have him asking what is dad sounds like because he cannot remember; asking what his dad was like because the only memory he has of his father is from his first birthday party when Tane was holding him and playing footy with all the other kids. The way he related and expressed his feelings and emotions about losing his dad was during the scene from *The Lion King* when Mufasa dies and Simba is standing over him, begging him to wake up and come back. For a little boy his age to draw such a powerful image to express himself, that pretty much shows how extreme his pain is and how he feels every day to know his dad—or Mufasa—does not wake up.

Ms NIOKA CHATFIELD: Good afternoon all. We had just been home around two days from our son's inquest and I received a phone call saying that they wanted us to put in a submission to Parliament New South Wales. My response was I never even unpacked my bag from the last trip. But yes, we will give it a go. I do not know what they thought or think that we are. But yes, we will still give it a go. Politicians, I would like to offer you this hour of your time to think about your backyard. Not the backyard you water at your holiday house in sunny Queensland or the one you live in upper-class Sydney.

Let us talk about the yard that you allowed droughts to take place when you have your own Aboriginal man that knows how to find water and the clans that know how to do the rain dance. The same backyard where the bushfires destroyed the lives of many people, when you have your own Aboriginal man in your backyard that can teach how to backburn. Two events I have named so far that have pushed the Australian dollar rising high like them flames were when they were burning people's homes down. Yet in my lifetime, I have seen that this lucky country is only lucky for the upper class citizen or the people who come from a war-torn country.

Given a second chance not only all Aboriginal stories and song lines are myths. We are always painted with the same black tar brush you painted her ancestors with. What a shame that is and we live in 2020. Why will not Australia acknowledge that we, as an Aboriginal race, lived in peace in Australia and survived without a supermarket? My great grandfather, King Bubby, the king of the Gumbaynggirr tribe, could have helped if he was allowed to pass his knowledge on but he was not to do so. I am Nioka Chatfield, mother to my beloved son, Tane. I thank you for this opportunity to stand once again on Gadigal land and to acknowledge past, present and future custodians of this land. I also want to acknowledge all political parties sitting listening to me today.

On 20 September 2017 I had found my baby hooked up to a life-support machine when his life should have been just starting. Three painful years I waited to hear about what had happened to my son, who was innocent and who was going to come home after two years on remand behind those prison walls—a prison that was supposed to be catering for all his needs yet they investigate their own when they locked him in the cell on his own with those hanging points. After he came home from hospital the night before on 19 September the nurse did not even read the discharge papers as they were not any.

Us, as Aboriginal people, always seem to come last in a lot of things. Not that we are not good at anything—us Aboriginal Australians—we are quite a talented race I would have you all know. It is because we get pushed back to the end of the line in our own country because people still have the mindset that we are all mad black bastards, as they called all the fathers and mothers that went clean of their head when the cruelty of the Australian system stole their children away and sent them miles away on a train and tried to breed the dirty black stinking black out of us all. I recall those words coming from my grandmother's mouth and hear the people in 2020 still saying, "Well that did not work".

So Mr Kevin Rudd said sorry. But I want to say we have our sorry now and it is time for action. Now it is time to have conversation to me and to my family that have suffered on a daily basis without any help from the people that inflicted my pain. It has been near three years as I see myself going into the intensive care unit [ICU] in Tamworth Hospital that is straight across the road from Tamworth Correctional Centre, which took near 65 minutes to get my son just across the road—65 minutes. Like I said he was in the hospital the night of 19 September but was then later discharged and returned to the jail and on the morning of 20 September he also returned back to the hospital a second time, as a hanging victim.

To protect him is something they did not do but they still investigate their own. My beautiful 22-year-old man, who left a six-year-old boy who does not even know the sound of his father's voice. That same system killed my son because Australia continues to let them investigate their own. So no one is accountable for the modern day massacres or the black deaths in custody where they have the coroners backing them all the way because they do not want to pass it down to the Director of Public Prosecutions' [DPP's] office because the lucky country has a thing called the code of silence.

Tane never had a chance and neither did we. I am sorry to mention deceased Aboriginal names but neither did Aunt Tanya Day, nor Rebecca Maher, Nathan Reynolds or David Dungay's families. I am here to ask you politicians that have the power to change laws, move with an ever moving world and help your First Nation people—the Australian citizens—and make a difference. My heart burns for my boy every day. I got told I cry in my sleep for my son. What happened to Tane we will never know because we never had the opportunity to see into his last hours of his life or into the cell as no correctional officer had a camera vest on.

Then it took about 20 minutes before a handheld camera came on the scene and all we got to look at was the officer's back. We need families to be able to work closely with the families when a black death in custody occurs from day one of the investigation so all parties in the coronial know what is happening so no one is left in the dark. Our son's daughter is not a myth. I am asking the Australian Government to stand with the Chatfield family today to make change where needed so we all can call Australia our home without the genocide and move forward respectfully together, equally. Tane's second chance offers a solution to help implement change for traumatised Aboriginal families that suffer with inter-transgenerational trauma that can offer less incarcerations of Aboriginal peoples and for people to stay on Country and to heal. Who will help us? Find it in your heart to make a truthful decision. Together we can live in this country peacefully. That is all I am asking. Tane never got the second chance but maybe today we might get the healing centre that can save so many other Aboriginal peoples lives'. Let us make the right choice. Let us make a start today. Thank you.

Mr GIBSON: Thank you Nioka. I will make some quick comments. I have worked supporting this family since the death in various ways. I worked very closely with the family through the recent coronial inquest. I would just like to draw your attention to a comment that was made in the inquest findings by Harriet Grahame, the coroner, where she said:

> [Tane's mother] told me directly that Tane was killed by the prison system. I acknowledge the truth and pain of her words.

That is the Coroner finding that the prison system killed Tane, even though she ruled that it was a suicide. Sitting on remand for two years, hanging points in the cell that Corrective Services said had not been removed because it was a heritage building and it was hard to remove hanging points from a heritage building, a litany of failures while Tane, a man not yet found guilty and sitting there for two years, is actually incarcerated—there are a whole range of reasons for the pressure that that prison put on Tane. I think one of the things, in terms of what you have seen here from this family's pain and contribution—their attitude to the inquest and investigation really illustrates a central point that a lot of organisations have submitted before this inquiry. What we need is a body that is completely independent of the police and the corrections system that can actually be first on the scene responding to a death in custody.

They can be the ones collecting evidence, taking the statements, that actually engage with the family and make sure that they are engaged from day one with the investigation process and are fed in. Because no detectives came and spoke to these guys about Tane and what his life was and what might have gone down. Corrective Services provided very slim information as well. For two years or more the family had no answers at all about what might have happened and did not see the video footage that was available and were not provided with fundamental evidence. It was a botched investigation. That needs to be said. Two days before the end of the inquest, it became apparent in the courtroom that there were actually two nooses found in the cell. No-one could explain to the family why there were two nooses, which one was actually around their son's neck, how he might have actually died and what this forensic evidence had to do. You have seen in the report that things were removed from the cell. There were apparently some drug paraphernalia and other things that were just gone, so they were not able to be included in any investigation.

Here you have really lax things around—someone has died. People years on are finding out towards the end of an inquest that this basic evidence—it cannot be explained why this evidence is missing. Even though the inquest process itself was actually one of the best I have seen—Harriet Grahame provided a lot of room and space for the family to talk and give their perspective on everything—we are talking about so far after the fact when all of the business end of an investigation has long passed and the family have been left for years to sit there and come up with their own understanding of what has actually gone on. That is why we say it must be independent, Aboriginal-led and able to actually engage with families if we are ever to find peace and there is ever to be something that resembles justice following a death in custody.

I will leave it there. Even if you accept the coroner's findings and I actually do, I understand why the family does not. If we are to come to a situation where people actually find some peace and truth, this has to be taken out of the hands of the police. We have heard what the police actually mean and the relationship they have had with Aboriginal people over many years from the family here today throughout their lives. Harriet Grahame said herself that there is no way that Tane, when he was feeling so distressed in those final moments, could have reached out for Corrective Services for help because of what they represented in his family's life and the way that he had suffered abuse at their hands over many years. He could not reach out to Corrective Services for help at that crucial moment. Why do we think that Aboriginal families are going to be able to rely on an investigation that police and Corrective Services are essentially involved in? I will leave my comments there, but I think it is very illustrative of why there needs to be fundamental root-and-branch change in how we actually go about investigating deaths in custody. It is one of many things that need to change. He should have never been there in the first place.

The CHAIR: Thank you. On behalf of the Committee, the Chatfield family has our most deep-felt condolences for their loss. Nothing we can say or do can remedy that, but we thank you for your insights and your powerful evidence here today.

Mr CHATFIELD: We would also like to thank you as well for giving us this opportunity and listening to us and what we are going through. We really thank you from the bottom of our heart.

The CHAIR: We thank you for that acknowledgement. It really is the least we can do.

Mr CHATFIELD: Thank you.

Mr DAVID SHOEBRIDGE: Can you tell us about the healing centre and what the plans are, Nioka?

Ms NIOKA CHATFIELD: Yes. It was a dream that I had 22 years ago. It stayed in the back of my mind. I think I wrote it down when I was about 25 and I just sort of left it. Then we get to the inquest and somehow it came out in our conversation and I wrote it down. A friend said, "Well, Nioka, this could work. Let's do this." Then I get home. It is a healing centre. The image in my head that I drew on paper is a healing centre that is an eco-friendly, sustainable-living, edible-landscape property that has two 10-bedroom houses, nine cabins, a multi-purpose building and an admin building. It is a program that I had continued to see work in my head.

Because I have never been on heavy drugs or drunk alcohol, the services in our hometown always refused me in anything that I had asked for because they said I needed to have a problem before they could fix a problem that I did not even have. So they wanted me to go away and get a problem before they could help me.

It continued not to make sense. I thought that, if I do not use drugs or drink alcohol and I do that, then they are going to help me. Then I could get my kids taken off me. Living the life as a prison wife and also living in society as a sober person, I had to find a solution through that dream in my head where it was going to work for all of us because it was so hard to find somebody that could help fix me. I found out that I had trans-generational trauma all along. The second that I found out that I was actually normal, it was like the sky got painted blue again. Because everything that I thought was dysfunctional was normalised to a traumatised person. Scientific facts through Heal for Life show that. They have a property up in Cessnock, which is the same. I am great friends with Liz Mullinar.

She has offered to educate me into facilitating my own healing centre. It has been a conversation with me and her for around 10 years now. I will learn to facilitate Tane's second chance myself, with my mum being an Aboriginal counsellor. I think it could work between the lot of us. But it is somewhere where somebody can have a fixed address. It is a place of safety and on country where they can heal and where they have that equal right to be able to sit in a safe room and say that they have a problem without being judged. It is working with the victims to be survivors and not just to live but to thrive to live. As Aboriginal people we need to come out of a lot of our mindsets because of something that was—it was like blankets being placed over our lives without even wanting them on there, but we just had to continue to try and live through it. But when I had that dream I woke up and I thought, "Wow". It was something that I saw really work.

Mr DAVID SHOEBRIDGE: Ms Vale, you have worked inside the system as well. When you think about the ability of having a healing centre—having some trauma-informed counselling on country, delivered by First Nations peoples—is that part of the solution, do you think?

Ms VALE: Definitely. Knowing the experiences I have had, like with drawing that map, and many other things in my life that I have not shared today, they are so important. I miss the old days of sitting around campfires with the old people—and now I am the old people. My mum passed in September. She lived to be 94. She lived to see five generations of us. We have just gone to her birthing tree. I always knew that she was born under a birthing tree, but we did not know it was actually still there. We all got to go there. That was something that was just amazing. They are things that you cannot explain—like when the birds come and I know exactly when it is going to rain or when I am getting visitors. These things are important to Aboriginal people.

When we were growing up, and we walked through the bush when we used to go and get our witchetty grubs, we were taught about listening—the deep listening. You listen to the bush and the bush will tell you a story. These things you do not see in these generations, but I think if we had a place where we could help them come back to that place it would make a lot of difference. What has always bothered me with—I have seen a family at court in Armidale. How does it work that a family can be taken to court over a child who does not go to school at 16, but the police will not bring a 15-year-old home? How does it work? We need to get our younger generation where we can sit around campfires and go back to that—and maybe take some of their technology away!

Mr DAVID SHOEBRIDGE: Everybody has that trouble, Ms Vale. Before I hand over to Ms Sharpe, could I ask you about the two years you spent after Tane's death waiting for answers and the lack of information? You never had the brief. You never had the evidence in front of you. Can you talk to us about that, and what it was like not really having anything—not having any evidence for those two years?

Ms VALE: It is like in limbo, isn't it?

Ms NIOKA CHATFIELD: It has made me actually age eight years older than what I actually am. It has physically taken a toll on my body. Me and Colin both now have chronic illnesses. It makes a person, or a family, physically sick. The part we got was that we could have an emergency visit with him. We also got the part where they said he was found hanging. The part that we did not get—and without no information, and no-one would talk to us—was the part that we found him naked. Watching crime shows, when somebody is found—to me, in my head, somebody that was found naked was a special victims unit [SVU] victim. Where were my boy's clothes if he was a suicide victim? They say that he committed suicide, yet who stripped my boy of his clothes? That is what I could not understand. Why was this investigation not taken more seriously than it had been?

Mr CHATFIELD: They took his rat's tail as well. They cut his rat's tail off.

Ms NIOKA CHATFIELD: Yes, they even cut his hair that he grew from the age of 13. It was only plaited the Saturday before, when the girls visited him. Then we get up to ICU and we find out that his hair has

been cut. To do that to a deceased Aboriginal person is just beyond—I would never do it. There is just so much wrong in that. But to have them have no answers and to say that they were not suspicious, and to act like that in front of us at the hospital—and even for the nursing staff to act suspicious—what were we supposed to think? It was like if they just shoved us into that room and just said, "Look, go in there and talk about this and youse will get over it, until we are ready to open the door again, because this is what we believe that you deserve as a family: that you don't have the right to have answers to what happened to your boy".

But little did they know that this was my second-oldest boy in my family—four boys and six girls. I love each and every one of them equally. My girls will tell you different, because they say that Tane is my golden son. I never went anywhere that he did not go. One day I pictured myself sitting in the backyard looking up to the sky and saying, "If you were not born, my boy, well then maybe you wouldn't have died on me". It felt like a thousand meat ants under my skin, where I wanted to scratch them out. The pain cuts so deep when it is a silence that you have to think about—when you are on your own, in the kitchen where you used to once smile and cook. I have cooked two home-cooked meals for my family in my kitchen in the last three years. Before that I used to cook all the time. But it does not feel like I have a family anymore, because one boy is missing.

Mr DAVID SHOEBRIDGE: Nioka, you pretty clearly have a family.

Ms NIOKA CHATFIELD: I know. David, I see them in front of me, but it doesn't feel right here in my heart. Nobody has the right to take anybody else's baby away from them. To have no answers—I felt like I was left sitting on a riverbank and they had just ripped my baby out of my arms. How can a woman lay in bed and be woken up at 2.00 a.m. by her husband saying, "You're howling in your sleep for your boy"? I believe my spirit went wandering, looking for my boy in my sleep—but I could not find him. It hurts. It hurts, and not me, as an Aboriginal woman, or any kind of race, female or male, that any parent have to go through what I suffered, nor Colin. And I pray and I hope that it will never ever be you that is sitting here in front of me.

It is just so wrong to have no answers when people have folders of evidence knowing what had happened. What got me was the Commissioner of Corrective Services being here in Sydney. He was not at the jail that day when this happened to Tane, but he stands on television and spoke like if he was. He said, "We are not suspicious." But, yet, the Governor was there. The Governor was not on the premises at the time, so somebody knew the story and nobody wanted to tell what had happened. It has been this long and it is still too raw.

The Hon. PENNY SHARPE: Thank you very much for coming along today and thank you for speaking to us. Most of the issues have been covered through your submissions, and I thank you for that. From the time that Tane died, it was obviously years before you got to the conclusion of the coronial inquest. At what point were you liaising with the police? It obviously goes for a long time and we have had quite a lot of evidence on this and it is a very long process. You are frustrated by the fact that Corrections has already given themselves a clean bill of health through the media, but I just wanted to know what your interaction was with the investigation itself.

Mr CHATFIELD: We had no contact with police at all, at any time.

Ms VALE: No.

Mr CHATFIELD: No-one come to see us to tell us what was going on. Like I said, my wife, at the early stages, we were just pushed in the dark room and just left in there—door shut on us—not even a match to light to find out where we were. We were left in the dark all the way right up to the coronial.

Ms NIOKA CHATFIELD: I think it was five weeks, but it could have been longer, that we had one meeting with Corrective Services and they had come to the Armidale Medical Centre there in Armidale, and they had given us some of Tane's things back that they said were in the cell. They did not even send the police to our door to say that we would find him like that or we could have a visit with him.

Mr CHATFIELD: Or go pick up his stuff.

Ms NIOKA CHATFIELD: It was five hours later that we got the phone call from Merinda and she just said, "Did anybody contact you from Corrective Services?" and I said, "No. Why?" She said, "They said that we can have an emergency visit with Tane." We was all expecting Tane to be sitting up in a chair. I had a little image in my head, and I am thinking, "I wonder what they did to my boy. I wonder if he is busted up." But I expected him to speak to me when I got there and to see him attached to that life support machine, and there was no one in authority to sit there and to—

The Hon. PENNY SHARPE: You just came in to see him and then you just left the building, and that was it.

Ms NIOKA CHATFIELD: Yes, the nurses said that we are going to give you—

Mr CHATFIELD: As we got in there we were smothered by the officers. Me girl is leaning over him and here is these officers leaning over me girl. Like, what are you doing? Get off her, man. We are here for a visit with our son. So they more or less just smothered us.

The CHAIR: But there was no preparation of you for what you were about to see when you got to the hospital?

Ms NIOKA CHATFIELD: No.

Mr CHATFIELD: Nothing.

The Hon. PENNY SHARPE: Nor anything when you were leaving about what happened next.

Ms NIOKA CHATFIELD: No.

The Hon. TREVOR KHAN: Sorry we can just find out, if you do not mind, what Merinda had been told? I take it, Merinda, you were identified when Tane went into custody as the next of kin. Would that be right?

Ms CONNOR: Yes.

The Hon. TREVOR KHAN: So do I take from that that contact came to you because that is what the records for the prison or Corrective Services showed?

Ms CONNOR: Yes. I got a phone call from the welfare worker at the Tamworth Correctional Centre at the time, and she called me and said there had been an emergency with Tane, he had been found unresponsive in his cell and had been taken to hospital, but he was in a stable condition and if I wanted to know anymore, to ring the hospital. As I rang the hospital, they told me the exact same thing that the welfare worker told me—that he was found unresponsive in his cell but he was in a stable condition. We got to the hospital and here he is laying up on a life support machine.

The CHAIR: So to be clear, you were not prepared for what you were about to see either?

Ms CONNOR: No.

Ms VALE: When we met with the Governor that day or evening—going back to that noose—I asked him how Tane did it and he said, "With a piece of blanket." Then when we met with the Deputy Commissioner up in Armidale, I asked him how Tane did it. He said, "A piece of green sheet." I said, "So, how did a piece of blanket go to a piece of green sheet?"

Mr DAVID SHOEBRIDGE: Again, you never had the evidence for two years—

Ms NIOKA CHATFIELD: Yes.

Mr DAVID SHOEBRIDGE: —and you are just filling up all the gaps.

Ms NIOKA CHATFIELD: Yes, and they said that he hung himself standing up, kneeling down, and two o'clock one morning I had just finished reading the Eddie Murray book, and I rapped Colin across the chest and I said, "Get up." I said, "We have just got the same story told to us 30 years later. The same story that Eddie Murray's parents got told how they found Eddie in the Wee Waa cells hanging standing up, kneeling down.

Mr CHATFIELD: Even with the forensics—we ended up with two forensic reports somehow. We got in contact with National Indigenous Television so we could have somebody stand in while forensics was doing what he did on Tane—whatever he had to do. When the all clear was done and he had done up his paperwork and so on and so forth, on the way back to Armidale, the Local Court Magistrate Prowse does another autopsy on his own. Therefore we got reports and one autopsy saying that his time of death is at the hospital, and you have got Prowse's report saying the time of death is two days earlier in prison.

Ms NIOKA CHATFIELD: Place of death. No, "Place of death: Tamworth Correctional Centre. Date of death: 22 September, Tamworth Hospital." That is on the death certificate; it does not make sense. We was just so confused; it manifested and it became anger in our family. To see all of them girls—a tightknit family that stuck like that. They are all 10 months apart and I sat them around when they were little, and I said, "Can you go outside and get two sticks?" They did that. I let them break one and the other I put in the circle. Then I walked away and I tied a ribbon around all of them sticks. I said, "Try and break this. Together we will not be broken—if we stick together." And all of these little kids got that workshop in their head—that if they stick together that they could not be broken or hurt. It represented strength and for someone to come along to take out the link that carried the majority of the strength just let everybody fall to cookie crumbs. Three of the sisters do not talk. Our daughter got married on Saturday; she had one sister in her wedding because the family is broke.

Mr CHATFIELD: They are even smoking ice and stuff now, and they did not even touch it before—ever in their life. But they have been affected by it that much where, I do not know what it is doing to them or what they are expecting from it, but, as I see, all it is doing is causing more conflict and both the girls are coming home and they are arguing to the point with me and the mum and so on and so forth. This is things that we have not experienced as a family before.

Ms NIOKA CHATFIELD: All these children were top-of-the-class students. They always got called the smart Aboriginal kids, so sometimes they would go down a class or go down two to fit in with the crowd or whatever. Top students that wore blazers and ties to school every day and it has just destroyed them. They hardly touched drugs or they did not touch drugs but the occasional once in a blue moon alcoholic beverage. A couple of girls have started smoking ice. They said when I confronted them, "We want to know what it is like not to go to sleep, so we do not have to dream about our brother."

Mr DAVID SHOEBRIDGE: You never had counselling offered either, did you?

Ms NIOKA CHATFIELD: Pardon?

Mr DAVID SHOEBRIDGE: The family was never given any counselling through all of this process?

Ms NIOKA CHATFIELD: Never. Not to this day.

Mr DAVID SHOEBRIDGE: I find it impossible that it did not happen, but we have run out of time.

Ms NIOKA CHATFIELD: Yes, thank you.

Mr CHATFIELD: Thank you very much.

The CHAIR: I would again like to thank you for your insight and evidence. You have our deepest condolences. We can only imagine how difficult it has been for you to relive this by coming to the Committee hearing and giving this evidence, but we thank you for it.

Mr CHATFIELD: Thank you. It is helping us in a way as well.

Ms NIOKA CHATFIELD: The conversation has to start somewhere.

Mr CHATFIELD: Knowing that somebody who cares is out there looking out for us, so it is not falling on deaf ears after all. We thank you as a family.

(The witnesses withdrew.)

The Committee adjourned at 16:33.