

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 Monday, 7 December 2020

The Committee met at 9:07 am

PRESENT

The Hon. Adam Searle (Chair)

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

The CHAIR: Welcome to the inquiry of the Select Committee on High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody. Before I commence I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the land on which we meet today. I pay my respects to the Elders past, present and emerging and extend that respect to other First Nations people present. Today we will be hearing from a number of stakeholders, including the NSW Police Force, the Law Enforcement Conduct Commission, government departments, industry associations, the relevant trade union and a family who has lost a loved one in custody. I thank everybody for making the time to give evidence to this important inquiry and to assist us with our important work. Today's hearing is open to the public and is being broadcast live on 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 broadcast guidelines, I remind media representatives 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 this hearing. I therefore urge witnesses to be careful about any comments they may make to the media or to others after completing their evidence here today. Committee hearings are not intended to provide a forum for persons 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 terms of audibility of the hearing today, I remind Committee members and witnesses to speak into the microphones. For those with hearing difficulties who are present today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, would everyone please turn off their mobile phones or set them to silent for the duration of the hearing.

ANN WELDON, Aboriginal Liaison Officer, Public Service Association of NSW, affirmed and examined
SHAY DEGUARA, Industrial Manager, Public Service Association of NSW, affirmed and examined

The CHAIR: We have submission 118 from the Public Service Association [PSA] of NSW. Did you want to make a brief opening statement before we commence questioning?

Mr DEGUARA: We might do that. We had an Aboriginal council meeting last week in Newcastle where we have members from across different agencies, from different nations within New South Wales, and we put together a bit of a summary of some of the thoughts that they were having in relation to this inquiry. They wanted to thank the Parliament for examining this issue; it is key to the work that they do. It is an issue burning at the heart of Aboriginal people and their communities. There is too much incarceration of Aboriginal people in New South Wales. The stats do not lie, basically.

There are many stories from the Elder members and older members of the council about how they have lost family members and they have had members changed irreversibly from their time in jails. There have also been stories about people being arrested for nothing more than having relationships with a person with the wrong coloured skin. What they did stress is that before Europeans came they had no need for foster care, they had no need for police and prisons, they did not have high unemployment or any unemployment, really.

Everyone got taught all the skills and had high literacy rates in their languages and the skills that they needed to live with their land. They did not have problems with housing, drugs, access to food or neglect of anyone. They operated in balance with their land and the community and with each other. There are a few things in the public service where we cover a whole range—a whole gamut of close the gap targets and in that regard we have dealt with a lot of those inside of our submission. The higher rates of incarceration should be looked at as a symptom of the upstream issues happening earlier not only in Youth Justice but in education, in child protection and other areas as well. We recommend that all the royal commission into black deaths in custody recommendations are adopted and we recommend more robust achievement of the close the gap targets through measures to keep people out of jail and to build up communities.

Mr DAVID SHOEBRIDGE: Thank you for your attendance today. What did your members say, particularly in that First Nations council, about the current oversight of deaths in custody? Was that raised?

Mr DEGUARA: We have only briefly touched on it in our submission. What they have spoken about is in the public service you have very few people in positions that make decisions in relation to the administration of justice, if you want to call it that, inside the criminal system. But also in the oversight of those decisions there is not a great deal. What they do hope is that there can be more people in higher decision-making positions. We have not come to a position on an oversight body as proposed for this Committee.

Mr DAVID SHOEBRIDGE: You are not suggesting the current arrangements are fit for purpose, are you?

Mr DEGUARA: No.

Mr DAVID SHOEBRIDGE: It is a question of what kind of reform is needed for your membership at this stage. Is that right?

Mr DEGUARA: Yes. The model by the Ombudsman seems to be a good start. They have a Deputy Ombudsman in there but whether or not that is resourced—the Ombudsman has had its own resourcing issues over the last years. Whether or not it is adequate, we have not come to a position on that yet. But it is a good start.

Mr DAVID SHOEBRIDGE: When you say a Deputy Ombudsman, I assume you are referring to the First Nations Deputy Ombudsman position?

Mr DEGUARA: Yes.

Mr DAVID SHOEBRIDGE: Whatever body ends up having the increased oversight of deaths in custody there should be an Aboriginal commissioner as part of that. I see Ms Weldon is nodding.

Ms WELDON: With respect, 30 years ago the Royal Commission into Aboriginal Deaths in Custody was completed, and things have gotten worse. There has to be major changes. One of the council members that has been working in Justice, and they are passionate about their job and the fact that they are there and it is hard for Aboriginal people to actually work within Corrections, but they are there for a purpose because they believe that they can, hopefully, bring about change. And one of the statements that he made is that it is all about social

engineering. Think about it. No child is born a criminal, society helps create. They graduate from the small house, from juvies, and then they end up in the big house.

Non-Aboriginal people have to respect it and certainly allow us to be empowered within our communities to help bring that change about. It is the only way that we are going to go forward. As far as the Aboriginal workers that work for Corrections or even in police and even in the Department of Family and Community Services, I commend them because it is hard. It is extremely difficult for you to be an Aboriginal person and be employed within those particular organisations—government agencies. So they go in there with the endeavours to help bring about change within the system and then educate non-Aboriginal people that work within it so that we as one can help turn things around.

The CHAIR: Ms Weldon, the Public Service Association of NSW submission talks about having more Aboriginal staff in all of the relevant bodies, whether it is Corrections and Juvenile Justice so that there is more understanding and a better relationship with the broader community. There is also a discussion about the Youth Koori Court and circle sentencing. You see these as interrelated steps along the pathway about greater empowerment.

Ms WELDON: I would say circle sentencing would be. Youth Koori Court I have a concern about personally because a lot of those children that actually go before that court, they have to plead guilty even though they are not. Some of the sentences are far harsher than what they would get if they had not pleaded guilty. So the attempts no doubt are measures that could be looked at in a manner where they are succeeding to some degree, but the level of expectation that that child has to—they have to have housing, they have to make sure that they get a job et cetera.

Now, because they go to Koori Court, there is no magic wand with that. Just because they go there does not mean that they going to have a house. If they could not have one before and a job, that does not automatically happen. One of the suggestions, and I think clearly what government need to take on board irrespective of who is in a position of power, is that if a few of these organisations, in particular within the Department of Community Services and even within the prison system, if they had more Aboriginal positions—when you look at the imprisonment rate of Aboriginal men and women and children, the level of Aboriginal staff within that is really poor.

The CHAIR: And yet we have heard that with female prisoners about a third are First Nations people, with the general prison population it is about 26 to 27 per cent, and yet the percentage of First Nations staff would be far lower than that.

Ms WELDON: With all due respect, with the employment of Aboriginal people within the different jurisdictions, they have to be Aboriginal people that have a lived experience—people that have lived the life as an Aboriginal person—not somebody that sadly has just discovered that their great-great-great-grandmother or great-great-grandfather three or four removed is Aboriginal because they do not have the empathy nor do they have the understanding. The other proposal is that government get serious about having Aboriginal Elders in residence so that they employ Elders who are respected Aboriginal people from their respective communities around the State in these positions within these government agencies so that they can then be a key adviser but, more importantly, an influence. When a person is an Elder and respected, then you will find those inmates, those children or those families that have come before the department will listen and be guided by the voice of wisdom from those individuals that are key employees of those government agencies. That is not a big ask. It is not a big ask at all.

The CHAIR: So they would have to be persons from relevant communities.

Ms WELDON: Exactly, and respected. It was the same within the Police Force and the young team, the young manager, in conjunction with the other Aboriginal staff member. They have developed a really good strategy for New South Wales police with their engagement and employment of Aboriginal people. One of the proposals is that within the towns, if they are recruiting Aboriginal people as police officers—if you as an Aboriginal person were to become a police officer, you really need to be tough and be able to actually handle the criticism and the isolation that you are going to receive from your community.

I think what they need to do is to actually focus on getting prominent—in a lot of our towns across New South Wales there are prominent Aboriginal families and they can encourage individuals or descendants of those particular families to actually perhaps go into the Police Force and take on those jobs because then there is going to be a key component of trust by the community. They think, "Well, they have got so-and-so from such and such a place. Yes, they are a respected family. They are perceived really well and they are upstanding within the Aboriginal and non-Aboriginal community."

Mr DEGUARA: It is similar to the Aboriginal liaison officers for police as well.

Ms WELDON: That is right.

Mr DEGUARA: I have done some work with them through my extracurricular activities. I saw some kids who were in my cohort of surf lifesaving nippers, and we basically saw them in trouble and they were getting into trouble with other kids, trying to beat them up. We got in contact with the liaison officer in the area and they were given some diversionary help so that they were not out on the streets at those times when the other kids were trying to start fights with them and stuff like that. It was just a quick pathway to Juvenile Justice and you do not want that to happen.

The CHAIR: But all of that requires a bit of thoughtfulness and resources from government to put in place those.

Mr DEGUARA: To build up communities it takes a long time; to destroy communities it is very quick.

The CHAIR: Mr Shoebridge was asking a question about oversight and the way in which deaths in custody is oversights in New South Wales. There are a number of different bodies that do different things. You have got the Coroners Court. You have got the Law Enforcement Conduct Commission that looks at police critical incidents. You mentioned the First Nations Deputy Ombudsman. All of these look at different parts of the puzzle and we have had a significant body of evidence to this inquiry, particularly from First Nations people, that says that even when we are working for the Coroner we do not have a lot of faith in the Police Force, given the history. There needs to be a new bespoke investigative body.

Different people have put it in different ways. Some people say it should be Indigenous only and Indigenous led and staffed and should not have anyone who was ever a police officer, even though apparently it is meant to be doing some sort of criminal investigation. Other people have said that generally this new body is needed, and there have been differences of opinion about where it should be located if it was to be created. Some have suggested it should be in the Coroners Court because the Coroner does most of these investigations. Some have suggested that maybe the Law Enforcement Conduct Commission could be a relevant place for this body. There are other views that have also been expressed.

That is not something that is addressed in the PSA submissions. Could I ask you to take that on notice, unless you have got any response here today. If you have no response that is fine because it may be something that you just have not reached a landing on, but if you did have any views about that matter that could be useful for the Committee's deliberations. I might get the secretariat to pull out a couple of references in the evidence to that subject matter for you to have a look at. Thank you.

Mr DEGUARA: We will take that on notice.

The Hon. PENNY SHARPE: One of the points you make in your submission is a very practical issue around dealing with high-risk inmates and the ability to actually do proper supervision. Do you want to talk us through that? At page 24 you provide a list of the types of protection and observation cells and those kinds of things. I suspect some of it has to do with staffing and some of it has to do with old infrastructure.

Mr DEGUARA: A bit of both.

The Hon. PENNY SHARPE: If you could talk to us generally about what your members have to say about that, I would be interested to know.

Mr DEGUARA: If you do not have an observation cell with a camera in it, it means you have to go and physically check it and some of our jails are quite old. Some of them are nineteenth century vintage, so there is quite a lot of work involved in checking that. We have a big problem in New South Wales where mental health facilities have basically become our jails, so that is part of the problem that we have. There are a lot of people in our jails at the moment with high needs and who are high risk. As a result of that, they are building another one at the Metropolitan Remand and Reception Centre [MRRC], which is at Silverwater. It will be another jail to house up to 400 inmates with mental health issues who are currently, basically, in the mainstream in the MRRC and other jails. It does indicate that there are a lot more inmates than what are on that table that require high level supervision.

The Hon. PENNY SHARPE: Yes, I was struck by that. That is why I am asking about it.

Mr DEGUARA: There are hundreds more, so they need to have more cameras in the cells and more observation cells. Some of the jails have cells where you have to look around the corner to see the actual cell and

it is a big thick wall. It was designed in Victorian times. They are not healthy places plus they are also not healthy places for self-harm and other issues like that.

The Hon. PENNY SHARPE: Some of the cases obviously that we have been discussing during this inquiry have been to the point where even the most basic requirement to remove hanging points from cells has still not happened. Do you know what monitoring or plan of works is in place to actually do that? As Ms Weldon said, it has been a long time since the royal commission. This does not seem that hard to me. Can you point us in the direction of where that is actually monitored and if there is actually a plan to deal with that?

Mr DEGUARA: I can only tell you about anecdotal stuff; I am not a prison officer.

The Hon. PENNY SHARPE: No, sure. We have got the department this afternoon so we will be asking them, but I am just interested from your point of view because your members would see this.

Mr DEGUARA: What they are doing is they are turning a lot of the smaller jails into big jails and putting new ones in. They have got these rapid builds which are almost dormitory style and there is no height differential bunks or anything like that. It is sort of like an open plan office when you look at it, to a degree, but there are different facilities inside each cubicle. So there are no hanging points in those, whereas in the other new jails where there is a traditional wing they have designed the beds a lot differently. What has happened since about 2014 is that the bed crisis has occurred, and there have been more inmates—and also remandees—in jail. The numbers have gone up and so what they have done is doubled up and tripled up cells. Sometimes it can be a good thing to put a person who is at risk in with another inmate and other times it is not, depending on the mix et cetera. But these are some of the problems that we have had. We have had to have bunks in a number of them and some of the older bunks still have hanging points et cetera.

The Hon. PENNY SHARPE: You are not sure.

Mr DEGUARA: I am not sure of the full thing, but they have been going through the older jails and converting them into newer jails. The newer jails also have a lower staffing ratio to the older jails. One of the problems that might come down the track is that you do not have staff to observe different—

The Hon. PENNY SHARPE: So everything is on camera, pretty much.

Mr DEGUARA: Yes, so that will be one of the problems.

Mr DAVID SHOEBRIDGE: We were told by Corrective Services in the last budget estimates round that there is no program at all to remediate any older cells and that their only program is when they build new prisons they do not put hanging points. I suppose we can test that with Corrective Services this afternoon.

The Hon. PENNY SHARPE: Yes, which I am sure we will.

Mr DEGUARA: You can just go on a quick Google search and find out when the jail was made and there will probably be wings still in operation which have the vintage of poor design that you are talking about.

Mr DAVID SHOEBRIDGE: But, if you made it a focus, you could improve and greatly reduce hanging points and improve the design but there is no program in place, is my understanding.

Mr DEGUARA: Yes.

The Hon. PENNY SHARPE: Can I ask about how your delegates talk about racism within their workplace? As Ms Weldon said, it can be tough being an Aboriginal worker in child protection, police, Corrections or anywhere. What do they say about that and what are their recommendations in relation to dealing with it? I am assuming they are not saying that there is no racism.

Mr DEGUARA: No, they are saying there is racism. In different agencies—I do not know if I should talk?

Ms WELDON: No, go on.

Mr DEGUARA: What they have said to us is there are problems with different agencies. If you look at child protection, for example, they get loaded up with the most difficult cases and the biggest case load and they have a lot of burnout in the Aboriginal child protection workers. They are very lucky to keep them from getting on workers compensation and leaving the service. There is a racism problem in some, but I think it is a lesser racism than was there before. There are programs, but there is still a long way to go.

The Hon. PENNY SHARPE: Do you think the programs have helped? What has made it better?

Mr DEGUARA: I do not experience it because I am not Aboriginal.

The Hon. PENNY SHARPE: No, I am asking Ms Weldon really.

Ms WELDON: It depends. I mean, the department—as an Aboriginal person if you work within any of those agencies, if there are no other Aboriginal people, then you are socially isolated. You are on your own. That in itself is just—psychologically, it destroys you. You are forever educating non-Aboriginal people; it is just ongoing all the time. But what annoys me is they only tend to want to get advice off the Aboriginal workers, or get them to be involved, when the non-Aboriginal person just does not know anymore what to do. The sad reality within the Department of Community Services is that when the workers do not follow through or be vigorous in the monitoring of the child, they will let that go. They will let it slide because they know that they are going to end up in juvie. They will end up going from being an out-of-home care or a placement or a child that is on an order via the department and then they will not follow up with it.

They know that they are going to be picked up and are going to end up in an institution. So they will know then where that child is going to be rather than work with him—and nine times out of 10 it is boys—to ensure that they are given the level of support and help that they need to be in proper care so hopefully there is at least hope for that child's future. Whereas they will just throw them—let them go and they are going to end up in juvenile. Then what happens after they end up in juvenile detention centres? They end up in jails. What makes me near want to cry is that when you look at the amount of Aboriginal men and women that go into jails, their families serve that time with them. Those children do not have a dad. You have got children that do not have a father in their life because most of their time is in jail. You have got this dysfunction—or a single mum that is raising that child. Where the mother is in jail, then they do not have either. This is what we are creating in society as we all sit here today, and that has to change.

Mr DEGUARA: One of the things the council said as well is that to qualify for the extra spending you have to go to jail or to Juvenile Justice before you can actually get the early intervention stuff spent on you.

Ms WELDON: That's right.

Mr DEGUARA: It seems to be a reverse "let's spend more before we actually can start saving money". They think that if the housing or the care and all of that sort of stuff—if you could put a lot more effort into the other stuff you will actually end up having less people in the jail.

Ms WELDON: Look at the amount of money they have spent on out-of-home care in this State. If we reinvest that into communities, directly with those families and children through proper means, then we would be a far healthier society. The long-term investment in Aboriginal people in those instances is going to be far more beneficial than the short term. It is just a vicious cycle. Here I am, at the age that I have reached, and I have been actively involved in Aboriginal affairs and fighting for change since I was very young, and what I see now is that things have gotten worse. They have not gotten better. They are getting worse, and yet you are fearful.

The Hon. PENNY SHARPE: Everyone says that it is getting worse but, in your experience, what specifically is worse? What were you able to achieve previously that you are finding harder to achieve? I am just trying to get some very practical—

Ms WELDON: The level of expectation. You take one step forward, then you take 10 back. Every initiative that has been implemented at a Federal level for Aboriginal affairs has certainly been wiped; just shut down. When you look at housing and when you look at programs of, say, alternate care—I am a founding member of the Aboriginal Children's Service. We started that way back in 1974-75, and that organisation actually grew out of the Aboriginal Legal Service. The reason why it evolved was because there were a lot of Aboriginal children that were escaping from lawful custody, and under the terminology—or absconding from lawful custody—were children that were either wards of the State or kids that were in institutions or in care. So those children would leave, they would take off and they would go to Redfern and they would be searching for family. And then they would be picked up but taken before Albion Street Children's Court. And there was just this alarming number of children. They did not have specialist workers, Aboriginal workers, at Albion Street. All you had was the Aboriginal Legal Service and that is where I worked.

So the Aboriginal Children's Service came about, and then we lobbied and fought to have programs explicitly for Aboriginal children where Aboriginal children, if they were going to go into care in keeping with our culture, went to family and they stayed within communities. The intent was not for people to be paid money, the way that alternate care has panned out now where major entities—or corporates, we call them—run out-of-home care facilities and they are paying carers. The obligation was back on communities and families in keeping with our culture and traditions because we have a cultural obligation to ensure that we care for our children. That is just a natural—it has always been our way. You talk about surrogacy. Surrogacy has been part of our culture since time immemorial and caring for our children.

When you look at what has happened—I mean I do not need to tell you but I am going to say it anyway. How long have non-Aboriginal people been in this country? Two hundred and fifty-odd years ago we cared for our children. Things changed 250-odd years ago. For 60,000-plus years we cared for our children who in turn become adults and decent human beings in country. But now that has changed. Over the last 200 years that has changed to our detriment at our expense. So I take my hat off to people that work in the department, that work in corrections and that work in the police force because, Lord knows, for an Aboriginal person, that is one of the hardest jobs that you would have to do. It is not only while you are within the system but it is when you go home in your communities and how you are perceived and received. That is when it is so hard.

If people would only listen and allow us to be in a position where we decide, as opposed to people deciding for us, then things will change. You asked me why is it not any better? It is because we do not have the right, we do not have the power. We do not have the power, we do not have the right. We are still the minority and we are still at the bottom of the socio-economic barrel. We are there. And when it comes to jobs, it is like Mr Deguara was saying: Within these government agencies—within justice, within corrections, within DoCs—there certainly needs to be more Aboriginal positions, given the number of Aboriginal children and adults that are actually within those systems.

The Hon. NATALIE WARD: Thank you very much for your submissions. I very much appreciate your assistance to the Committee. It is a comprehensive submission, so thank you for the work that has gone into that and also for the work that you both do. I apologise for not being there in person today. I very much appreciate your recommendations about employment. You have just touched on that. I want to explore that in two further respects if I may. The first is in relation to the recommendation about employment in government agencies, such as youth justice, corrective services and so on, to increase the level of Aboriginal employment. I think that is an excellent submission. I note your comments about the need to employ Elders and those with lived experience. I think that is also very helpful.

In regional areas, it can be very difficult. There is simply not enough people available. I hope that we can rectify that but if you had to prioritise in any of these areas right now—I mean obviously we want to keep working until we are at parity but if we had to prioritise right now, of those suggestions, where would you direct resources at the moment? Would it be in juvenile justice? Would it be in corrections? Would it be in police? Would it be in sentencing? Where would you focus that to begin with, or the top two or three? If you would prefer to take it on notice, I absolutely understand that too.

Mr DEGUARA: We will take it on notice but the younger, the better. Youth justice does have a better employment ratio than adult correctives, from what I understand in the profile, but they also have a higher casualised and temporary workforce with greater turnover, so they do not actually have the people build up their knowledge. Both agencies lack that sort of substantial programs to run Aboriginal programs. So both of them have units but they do not have large enough units for the numbers of detainees/inmates that they have, but specific programs within those agencies.

Ms WELDON: Sadly, within the Department of Community Services there was a major cutback in Aboriginal positions, which has been to the detriment of the department, in particular, and the Aboriginal community for not having those workers. I think it was a couple of years ago, I think they end up—they had eight different workers in the Dubbo, Central West and western area. Those positions were all white. They no longer exist. So people were finished up. And they were working directly with communities around projects and development within those different locations across those regions.

The Hon. NATALIE WARD: Were people repositioned into other roles? What happened with those eight?

Ms WELDON: No, they finished up. They were no longer employed by the department.

The Hon. NATALIE WARD: In terms of prioritisation, did I hear you say justice?

Mr DEGUARA: Youth justice is where you are changing people for the rest of their lives.

The Hon. NATALIE WARD: Yes, you hope.

Mr DEGUARA: They might be, unfortunately, already too changed when they get to the adult jail. But we have been successful in reducing numbers in youth justice, compared to, say, six or seven years ago. But there is still a number of people in orders in the community, which is probably better than being inside.

Ms WELDON: Yes.

The CHAIR: Any further questions?

The Hon. NATALIE WARD: I have one more quick question if I may. Again you are welcome to take this on notice. You recommended auditing of Aboriginal employment policies in government agencies. What body do you think would be best placed to conduct that audit work?

Mr DEGUARA: Not the NSW Public Service Commission, unfortunately. The Public Service Commission has adopted a number of initiatives which it has not enforced and now they are actually aiming to reduce their own staff in relation to diversity goals. It is unfortunate that I am recommending against them doing that but I do not think they have the track record of actually enforcing what they talk about.

The Hon. NATALIE WARD: Do you think it is the Audit Office or the Ombudsman?

Mr DEGUARA: The Audit Office would probably be a better avenue, yes. The Audit Office tends to have a pretty good record in as far as their reports and they also have a multidisciplinary team and they can go into social as well as other financial sorts of issues as well.

The Hon. NATALIE WARD: And, in your view, is there—there is nothing to stop that happening now. The Audit Office could undertake that work potentially if that were recommended?

Ms WELDON: I think there is a number of ways that an audit could be triggered at the Audit Office. I think one of the ways is a Minister or a Committee can request it, from what I remember. It has been a while since I looked at that.

The CHAIR: Do other Committee members have further questions? Mr Roberts? If not, I thank the two witnesses for their time and for providing their insights to the Committee. I think a couple of questions have been taken on notice, the due date for which is 22 January 2021. The secretariat will be in touch with you about the precise terms of the questions that have been taken on notice. Thank you very much.

(The witnesses withdrew.)

(Short adjournment)

MAKAYLA REYNOLDS, Sister of Mr Nathan Reynolds, sworn and examined

TALEAH REYNOLDS, Sister of Mr Nathan Reynolds, affirmed and examined

The CHAIR: It being 10.00 a.m., we will commence with our next round of witnesses. Our two witnesses who will give evidence are members of the Reynolds family. I note that their submission No. 124 has been published by the Committee. I remind the witnesses that we are aware that the relevant coronial inquiry is still ongoing so, obviously, speak to what you have put in your submission and try to keep away from the details of the coronial inquiry itself. Just keep to the subject matter that you have raised in your submission. Would either of you like to give a brief opening statement?

Ms TALEAH REYNOLDS: Yes, I would like to, please. Good morning. I am Taleah. We are the sisters of Nathan. I would like to acknowledge that we are meeting today on the country of the Gadigal people of the Eora nation. I pay my respects to Elders past, present and emerging. We would like to thank the Select Committee for allowing my family to make submissions to the inquiry. I have heard and read all about deaths in custody but never thought that this would happen to my family; that my brother would die on the cold floor of a prison. I want to thank the families before us that have had to endure the heartache of losing a loved one in custody. Their strength and courage has given us the empowerment needed to speak out about this issue and spread awareness about deaths in custody here in Australia.

We are standing here today because we lost our brother Nathan who died in the Outer Metropolitan Multi-Purpose Correctional Centre, which has since changed to Geoffrey Pearce Correctional Centre, at Berkshire Park. Nathan was a son, first grandchild, first nephew, brother, father, stepfather and cousin. Nathan died at the age of 36, which was way too young. It is totally unfair that a four-month prison sentence cost my brother his life. Nathan was a hardworking man and started working at the age of 16. Nathan lit up any room that he walked into and is so very loved and dearly missed. Nathan died on 1 September 2018 due to an asthma attack. You may or may not be aware that the inquest into Nathan's death is still happening, and we are due in court this Friday—hopefully the last day that we have to endure the heartache of hearing the poor excuses from Corrective Services NSW and Justice Health staff. We have already had to sit in court for eight days, and, to me, my brother was regarded as less than a human and the treatment he received was way below standard healthcare treatment.

Many staff have no remorse for their lack of action in my brother's case. I have seen over and over that no-one is held accountable for a death in custody. They know they can hide behind a system. Therefore, these deaths will continue to happen until someone is held accountable and the precedent put out there that they cannot hide behind a system and they will be held accountable. Even before entering the prison system our brother was set up for failure through the parole system. There is no consideration that my brother had a family he had to support, and they just expected him to complete all the programs put forward, including community service on the weekend. They took no consideration that he worked full-time or that he had a chronic health condition. I recall a doctor wanting Nathan to go to hospital due to his asthma but Nathan refused because he had already been told by the parole that he cannot keep producing medical certificates to excuse him from his community service.

Our brother said that it would be easier to go to prison but I am certain that if he knew the outcome and what happened, he would have done everything he could to stay out of jail. I bet that there are a lot of other people in the same boat as my brother, set up for failure. The notification to our family of the death and any communication after the death needs to be reviewed also. New South Wales police attended my terminally ill grandfather at 4.00 a.m. in the morning looking for my mother. But Nathan had me listed next of kin. To this day I still formally have not been notified by New South Wales police. This was very traumatic for several family members that were in contact with the police that night. When we had a meeting with Corrective Services, they were quick to pass on the blame with New South Wales police. Not once throughout the inquest have we seen New South Wales police, Corrective Services or Justice Health work together. Instead, they are quick to pass the blame around. We lost our brother Nathan in 2018 and then in 2020, earlier this year, we had another brother who was in jail. I would say that we nearly lost him too. Makayla will share that story.

Ms MAKAYLA REYNOLDS: So, earlier this year our brother was incarcerated in New South Wales prison. He did ring me quite regularly on an everyday basis just to check in, see how the family is and just because they do not really have much else to do in there. He was ringing up with health complaints over a two-week period, saying that he was also suffering with breathing issues and he was coughing up blood. He said that he had been asking for help from the guards and trying to request to see a nurse.

The CHAIR: Sorry, was this Nathan or Shannon?

Ms TALEAH REYNOLDS: This is Shannon.

Ms MAKAYLA REYNOLDS: This is another brother, yes.

The CHAIR: I wanted to be clear about that, yes. Thanks.

Mr DAVID SHOEBRIDGE: Is it Shannon who is mentioned in the submissions, Makayla?

Ms MAKAYLA REYNOLDS: Yes. I did not know Shannon was mentioned. I will say his name now.

Ms TALEAH REYNOLDS: Yes.

Ms MAKAYLA REYNOLDS: So, yes, Shannon was incarcerated. Over the two-week period he was ringing me up regularly, saying he was having trouble breathing, coughing up blood and that he was not getting adequate medical attention. It got to about the fourteenth day. Shannon spoke to me and, his breathing, I could hear it through the phone. I said, "Are you alright?" He said, "No." I lodged a civil form and the Aboriginal department of Legal Aid got back to me and said that Shannon is in hospital. Justice Health then made contact with me and said that his lungs were full of fluid and he was suffering with pneumonia. So he had pneumonia for two weeks without getting adequate medical attention.

Ms TALEAH REYNOLDS: I think the point of mentioning that is just to highlight that even two years down the track inmates are still not taken seriously in regard to their health concerns, even after asking for help several times. And I guess we are just lucky that we have Makayla who is working in the environment that can give us the step up that was needed to help get the care that Shannon needed.

Ms MAKAYLA REYNOLDS: So, yes, basically coughing up blood and losing a brother is still not enough for someone to get help quite urgently.

Ms TALEAH REYNOLDS: Sorry, I will just to finish off my opening statement. Many deaths in custody are preventable. We also know that many oversight procedures are only initiated when someone dies in custody. I could go on for so long but I know my time is limited. Therefore, I will just do an overview of what is important to my family and what we see that needs to be changed. We believe that there should be an independent body to investigate deaths in custody to keep families informed of investigations from the beginning to the end.

Although we were lucky with the detective assigned to our case and everyone on our team were very fortunate, I know a lot of other families were not fortunate enough to get a good team like we did. NSW Police Force, Corrective Services and justices of health should work together instead of passing the blame; parole should review each person's individual case before their requirements review; if a parolee works and has medical issues that could impact their attendance, remember that parole is put in place to keep a person out of prison, not set them up for failure; NSW Police Force should be regularly audited because they are criminally charging people with incorrect charges—they charge the offender with the highest charge that they can and, eventually, the person gets charged with a much lesser offence but then has to sit on remand for a significant amount of time; also, having an Aboriginal engagement unit that families can approach and trust throughout the coronial inquest. Thank you.

The CHAIR: Thank you. You highlighted just then and in your written submission that a majority of First Nation people who have died in custody are imprisoned on remand not sentenced. What was Nathan's status when he was in custody?

Ms TALEAH REYNOLDS: He was sentenced.

The CHAIR: Did you say for a four-month period?

Ms TALEAH REYNOLDS: Yes, a four-month period.

The CHAIR: What was the sentence for?

Ms TALEAH REYNOLDS: A breach of an apprehended violence order [AVO].

The CHAIR: Okay, thank you.

Mr DAVID SHOEBRIDGE: You said you had a good detective on the case, but what about the exchange of information with your family since Nathan died? It has been more than two years, how long was it after Nathan's death that you first saw some paperwork or you were given insight into what Corrective Services had?

Ms TALEAH REYNOLDS: I cannot recall. As I said, we were lucky the detective did a really good job of getting the evidence and so forth together.

Mr DAVID SHOEBRIDGE: What about telling you what evidence they had—sitting down and saying, "Here is the evidence. Here is what correctives is saying."

Ms TALEAH REYNOLDS: That did not happen. We did not really get what information they were getting at what time. It was just pretty much that they were getting the statements of the nurses and of Corrective Services but it was not until the brief was handed over that I knew what any of the evidence was—what was contained.

Mr DAVID SHOEBRIDGE: How long after Nathan's death was that?

Ms TALEAH REYNOLDS: I cannot recall. Some six to nine months.

Mr DAVID SHOEBRIDGE: This is deeply painful for the family—everyone is having extremely emotional responses to it. Was any counselling offered to the family?

Ms TALEAH REYNOLDS: No, the NSW Police turned up to my mum's house and said, "Do you know Nathan? I think he may have died." Mum just took off up the street and when she came back they were gone. The police had left after they had delivered that. Her automatic response was that she just ran up the road and when she came back they were gone.

Ms MAKAYLA REYNOLDS: I might just add to that. There was no counselling offered to us and there was also no counselling offered to the inmates who witnessed Nathan's death.

Mr DAVID SHOEBRIDGE: I know it must have been an horrific two years and I am certain that every member of the Committee expresses their deep concern and condolence for the family. If you reflect back on the past two years, what support has the family had? Where has the support come from?

Ms TALEAH REYNOLDS: The only support, really, that we had was our legal team—the Aboriginal Legal Service [ALS]. That is pretty much who we had support us. I had a meeting with Corrective Services NSW and the commissioner but that was pretty much just a waste of my time. It was just a poor response going there; nothing really came out of it.

Mr DAVID SHOEBRIDGE: You said that you are coming for the eighth day of hearings this Friday?

Ms TALEAH REYNOLDS: We have done eight days so Friday will be the ninth day.

Mr DAVID SHOEBRIDGE: What about the support at the Coroners Court?

Ms TALEAH REYNOLDS: No support there. If anything, we are made to feel as though we cannot—we have to be quiet, we have to keep our mouths shut. I had family members who wanted to come but the timing of it all was that the people who were giving evidence that day and family members turning up—we had to be careful that the witnesses did not feel intimidated. So we were arguing with family not to come because we had to try to not make out that we were being intimidating to the witnesses who were taking the stand that day.

Mr DAVID SHOEBRIDGE: Can you just give us an insight into what it is like as sisters to be in the coronial court? What, if any, role do you feel like you have in the proceedings?

Ms TALEAH REYNOLDS: I have been involved with the case from the beginning. I have read all the briefs and asked the questions that I felt needed to be asked. The legal team always checked if I had any questions and so forth but, for the past two years, I can definitely say that I put my feelings aside. I have not been able to grieve my brother or anything like that because, if I do, I feel like it will break me and that I will not be able to give my full into the inquest. I need to try to be clear minded at the inquest so that I know what is going on to try to find the faults and get them fixed.

Mr DAVID SHOEBRIDGE: Makayla?

Ms MAKAYLA REYNOLDS: I feel as if I am a family member sitting there showing support for my brother every day. I feel like that is how I felt inside the Coroners Court. That is what I was: a family member showing support for my brother every day with 10 other family members.

Mr DAVID SHOEBRIDGE: Do you think the court was there to help find answers for your family or involving your family in that search for answers?

Ms MAKAYLA REYNOLDS: Well, I guess we will find that answer out after it is finished and we get our outcome.

The Hon. PENNY SHARPE: We have had a lot of evidence about the trials of the coronial process. I am sorry that it is such a long and difficult process for you. Who was your main contact at the Coroners Court?

How do you find out what is going on and when? I note that in your submission you talk about the need for an Aboriginal liaison, but how does that happen at the moment?

Ms TALEAH REYNOLDS: Through the ALS.

The Hon. PENNY SHARPE: So they basically do all of the work with the people working on the inquest and they share information that way?

Ms TALEAH REYNOLDS: Yes, and filter down information.

The Hon. PENNY SHARPE: In your submission you talk about the overlap of functions and the overlap of blame. I am interested in your perspective. You obviously have recommendations around the difference between Justice, Health and Corrective Services and the way the family see and experience having someone in custody. Do you want to speak to that part of your submission?

Ms TALEAH REYNOLDS: I guess it was just to highlight that there really is a line divide. If it is medical it is just justices of health. Corrective Services are trained in first aid yet with the medical side of things it is just blamed on justices of health. It is all about the record keeping and what they can look at. What Corrective Services can look at and what Justice Health can look at—they are different systems and they are just totally divided. They say that you have got this and you could look at this but you could look at that. There is no, "Well, there was this system and we should have looked at this system," or, "We have one system that we can look at with health needs and stuff like that."

The Hon. PENNY SHARPE: When you have had the meetings, have you had to meet with them separately? Is that the case? There are reasons why there are different health systems, which is beyond the remit of this Committee, but by meeting separately it means essentially everyone can point the finger at someone else and you never have the people in the room who can give you the answer that you need.

Ms TALEAH REYNOLDS: Exactly.

The Hon. PENNY SHARPE: I thought that was actually a very good recommendation.

Ms TALEAH REYNOLDS: It is the same thing that happens in the inquest as well. Once you get to the inquest they have all got their lawyers and it is all blame passing the whole way through.

Mr DAVID SHOEBRIDGE: You have extracted bits of that in your submission. Justice Health says look at Corrective Services and Corrective Services points back at Justice Health.

Ms TALEAH REYNOLDS: Yes.

The CHAIR: I have three questions arising from your very useful and targeted submission which really talked to key points in our remit. The first thing I noticed was you have very clearly identified a missing piece of the puzzle. From the moment your family was notified of the death in custody, in the process that unfolded from there to where you are now there appears to be no body or form of support that helps a family in your situation through all the steps of the process and keeps you informed in a timely way. Has it been your experience that there is that piece of the puzzle missing?

Ms TALEAH REYNOLDS: Yes, absolutely. For a quick example, it is New South Wales police that notify the family of the death. The following day I constantly rang the jail. I just wanted to know where my brother was. So I had to then ring the jail to find out—I was trying to find out where Nathan was. My calls went unanswered all day and then I had to deal with Corrective Services to pick up Nathan's belongings. I had to go to the jail and pick them up myself. Apparently there was someone that does it but that was not offered to me at the time. So I am trying to figure out who I have got to deal with at the beginning just to get basic information.

The CHAIR: A single point of contact for the family to help you through this process would have been very useful.

Ms TALEAH REYNOLDS: Absolutely, to connect the triangle through.

The CHAIR: The second point you make interestingly is about the need for an independent specialist investigative body to look at deaths in custody. Do you have any view—and it doesn't matter if you do or do not—about whether that should be a new body by itself or should it be part of the Coroners Court? Do you have any view about where it could be located in the existing system or does it need to be separate?

Ms TALEAH REYNOLDS: I feel that it needs to be separated from all of the departments now.

The CHAIR: Okay. The other thing you mentioned was the need for welfare services for First Nations persons both inside and as they leave prison to help them navigate the challenges once they reach the outside world. Is that something you think would provide assistance to help First Nations people not re-enter the prison system once they leave?

Ms TALEAH REYNOLDS: Absolutely. If they have the support that is needed once they get out of the prison, they will be able to find stable housing and get into the workforce if they have that support. But if they don't, they just go back to the situation they were in prior to going to prison.

Mr DAVID SHOEBRIDGE: Even something as basic as putting the family in touch with the Aboriginal Legal Service or ALS in touch with the family, there did not seem to be a system in place for that. Do you want to talk us through that?

Ms TALEAH REYNOLDS: Still to this day I am not even 100 per cent sure how it worked but the ALS I think made contact with someone in the community that knew about our family and then that is how the connection was made, but I do not really know how that works.

Mr DAVID SHOEBRIDGE: You say in your submission that Corrective Services apparently did not provide ALS with your contact details as next of kin because of privacy concerns. It seems to me extraordinary that we do not even have a basic system in place so that once a First Nations inmate dies ALS is immediately notified and next of kin details are notified so that loop can be closed instantaneously.

Ms TALEAH REYNOLDS: It needs to be fixed from the very beginning, from the notification of death, because that is where it starts to crumble straightaway—the notification of death from New South Wales police to a family member. It is broken from the very start.

Mr DAVID SHOEBRIDGE: And your mum's reaction, the reaction she had in grief—there is not even a counsellor there at the time or somebody coming to help at the time of the notification. It is just a police officer who turns up and knocks on the door.

Ms TALEAH REYNOLDS: And the words "I think". If you are going to deliver information like that, I think you need to be firm with your words and the way you deliver it to a person.

Ms MAKAYLA REYNOLDS: It was not even within a 10-minute time thing. She had come back and they were gone. She did not get told why, what, when, how. "I think your son has died" is the words that she did get told.

Mr DAVID SHOEBRIDGE: Did they leave cards or contact details?

Ms MAKAYLA REYNOLDS: No, I don't think they did. I think someone else there asked what station they were from or something like that, but I don't think they left anything.

Ms TALEAH REYNOLDS: I don't think that they did. It was not until the following evening that the detective came back.

Mr DAVID SHOEBRIDGE: And there was no brochure or material about support? You would have thought there would be a package of materials to leave with a family and say, "Here's who to contact for counselling. Here's how to deal with legal issues." Was anything like that left?

Ms TALEAH REYNOLDS: I went to my mum's house the following evening and some stuff was given then. But really at that time a follow-up needs to be made. The family has just been told devastating news. You at least need 24 hours to even comprehend what is happening. Even a follow-up after that 24 hour period saying, "Did you get this? Do you have this pamphlet? Do you need help? Do you have counselling?"—that is what needs to happen because for that first 24 hours your life is just turned upside down and you do not comprehend what is going on around you.

Ms MAKAYLA REYNOLDS: I think that night my mum got a call from another inmate in custody telling my mum everything that had happened. So she got the most information out of another inmate, who did see what happened. Basically their job was to keep Nathan alive—other inmates—and again they are the ones that informed our family of everything that did happen that day. The information they told us was quite correct. It is what we have been hearing and seeing in our brief and over the two weeks of the coronial inquest.

Mr DAVID SHOEBRIDGE: So the real information you got was from another inmate within 24 hours?

Ms MAKAYLA REYNOLDS: Yes.

Mr DAVID SHOEBRIDGE: And how long did it take for you to get anything like that kind of frankness or detail out of Corrective Services?

Ms MAKAYLA REYNOLDS: I think it was over the six- to nine-month period of the brief of evidence.

The Hon. PENNY SHARPE: The last part of your submission talks about welfare and you have already commented on it today, Makayla. There were other inmates who were involved in trying to resuscitate Nathan and they have had no follow-up support internally around their mental health and welfare. Is that the case?

Ms MAKAYLA REYNOLDS: Yes. That is a true fact. An inmate did give that evidence. I also heard that another person who was incarcerated with Nathan had three more months left of his sentence after Nathan had died. They did build a good friendship over the time that they were incarcerated together. I am sure the guards would have known that. He was left to serve the rest of his time in John Moroney Correctional Centre. He was not offered counselling. He was not transferred to a new jail. He was just left there.

The Hon. PENNY SHARPE: You also made a comment which is slightly outside our remit. I am interested, in terms of health services, around growing prescription of sedatives and antidepressants to people in jail. Do you want to comment on that ?

Ms MAKAYLA REYNOLDS: Yes. Sometimes they have to wait months to see a nurse before they get their prescription of any medication. So maybe there is a list. Maybe they will not get seen. I think they get screened once or twice and then they are on a waiting list and they have to wait. What happens if it takes three weeks for these people to get their antidepressants?

The Hon. PENNY SHARPE: We have had quite a lot of evidence about people in quite acute mental distress then having to wait quite a long time before actually seeing support.

Mr DAVID SHOEBRIDGE: I suppose my last question is about how your perception of the system has changed in the last two years.

Ms TALEAH REYNOLDS: It hasn't.

Ms MAKAYLA REYNOLDS: Mine has not changed. There are still deaths in custody happening to this day after Nathan's death. How many were there this year? Was it three to four?

Ms TALEAH REYNOLDS: Nothing has changed.

Ms MAKAYLA REYNOLDS: No, nothing.

Ms TALEAH REYNOLDS: Two years since his death, nothing has changed.

Mr DAVID SHOEBRIDGE: Taleah, your evidence about not being able to grieve because you feel like you have to monitor this coronial—that is pretty tough.

Ms TALEAH REYNOLDS: I suppose I am the person who has stepped in for mum and dad because they cannot bring themselves to deal with it. In saying that, my mum has been everyday to the inquest. My dad came on the last day. But, you know, something happened with my dad with the police that he still does not talk about. I just find it really sad that my grandparents went through Stolen Generations and fought and the royal commission and all that happened, yet we still have to sit here at this table today to discuss deaths in custody.

Mr DAVID SHOEBRIDGE: Makayla, you have watched what your sister has had to go through. Do you have any observations about the role that Taleah has had to do and how tough it is for her and the family?

Ms MAKAYLA REYNOLDS: Well, she is a great person for doing what she has done and to take that place. I do not think anyone could do that. I definitely do not think I could take that big role. We are thankful for Taleah. She really has not been given adequate support or anything from anyone. I feel maybe if NSW Police and Justice Health and Corrective Services gave a proper apology to my sister, that might have kept—I do not know. Just a bit more support towards our family and Taleah—

The CHAIR: Just on that, what practical steps could have been put in place that would have made what you have had to go through as a family and as individuals easier?

Ms MAKAYLA REYNOLDS: Formal apologies. Proper apologies.

Ms TALEAH REYNOLDS: Knowing the process of the inquest. I suppose I say that I am lucky that I have been brought up as a strong person. But there are a lot of families that—it is hard to go through this and some families do not get the right coronial inquests because they do not have a strong family member. I am just

lucky that I was brought up to be a strong person to be able to go through the proceedings. But the support is definitely needed.

Mr DAVID SHOEBRIDGE: It should not be dependent on having extraordinarily tough siblings and, from what I read from your evidence, a detective who has gone above and beyond what is required to at least give you some insight into what has happened. It should not be up to extraordinary individuals. The system needs to be fixed.

Ms MAKAYLA REYNOLDS: No, it shouldn't. Because what happens if we did not get a good police officer on that day who did not care enough? What happens if someone is in a New South Wales prison and all their family are in Walgett and there is no information transferred to the family members? Does their case not get seen as strongly as someone else's with a good police officer or with a strong family backbone?

The CHAIR: Yes.

Ms MAKAYLA REYNOLDS: Does it get swept under the rug? We do not hear about it.

The Hon. PENNY SHARPE: Is there anything that you have not told us that you want us to know?

Ms TALEAH REYNOLDS: I do not have anything else. Thank you.

Ms MAKAYLA REYNOLDS: I think Taleah has pretty much covered our recommendations.

Mr DAVID SHOEBRIDGE: But you are also not at the end of it, are you? You do not really have all of your answers yet at the moment or even all the questions until you see this inquest completed.

Ms TALEAH REYNOLDS: That is right. I suppose I would say that we had done recommendations that we put forward to the coroner prior to the inquest starting. But it is just disheartening when you go to the inquest and you just hear witnesses and stuff like that. The brief of evidence still does not prepare you for sitting in court. Now I will go back and review the recommendations that I have already put forward because there is a lot more that comes out of the inquest that you just do not get from reading from the evidence. I will resubmit recommendations again.

The CHAIR: Are those recommendations similar to the ones that you have made to us?

Ms TALEAH REYNOLDS: Kind of. I think there are more specific recommendations where we have said what the issue was and this is what we believe could fix it. Yes, it is more specific recommendations that we have given as well.

Mr DAVID SHOEBRIDGE: If after—what is our time for questions on notice?

The CHAIR: It is 22 January 2021.

Mr DAVID SHOEBRIDGE: I will give you this opportunity. After Friday's hearing and on reflection after you think about what has been discussed today, if there is anything further you want put to us, I will give you the opportunity to put it in writing to us by the—

The CHAIR: 22 January 2021. If you could take on notice our general requests for anything further you wish to tell us and, as Mr Shoebridge says, if there is anything after the coronial has been completed and you want to give us a version of your recommendations or anything else that occurs to you, you can do that by 22 January.

Mr DAVID SHOEBRIDGE: That would be useful.

Ms TALEAH REYNOLDS: Absolutely.

The CHAIR: The questioning of these witnesses has come to a conclusion. I would just like to thank both of you for taking the time to come and give your evidence and provide your insights. You have the condolences of the Committee for the experience is that you have had and that you are still going through. We will endeavour to do the best we can with the evidence you have given us today. Thank you.

(The witnesses withdrew.)

(Luncheon adjournment)

ANTHONY CRANDELL, APM, Commander, State Intelligence Command, NSW Police Force, affirmed and examined

The CHAIR: I welcome our next witness. We do not have a submission from the NSW Police Force. Do you have an opening statement you wish to share with us?

Assistant Commissioner CRANDELL: Yes, I do. Thank you for the opportunity of addressing the select committee inquiry into the unacceptably high level of First Nations people in custody and the suitability of oversight bodies tasked with inquiries into all deaths in custody in New South Wales. On behalf of the NSW Police Force, I acknowledge the Gadigal People as the traditional custodians of this land. I also pay respect to the elders past, present and emerging of the Eora nation. I extend that respect to other First Nations people present or watching proceedings. The NSW Police Force recognises appropriate and preferred terminology for First Nations people in Australia. In line with widely accepted terminology and NSW Police Force recording and writing standards, the use of the term Aboriginal or Indigenous within this briefing refers to Aboriginal and Torres Strait Islander people, acknowledging them as the First Peoples of Australia.

The NSW Police Force has many responsibilities to the many diverse communities of New South Wales. The focus of police is not solely upon perpetrators of crime. Within any modern policing framework there must be an overriding responsibility for community safety, brought about by preventing, disrupting and effectively responding to crime. Within this framework, consideration must be given to vulnerable communities, including First Nations people, those affected by disabilities or simply those that are the subject of bias or hate. At the forefront is preventing victims of crime by engaging prevention and protection strategies to ultimately deliver impartial policing services to the people of New South Wales.

The NSW Police Force acknowledges the overrepresentation of First Nations—Aboriginal and Torres Strait Islander—people in the criminal justice system and the complexities of this disadvantage. This context presents many challenges. The NSW Police Force is committed to working with policy-makers to develop strategies to meet these challenges. It is acknowledged that developing trust is a crucial element of upholding our primary responsibility to maintain safe and secure environments. To that end, the NSW Police Force must support positive and long-term engagement of Aboriginal and Torres Strait Islander communities.

According to the National Deaths in Custody Program [NDICP] from the Australian Institute of Criminology, over the 28 years between 1990 and 2018 some 490 First Nations people died in custody. Some 29 deaths were in New South Wales and classified as while in police custody or related to custody operations. Locations of those deaths are recorded as: within a public place, 14 deaths; on private property, four deaths; in a public hospital, eight deaths; in another custodial environment, one death; and in a police cell, two deaths. In 2019 the Australian Institute of Criminology published *Indigenous deaths in custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody*. NDICP data show Indigenous people are now less likely than non-Indigenous people to die in prison custody. According to the ABS, over the past 12 months the imprisonment rate of Aboriginal people nationally decreased by 2 per cent; the New South Wales reduction was 7.5 per cent.

The NSW Police Force has learnt lessons from deaths in custody and implemented many new procedures, systems and educational programs that prevent deaths in custody. Learning products and programs are continually evolving. They address heightened vigilance and awareness of early danger signs for people in custody, and now expand to reduce the number of people being brought into custody through use of alternative pathways to justice. Measures to divert Indigenous people from NSW Police Force custody have increased by 54 per cent between 2010 and 2019, compared with a 5 per cent increase for non-Indigenous people. It is important to note that offending does not stop at diversion and does not necessarily stop people in a life of crime. Further support is required beyond the simple act of diversion.

Delaying entry into the criminal justice system is equally unacceptable, because the NSW Police Force cannot support creating more victims of crime. Turning a blind eye to recidivism is not effective diversion. A whole-of-government approach is necessary, with engagement much earlier in a vulnerable person's life, and well before first and subsequent contacts with the criminal justice system. The NSW Police Force has recognised the value of early intervention with introduction of the Commissioner's youth-specific RISEUP program, designed to address drivers of antisocial behaviour including learning, work and employment opportunities. Early measurement indicators are extremely positive, with several young people being placed into employment and provided more educational opportunities in positive environments of support that have directly impacted recidivism.

Victimisation rates of Aboriginal people are concerning. The Australian Bureau of Statistics found Aboriginal people in New South Wales are 2.6 times more likely to be victims of assault. Aboriginal females make up 65 per cent of all Aboriginal assault victims, and nine out of 10 times they will know their attacker. Aboriginal females in New South Wales are 2.4 times more likely to be victims of sexual assault. Approximately 16 per cent of all domestic violence-related incidents over the past 12 months in New South Wales involved both a person of interest and victim identifying as Aboriginal. The NSW Police Force must protect victims of crime and balance the needs of perpetrators, especially those involved in incidents of violence where victim protection measures are likely to be required.

The Commissioner of the NSW Police Force and its executive team are committed to the Suspect Targeting Management Plan [STMP] strategy. The latest iteration of the Suspect Targeting Management Plan, STMP III, was introduced into the NSW Police Force on 4 November 2020. Additional streams of targeting now allow greater flexibility to engage recidivist offenders in plans designed to remove them from the criminal justice system. There is considerable independent research showing evidence in support of proactive police interventions that target recidivist criminal behaviour to prevent and deter ongoing criminal activity. *The long-term effect of routine police activity on property and violent crime in NSW, Australia* found that sustained increases in police activity, whether in the form of move-on directions or person searches, suppress break and entry, motor vehicle theft, and robbery offences. Research entitled *Crime, deterrence and punishment revisited* found:

... criminal activity is highly responsive to the prospect of arrest and conviction, but much less responsive to the prospect or severity of imprisonment.

Results of this 2019 study indicate:

... increasing the risk of apprehension and conviction exhibits a much larger effect in reducing crime compared to raising the expected severity of punishment.

The authors indicated the significance of implications because imprisoning more people for longer is not optimal from a policy perspective. The best policing activities—including forms of alternative intervention—will be those that exert the strongest influence on the perceived risks of apprehension. Most recently, research entitled *An evaluation of the Suspect Target Management Plan*, dated October 2020, found that the NSW Police Force STMP II policy is an effective tool for reducing crime among high-risk individuals through proactive policing strategies. The study found a 16 per cent decrease in the probability of at least one new violent or property crime within 12 months of being placed on STMP II, and a 43 per cent reduction in the probability of at least one new domestic violence [DV] offence within 12 months of being placed on DV STMP II. It also found a 10 per cent deterrence effect for First Nations people.

The crime reduction benefit was found to be predominantly through deterrence rather than incapacitation by imprisonment, especially for domestic violence offenders. Deterrence is created by lowering an individual's intent to offend by increasing the likelihood of apprehension and punishment. The NSW Police Force currently has 79 Aboriginal adult people listed as active under STMP, which is 23 per cent of the total STMP cohort. Some 16 Aboriginal young people are listed as active under STMP, which is 5 per cent of the total STMP cohort. For domestic violence, 27 Aboriginal people are listed as active under DV STMP, which is 24 per cent of the total STMP cohort. No Aboriginal young people are active under DV STMP. Strategies of diversion and engagement attract support from the NSW Police Force when those measures show reduced recidivism and, therefore, reduced victims of crime.

The RISEUP strategy, which affects all communities of New South Wales, was launched in 2018 and comprises a suite of eight programs to positively engage young people. More than 300 young people have been engaged and obtained employment, including over 50 Aboriginal youth. Circle sentencing is an engagement program also supported by the NSW Police Force because of its positive outcomes. Project Walwaay in Dubbo, developed in 2019, targeted over-representation of Aboriginal youth in the criminal justice system by engaging the RISEUP program's methodology. That has seen a reduction in recidivism among Aboriginal youth after six months of operation.

The Maranguka program at Bourke, developed in 2013 as a multi-agency diversionary program, remains in operation and engages the Bourke Tribal Council with daily communication and organised events to reduce Aboriginal youth in the criminal justice system. Maranguka has been independently assessed as positively associated with reducing domestic violence and Aboriginal incarceration rates while increasing vocational education and achievement of driver licences. The Indigenous Police Recruitment Our Way Delivery [IPROWD] program in New South Wales is a joint initiative developed to attract educational and employment opportunities for Aboriginal people in policing and across New South Wales Government agencies. The NSW Police Force has

3.1 per cent or 658 Aboriginal or Torres Strait Islander identified employees: 470 police officers and 188 administration staff including 55 Aboriginal community liaison officers.

Over the past 10 years, the NSW Police Force has replaced and upgraded custody areas and holding cells to meet the best possible safety standards. Upgrades include increased CCTV cameras and TV monitors; better design and location of custody areas, cells and charge desks; and improved safety finishes to walls, floors, cell doors and fixing points. Self-harm points such as gaps between fittings and unsecured grates have been rectified. A budget of \$19.5 million was approved for the program, later increased to \$23.5 million, which was fully expended. Eighty-six police stations across metropolitan and regional areas of New South Wales have had ongoing upgrades to custody facilities at an ongoing cost, presently \$3.8 million in 2020. Investigative oversight is appropriate given the breadth of oversight agencies listed in the inquiry terms of reference. But it is not for the NSW Police Force to determine an appropriate oversight structure, notwithstanding the NSW Police Force contribution to oversight inquiries. This reflects our maturity as an organisation.

Many submissions to this inquiry have referenced statistics relating to the number of Aboriginal people targeted under STMP-II. The LECC indicated an estimate of 72 per cent as opposed to the NSW Police Force estimate of 47 per cent. The NSW Police Force has since commenced a review of statistical methodology within this difficult environment. Aboriginality is not a feature easily confirmed. Some assessments are made by officers unilaterally, based on a person's appearance and conversation, whereas others rely upon self-identification as in custody settings. If a person identifies as Aboriginal or Torres Strait Islander or is identified as such by any means then that person is always treated as potentially vulnerable. The "once identified, always Aboriginal" tenet is misleading from a statistical perspective. The process for determining highest likelihood of Aboriginality is under review and will attract peer review processes once determined. The NSW Police Force has developed many positive and supportive relationships with First Nations communities all across New South Wales and is committed to improving outcomes for all Indigenous citizens of New South Wales.

The CHAIR: Thank you for that lengthy and quite informative opening statement. Do not take this as a personal reflection, but it would have been good to have that a bit earlier because there is a lot of meat in it. As a result, there may be some follow-up questions that we put on notice.

The Hon. PENNY SHARPE: I was madly scribbling down some of that. I apologise if I get some of it wrong because I have obviously not seen it before. Just to start off with, though, you made comment late in your submission about the statistics. Obviously some quibble with the way in which the LECC counts them versus the way in which the police count them. Can you elaborate on what the differences are?

Assistant Commissioner CRANDELL: Yes, sure. The difference is in the methodology of counting. I am certainly no statistician. However, my understanding is that there are two ways that we classify or count Aboriginal people in the NSW Police Force. One was an 80 per cent algorithm. It basically determined that if a person was identified as Aboriginal and then later said that they were not Aboriginal, then 80 per cent en masse would come out to around about the right figure. The other way was "once identified as Aboriginal, always Aboriginal". If a person goes into our system and is once identified then they are forever identified as Aboriginal. To my mind, there are significant disadvantages with both algorithms. We are presently going back to do actual counts of numbers of Aboriginal people in our system and then trying to calculate the best method going forward, which gives us the most accurate result. At the present time, I would not like to rely upon the identification of Aboriginality in statistics as it currently stands.

The Hon. PENNY SHARPE: When you say that, do you mean for the BOCSAR and the LECC as well or just your own figures?

Assistant Commissioner CRANDELL: The BOCSAR use our data but I am uncertain how they calculate Aboriginality.

Mr DAVID SHOEBRIDGE: They rely upon your data.

Assistant Commissioner CRANDELL: They do rely upon our data, but I do not know whether they employ the same algorithm to come up with the result.

The CHAIR: We will ask them tomorrow.

The Hon. PENNY SHARPE: Okay. Have there been attempts to actually collect this data across those various agencies in a similar way?

Assistant Commissioner CRANDELL: Not to my understanding, no.

The Hon. PENNY SHARPE: The Royal Commission into Aboriginal Deaths in Custody was obviously a long time ago. Is there ongoing oversight and monitoring of the recommendations for that or does it pretty much now just sit on the shelf?

Assistant Commissioner CRANDELL: No, I have seen reports as early as this year and last year that report back to our secretariat.

The Hon. PENNY SHARPE: Who does those reports?

Assistant Commissioner CRANDELL: Those reports are done by the Corporate Sponsor for Aboriginal Engagement. I have seen those reports but I have not gone into the detail of exactly what the reports are about. Obviously I know that they are about the royal commission recommendations and progress or otherwise in relation to those recommendations.

The Hon. PENNY SHARPE: Is there public reporting of progress towards those?

Assistant Commissioner CRANDELL: Not to my knowledge.

Mr DAVID SHOEBRIDGE: Who is the corporate sponsor?

Assistant Commissioner CRANDELL: The Corporate Sponsor now is Assistant Commissioner Joe Cassar from Southern Region. Prior to that it was Assistant Commissioner Peter Barrie.

Mr DAVID SHOEBRIDGE: Can you provide us on notice with either the reports, if possible, or if not then a summary and details of the reports?

Assistant Commissioner CRANDELL: Yes, certainly.

The Hon. PENNY SHARPE: Are you aware of anywhere else in government where there is oversight of those recommendations, or is that something that the NSW Police Force do themselves?

Assistant Commissioner CRANDELL: I believe that there have been submissions. I have seen a very large document that has outlined a number of reports and updates on progress in relation to recommendations. That is not all our document but we have contributed to it.

Mr DAVID SHOEBRIDGE: What was that document?

Assistant Commissioner CRANDELL: I have seen it. It is a very, very large spreadsheet with a number of pages and it was under a ministerial adviser.

Mr DAVID SHOEBRIDGE: Could you provide that?

Assistant Commissioner CRANDELL: Certainly.

The Hon. PENNY SHARPE: If you could do that, that would be great. Similarly, there was an Australian Law Reform Commission report. I think it was in 2018.

The CHAIR: *Pathways to Justice*, I think.

The Hon. PENNY SHARPE: Yes, I think that is it. How does the NSW Police Force interact with that document and the recommendations set out in it?

Assistant Commissioner CRANDELL: We have an Aboriginal Coordination Team that goes through that sort of research and then has a look at those sorts of recommendations. I would have to take that on notice in relation to the progression of them.

The Hon. PENNY SHARPE: Obviously this is the Australian Law Reform Commission, but we have had a lot of evidence in this inquiry that the recommendations remain the same. They are not dissimilar from the royal commission. I am interested in their status and the way in which the NSW Police Force interacts with them, including whether you report formally against them. I am happy for you to take it on notice.

Assistant Commissioner CRANDELL: Yes, sure. I do not know that we report formally against them. I do know that some of the recommendations from that report obviously indicated justice reinvestment, meaning perhaps us getting ahead of the game and trying to interact with people prior to them coming into the criminal justice system. That was very sound.

The Hon. PENNY SHARPE: In your opening submission you said that you believe that it is now less likely that Indigenous people die in custody than non-Indigenous people. Can you expand on that? Is that in police custody? Can you explain where that figure comes from?

Assistant Commissioner CRANDELL: That was a research finding.

The Hon. PENNY SHARPE: Which bit of research? Sorry, I cannot reference it because I do not have it in front of me.

Assistant Commissioner CRANDELL: Unfortunately I do not either.

Mr DAVID SHOEBRIDGE: You referred to the 2019 Australian Institute of Criminology report.

The Hon. PENNY SHARPE: It is the criminology report.

Assistant Commissioner CRANDELL: Ah, yes. That is where I have pulled that data.

Mr DAVID SHOEBRIDGE: That conclusion where you say that the NDICP data shows Indigenous people are now less likely than non-Indigenous people to die in prison custody is actually wrong, is it not?

Assistant Commissioner CRANDELL: That is the information that I had available to me. I certainly would not be putting something into my submission if I thought it to be wrong.

Mr DAVID SHOEBRIDGE: Well, what that report shows is that once an Aboriginal person is in custody, they have a marginally lower likelihood of dying in custody now than a non-Aboriginal person.

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: That is what the report shows, is it not?

Assistant Commissioner CRANDELL: To my knowledge, yes.

Mr DAVID SHOEBRIDGE: But, of course, because Aboriginal people are in jail at 10, 15 or 20 times the rate of non-Aboriginal people, the actual rate at which Indigenous people die in custody is still substantially and multiple times greater than non-Aboriginal people. Do you accept that?

Assistant Commissioner CRANDELL: I would need to take that on notice and do my own research on that. My understanding was that the likelihood between Aboriginal deaths in custody and non-Aboriginal deaths in custody were very closely similar.

Mr DAVID SHOEBRIDGE: Assistant Commissioner, do you understand the difference?

Assistant Commissioner CRANDELL: Yes. I understand what you are saying. However—

Mr DAVID SHOEBRIDGE: And I put it to you again that your report, where you say NDIC data show Indigenous people are now less likely than non-Indigenous people to die in prison custody is just plain wrong. In fact, Aboriginal people, First Nation people in this country, die in custody at a rate 10 times or greater than non-First Nation people. Do you agree or disagree with that?

Assistant Commissioner CRANDELL: I would like to take it on notice so that I could prepare a proper response.

The CHAIR: Ms Sharpe, the floor is yours.

The Hon. PENNY SHARPE: Thank you. I was looking at your Suspect Target Management Plan [STMP] figures, sorry. Just bear with me. You say that 79 Aboriginal adult people are listed as active under the STMP, which is 23 per cent. How many people is that in total? I can probably work that out. When you say that they are currently listed as active, that means that they are subject actively to the program, but are there other people within the program who are activated and deactivated?

Assistant Commissioner CRANDELL: Yes, there are.

The Hon. PENNY SHARPE: Are you able to provide us the figures or the numbers in the whole list?

Assistant Commissioner CRANDELL: I certainly can. The change from STMP II to III will have a three-month review period and, at that three-month review period, there must be a determination as to whether or not the targeting process will continue.

The Hon. PENNY SHARPE: Okay. I have one more question. I want to talk about the fundamental issue with all this, which is the trust issue. We have had a lot of evidence, obviously—this will come as no surprise to you—about the levels of trust, or probably more importantly distrust, between Aboriginal communities and the NSW Police Force. You point in here to some of the pilot programs. Subsequent to that and in addition to that there has been a lot of discussion about the independence of investigations when there is a death in custody. Do

you believe that a more independent process for investigations—how do you think that would interact with building trust with a group of people who have called very strongly for changes to the current arrangements?

Assistant Commissioner CRANDELL: Look, I think it has got merit. I think that the involvement of—I think there was a suggestion in some of the papers that there should be an involvement of Aboriginal people in that process. I think the suggestion was that the Aboriginal Community Liaison Officers, which would be problematic only because Aboriginal Community Liaison Officers are just that: They are not investigators. We would have to have people that understand investigative processes and could do a proper review, I guess, and be involved in that sort of review. If that was something that could bring us closer together then so be it. I believe, though, that our investigative processes are very robust. There are review processes, particularly in the critical incident investigation regime. The oversight and review of processes that occur are very robust.

The Hon. PENNY SHARPE: How much liaison is there with families through that process? Again, there have been some very good stories of excellent liaison work from the police but also equally there have been stories where families are distraught. They really have no idea of what happens next. They do not have access to information, particularly and obviously if it goes to the Coroner: It could be years. What sort of insight do families have at that critical review stage? None of them had mentioned it.

Assistant Commissioner CRANDELL: Look, I think what you said earlier is correct and that is that there are varying degrees of success and performance in those areas, particularly when dealing with families. Some investigators may have contact with the families far more often than others and advise them of processes, et cetera. Perhaps a protocol in that regard would be helpful. I think, though, that there is a deal of compassion in relation to these matters, particularly when death is involved. Whether that requires additional guidance is another question.

The Hon. PENNY SHARPE: Yes. I have to say I have heard some pretty bad stories.

Assistant Commissioner CRANDELL: Sure.

The Hon. PENNY SHARPE: I have one more question before questioning moves on to others. You also mentioned in your opening statement about the upgrades that have occurred to police facilities. Are there any places currently that have not been upgraded that would not now meet the basic requirements as set out in the Royal Commission into Aboriginal Deaths in Custody? Do we still have places that have hanging points, for example?

Assistant Commissioner CRANDELL: Not to my knowledge. However, can I take that on notice so that I can be certain of that?

The Hon. PENNY SHARPE: Yes. That would be great.

Assistant Commissioner CRANDELL: That is a good point.

Mr DAVID SHOEBRIDGE: Thank you, Chair. And thank you, Assistant Commissioner Crandell, for the submission. Can I take you to the Suspect Target Management Plan?

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: You say at one point in your submission that the NSW Police Force currently has 79 Aboriginal adult people listed as active under STMP, which is 23 per cent of the total cohort.

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: Is that as of today or as close to today as you can?

Assistant Commissioner CRANDELL: Yes, it is.

Mr DAVID SHOEBRIDGE: Is that because of changes under STMP III?

Assistant Commissioner CRANDELL: I believe so and I certainly hope so.

Mr DAVID SHOEBRIDGE: You say that 16 Aboriginal young people are listed under STMP, which is 5 per cent of the total STMP cohort?

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: Again, do you think that is because of changes under STMP III?

Assistant Commissioner CRANDELL: Well, I believe so. Having said that STMP III allows a stream of support, particularly for young people, so if there was a larger cohort in the supportive stream, then I would be even more happy.

Mr DAVID SHOEBRIDGE: Well, I could say both those figures show a substantial reduction from the rate of Aboriginal people involved in STMP from last year.

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: Do you agree to that?

Assistant Commissioner CRANDELL: Yes, I do.

Mr DAVID SHOEBRIDGE: Was that part of a conscious strategy inside the police?

Assistant Commissioner CRANDELL: I would say yes, on the basis of the introduction of STMP III and a broadening of the focus.

Mr DAVID SHOEBRIDGE: Going to your discussion about statistics, you say that the Law Enforcement Conduct Commission [LECC] has indicated an estimation of 72 per cent of people under STMP II were Aboriginal.

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: And the NSW Police Force estimation was 47 per cent.

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: Can you explain in some more detail what the difference between the statistical positions is?

Assistant Commissioner CRANDELL: I will do my best. If not, I am happy to take that on notice and to work out the difference. My understanding is that different methodologies were used in order to arrive at those figures.

The Hon. PENNY SHARPE: Can I just clarify something? Is there an agreement on the number of people? Is there an agreement between yourselves and LECC on the actual number of people under the program but the disagreement is about whether they are Aboriginal or not?

Assistant Commissioner CRANDELL: Yes, that is correct.

Mr DAVID SHOEBRIDGE: The LECC accepted the police identification as the basis for their data. Is that right?

Assistant Commissioner CRANDELL: Yes, so there are two sets. I have actually seen the tables. They are in my notes. There is the LECC estimation figures and then there is the police estimation figures, which we have done off a formula. I cannot tell you which formula that was.

Mr DAVID SHOEBRIDGE: Yes. But, as I understand it, the LECC adopted the police's observations as to Aboriginality, whereas the police put it through some sort of algorithm and reduced that to 80 per cent or so of the actual observed Aboriginality by police. Is that right?

Assistant Commissioner CRANDELL: It could be that LECC adopted the "once identified Aboriginal, always identified Aboriginal" methodology—

Mr DAVID SHOEBRIDGE: Correct.

Assistant Commissioner CRANDELL: —and that the police adopted the 80 per cent methodology. That could be the difference. But, either way, I think either algorithm has issues.

Mr DAVID SHOEBRIDGE: Indeed. If you could provide us with some more detail about that—

Assistant Commissioner CRANDELL: Sure.

Mr DAVID SHOEBRIDGE: —because the police method of simply reducing it on the assumption that some people were incorrectly identified as Aboriginal ignores the fact that another cohort are wrongly identified as not Aboriginal when they are.

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: And so, the police data just simply discounts. Is that how it operates, Assistant Commissioner? Perhaps I will invite you to provide some more detail and respond to that observation on notice.

Assistant Commissioner CRANDELL: If I can, that would be good. These are statistical matters. All I know is that I am not comfortable with the outcomes from either and I think it needs a complete review.

Mr DAVID SHOEBRIDGE: Who are you working with to ensure that the data on Aboriginality, which would have to be one of the most critical data components the police have—who are you working with outside the police to make sure that data is statistically robust?

Assistant Commissioner CRANDELL: I am not working with anybody outside the police. I know we have a statistical services team that works with BOCSAR in relation to statistics. The other difficulty is also identifying people that are victims of crime that are Aboriginal. And so, that system of identification is extremely difficult, particularly when verification of Aboriginality takes a number of forms.

Mr DAVID SHOEBRIDGE: Alright. So, do I understand the New South Wales police are not working with any external agency to try and put additional credibility into the data?

Assistant Commissioner CRANDELL: Not to my knowledge, but can I check on that?

Mr DAVID SHOEBRIDGE: Do you accept, though, that if the New South Wales police want whatever reforms they do on their data to have credibility, especially in the Aboriginal community, it will be necessary to have external verification of that?

Assistant Commissioner CRANDELL: I absolutely agree. It would need to be peer reviewed at least.

The Hon. TREVOR KHAN: Sorry to cut in and sorry I was late; I had an interesting morning. Your statement says:

... and will attract peer review processes once determined.

I suppose my question is: What does peer review processes mean? Does that mean two officers sitting in a room or does it mean something else?

Assistant Commissioner CRANDELL: Good question. It would be an external review process with people that are properly qualified in statistical processes.

The Hon. TREVOR KHAN: I am not being rude, but you do not know who they are?

The CHAIR: Would that be BOCSAR?

Assistant Commissioner CRANDELL: Well, it could be BOCSAR, but certainly somebody external to the NSW Police Force would be my expectation.

Mr DAVID SHOEBRIDGE: I suppose my concern was that simply doing that, as opposed to a co-designed model where you are working with an external partner throughout it, is a very substandard outcome if you want it to be seen to be credible by external voices and most especially the Aboriginal community.

Assistant Commissioner CRANDELL: I accept that.

Mr DAVID SHOEBRIDGE: Do you accept in terms of identification of Aboriginality that surely one of the key stakeholders in working out how to identify Aboriginality must be the Aboriginal community?

Assistant Commissioner CRANDELL: Yes.

Mr DAVID SHOEBRIDGE: What, if any, engagement has there been with the Aboriginal community about that in this review?

Assistant Commissioner CRANDELL: I do not know of Aboriginal engagement in relation to that. We have a number of internal system issues that need to be looked at in relation to recording of Aboriginality and then being certain that Aboriginality is correct.

Mr DAVID SHOEBRIDGE: But surely you could not have a review as to whether or not police are accurately identifying Aboriginality without having the Aboriginal community's views and attitudes informing that review? It sounds to me like that is not happening. I cannot conceive of how you could have a credible review about identifying Aboriginality without understanding how the Aboriginal community identifies it.

Assistant Commissioner CRANDELL: Sure. Well, in terms of the review, I am certainly comfortable to bring in Aboriginal community to determine what the best possible mechanism is, because the system at the moment is not complete and I can assure you that I am looking for accuracy in whatever model we choose.

The CHAIR: What is the time frame for completing this?

Assistant Commissioner CRANDELL: It is underway now. In terms of the time frame, I cannot tell you, but I can take that on notice, if you wish, and perhaps provide you an indication of when that is likely to be complete.

The CHAIR: That would be good.

Mr DAVID SHOEBRIDGE: I think we will probably have some clarity once we get those answers on notice, Assistant Commissioner.

Assistant Commissioner CRANDELL: Sure.

Mr DAVID SHOEBRIDGE: Do you accept that the Aboriginal community is over-policed?

Assistant Commissioner CRANDELL: I do not know what you mean by over-policed.

Mr DAVID SHOEBRIDGE: Policed more aggressively for the same conduct than non-Aboriginal people are.

Assistant Commissioner CRANDELL: I think the circumstances of Aboriginal people lend themselves to being incarcerated more often—and bail refused more often—because of their circumstances. I do not know that I would attribute that to aggressive policing. Of course, it does get very difficult for police officers, when there is a history of offending, to then look at less intrusive methods of proceeding.

Mr DAVID SHOEBRIDGE: Assistant Commissioner, we could have a statistical battle here. I could throw numbers at you and you could take them on notice. But could I suggest to you that the evidence is compelling that from the moment police begin investigating, Aboriginal people are more likely to have a police investigation of the same incident than a non-Aboriginal person? Aboriginal people are more likely, with the same set of facts, to have it lead to criminal charges. With the same set of facts, Aboriginal people are more likely to be refused bail. Aboriginal people are more likely to go to jail for the same offence than non-Aboriginal people. Aboriginal people are more likely to have a longer sentence—

The Hon. TREVOR KHAN: Sorry. Wait a minute—

Mr DAVID SHOEBRIDGE: —and Aboriginal people are more likely to be refused remand.

The Hon. TREVOR KHAN: I will take a point of order.

The CHAIR: There is a point of order taken.

The Hon. TREVOR KHAN: The point of order relates to—it is unfair on this witness to put a series of propositions, some of which actually do not relate to the cops. For instance, assertions with regard to length of sentences—

The Hon. ROD ROBERTS: That is one of my questions that I have here.

The Hon. TREVOR KHAN: —has nothing to do with Assistant Commissioner Crandell. I think it has to be broken down in some way.

The CHAIR: I take the point of order. I will not uphold it, but I will invite Mr Shoebridge to—rather than putting a series of rolled-up propositions to the witness, as is not allowed in courts—put the proposition and ask him to respond with a bit more interaction.

Mr DAVID SHOEBRIDGE: Alright. We will deal with the moment leading up to an Aboriginal person being put behind bars. The evidence seems unchallengeable that the same conduct is more likely to lead to a police investigation when the conduct is engaged in by an Aboriginal person than a non-Aboriginal person. That same conduct is more likely to lead to charges against the Aboriginal person. That same conduct is more likely to lead to the police making an application to refuse bail when it is an Aboriginal person than a non-Aboriginal person. Do you accept that that is the nature of the data in terms of the police interaction with First Nations peoples?

Assistant Commissioner CRANDELL: I would like to see the data.

Mr DAVID SHOEBRIDGE: Well, are you aware of data that shows that?

Assistant Commissioner CRANDELL: No.

Mr DAVID SHOEBRIDGE: Do you accept that Aboriginal adults are incarcerated in New South Wales at a rate of—depending if they are women or men—between 10 and 20 times the rate of non-Aboriginal people?

Assistant Commissioner CRANDELL: I would have to check the data.

Mr DAVID SHOEBRIDGE: Do you accept that Aboriginal people are incarcerated at a rate that is a multiple of non-Aboriginal people, Assistant Commissioner?

Assistant Commissioner CRANDELL: Yes, I would.

Mr DAVID SHOEBRIDGE: Do you accept that Aboriginal people are not inherently more criminal than non-Aboriginal people?

Assistant Commissioner CRANDELL: No, but once again, I would like to have a look at the data that you are referring to.

The CHAIR: I do not think that question related to data.

Mr DAVID SHOEBRIDGE: I am asking you whether or not you sitting there, Assistant Commissioner, accept that Aboriginal people are not inherently more criminal than non-Aboriginal people.

Assistant Commissioner CRANDELL: Yes, I accept that. I accept what you are saying.

Mr DAVID SHOEBRIDGE: Can you explain how it is that, partly as a result of police actions, they find themselves in jail at multiple times the rate of non-Aboriginal people?

Assistant Commissioner CRANDELL: Sure. Look, I accept that the vast majority of the Aboriginal communities do not have any contact with the justice system or with police.

Mr DAVID SHOEBRIDGE: The data would not show—

The Hon. TREVOR KHAN: Just let him finish. I do not want to take formal points of order.

The CHAIR: The witness is able to respond.

The Hon. TREVOR KHAN: He is, but he is entitled to answer before Mr Shoebridge jumps down his throat.

The CHAIR: That is true.

Mr DAVID SHOEBRIDGE: I am endeavouring to keep this at as low a temperature as possible.

The Hon. TREVOR KHAN: I can see you working valiantly at it.

The CHAIR: This will work better if Mr Shoebridge asks a question and permits the witness to answer before proceeding to a second question.

Mr DAVID SHOEBRIDGE: I will let you finish, Assistant Commissioner.

Assistant Commissioner CRANDELL: Could you repeat the question? I have been distracted.

Mr DAVID SHOEBRIDGE: How do you explain the fact that partly as a result of police conduct Aboriginal people are finding themselves behind bars at multiple times the rate of non-Aboriginal people if, as you agree with me, Aboriginal people are not inherently more criminal than non-Aboriginal people?

Assistant Commissioner CRANDELL: I think there are a variety of factors that impact upon Aboriginal incarceration rates. Those drivers relate to factors like unemployment, like poverty, like the serious marginalisation of Aboriginal communities throughout New South Wales and Australia. There are a number of drivers that bring Aboriginal people to the attention of police and then attract process from police that place them into custody. Yes, police are involved in that process—absolutely, no question—but the drivers that cause recidivism and that contact with police are many and certainly very complex.

Mr DAVID SHOEBRIDGE: Assistant Commissioner, do the New South Wales police accept any responsibility for what I would characterise as the grossly unacceptably high rate of Aboriginal people in New South Wales jails?

Assistant Commissioner CRANDELL: Absolutely we find that unacceptable and concerning and it is something that we want to work with Aboriginal communities to address. There is no question about that.

Mr DAVID SHOEBRIDGE: Assistant Commissioner, my question was whether or not the police accept any responsibility for that outcome. Or do you simply point to all of these external factors and deny any role in it?

Assistant Commissioner CRANDELL: No, no. The police have a role in the whole process and the incarceration of Aboriginal people. There is no question about that.

Mr DAVID SHOEBRIDGE: Do you accept on behalf of the New South Wales police that police conduct needs to change as part of the response to reduce the rate at which First Nations people are put in jail?

Assistant Commissioner CRANDELL: I would absolutely look to any opportunity to improve relationships, to improve our relationships with Aboriginal communities and keep people out of the criminal justice system. Anything that we can do in that regard would absolutely be taken on board.

Mr DAVID SHOEBRIDGE: We have heard from witness after witness after witness in this inquiry who has said one of the things they want is less interactions with police, not more interactions with police. They want you to pull back from the overt policing of their communities. As I read your opening submission, that is a strategy you reject. You are actually asserting that proactive policing is part of your mission in Aboriginal communities.

Assistant Commissioner CRANDELL: Part of our mission is not only putting people into the criminal justice system but now seeking to offer pathways before they get to the criminal justice system or pathways out of the criminal justice system. That is what we are working to do. We cannot simply turn a blind eye to what is happening in these communities. We need to look at our prevention strategies and try to prevent people from coming into the criminal justice system. That is what our mission is and we should not shy away from that. We should not simply say, "Well, we will not have any contact." We can help and we can put together some decent prevention strategies. There is no question about that, so to simply say, "Well, we should have no contact," I do not think is an acceptable solution.

Mr DAVID SHOEBRIDGE: Assistant Commissioner, I cannot recall a single submission from an Aboriginal community who said that they want your help in that regard, that they want you more involved in their communities. The submissions are saying they want you less involved and they want resources so as they can have self-determination in their communities. On what basis are you saying that greater police involvement in Aboriginal communities is going to help? Where is the evidence to support that?

Assistant Commissioner CRANDELL: For a number of reasons. Maranguka is one example where police involvement in that Aboriginal community has delivered significant outcomes, and that has been independently assessed not by the police but by KPMG. I do not know whether those papers are before this Committee but they should be. That is one outcome. There are a number of others right across New South Wales. There are programs that police engage with Aboriginal communities and make a difference to those Aboriginal communities. I have experienced it myself in Lismore up on the Far North Coast many years ago. Aboriginal community consultative committees still occur right across New South Wales.

There is a number of communities out there that enjoy the support of police, that enjoy police-run programs. I just heard of a police boxing program in Armidale where there has been up to 86 young people involved who are working with police, looking to get educational opportunities and other opportunities right through the community. It is not just at Armidale though; it goes right through different communities. Bourke is another example. Mount Druitt has just done a strategy to allow young mothers, particularly Aboriginal mothers, access to baby restraints because it was found that half of the babies that were killed in car accidents were not properly restrained. There has been a 33 per cent reduction as a result of that strategy. These strategies are going on all across New South Wales. They are not something that we would simply say that we would walk away from. There is boxing, there is exercises, there is educational programs; there is a great deal of value that we add to communities right across New South Wales.

The CHAIR: Can you provide details of those programs on notice?

Assistant Commissioner CRANDELL: I am absolutely happy to provide details of all of those programs.

The CHAIR: Please do.

Assistant Commissioner CRANDELL: Our Aboriginal coordination unit would have examples from all of that good that we are doing across the State. Often they are police led but sometimes they are multi-agency

led. When we look at Maranguka—multi-agency led. But the difference we can make in those communities would far outweigh anything like us simply removing ourselves from that supportive role.

Mr DAVID SHOEBRIDGE: Maranguka, the one you first raised, is Aboriginal led, external to the police. Yes, police have an involvement. I have been up there and seen police involvement. I have seen it for myself. But why that works is because police are not taking the lead, the community are taking the lead, the community are directing resources, not the police. In fact, the first and strongest case that you cite is against your proposition that it should be police-led initiatives, is it not?

Assistant Commissioner CRANDELL: I have outlined to you all of the different projects and programs that we have in place. If you have a look at some of the other programs that I have indicated—for example, the Armidale program. If you have a look at those numbers and have a look at the difference that the police make, you would not simply say that it must be community led. Where the police can contribute, they ought to contribute. We ought to have a presence and we ought be able to put people in the right direction and not bring them before the criminal justice system.

Mr DAVID SHOEBRIDGE: So it is the New South Wales police's position that it should be police-led rather than First Nations-led intervention programs that we should be looking to?

Assistant Commissioner CRANDELL: No, I am not saying that.

The CHAIR: In all fairness, I do not think that is what he said.

Mr DAVID SHOEBRIDGE: I will recast the question.

The CHAIR: Please do.

Mr DAVID SHOEBRIDGE: Assistant Commissioner, do you accept that it is the broad view of the Aboriginal community that self-determined Aboriginal-led programs are the best solution for engaging with their community and keeping them out of the criminal justice system? Do you accept that that is the view?

Assistant Commissioner CRANDELL: I accept that is a view. I also say though whether the police lead the program or whether it is a community-led program is of less consequence to me and the NSW Police Force. It is about outcomes and how we can divert people and not bring them into the criminal justice system. We know that when young people in particular have early contact with the criminal justice system it creates a terrible impact upon their prospects for the future, be it employment or otherwise.

Mr DAVID SHOEBRIDGE: Perhaps part of the answer is stepping back from over-policing Aboriginal communities so Aboriginal young people do not come into contact with police every time they step out of the door, every time they walk down the street in Glebe. Perhaps stepping back is part of the answer, Assistant Commissioner.

Assistant Commissioner CRANDELL: I think I have answered that and my answer has been that I think the positive community engagement strategies ought to continue.

The Hon. ROD ROBERTS: In your time as a police officer how many people have you ever sentenced to a term of imprisonment?

Assistant Commissioner CRANDELL: None.

The Hon. ROD ROBERTS: Who does that?

Assistant Commissioner CRANDELL: That is the courts.

The Hon. ROD ROBERTS: It has nothing to do with the police, does it?

Assistant Commissioner CRANDELL: No.

The Hon. ROD ROBERTS: As to who goes to jail or not?

Assistant Commissioner CRANDELL: Correct.

The Hon. ROD ROBERTS: On page 2 of your submission you talk about:

Delaying entry into the Criminal Justice System is equally unacceptable because the NSWPF cannot support creating more victims of crime. Turning a blind eye to recidivism is not effective diversion.

Can you explain to the members of the Committee what happens in terms of policing if the police do not act on the complaint that they have received?

Assistant Commissioner CRANDELL: Yes. This becomes very difficult for police because if there is a complaint then police must act and if they do not there can be consequences for that.

The Hon. ROD ROBERTS: The officers themselves do not really have discretion as to whether they act or not.

Assistant Commissioner CRANDELL: No, they must investigate and they must then be led by that investigation and make a determination as to the process thereafter.

The Hon. ROD ROBERTS: And if they do not, what are the consequences of that or the potential consequences of that?

Assistant Commissioner CRANDELL: Potentially they can be liable to a penalty, certainly managerial action and the instigation of complaint proceedings.

The Hon. ROD ROBERTS: I know you are fairly astute in lots of statutes, but section 18 (k) of the Bail Act, are you familiar with that? Let me help you there.

The Hon. PENNY SHARPE: I think you have mentioned it before.

The Hon. ROD ROBERTS: I think I have and I think it needs mentioning again. Section 18 (k) of the Bail Act says in determining whether bail is granted or not the officer must take into account:

... any special vulnerability or needs the accused person has including because of youth, being an Aboriginal or Torres Strait Islander, or having a cognitive or mental health impairment.

Can you explain to the Committee what the implications are of section 18 (k) of the Bail Act for an operational police officer?

Assistant Commissioner CRANDELL: Certainly prior to determining bail then those particular heads of consideration must occur. If a bail determination is to be made appropriately then each of those considerations must be recorded, must be thought about and appropriate strategies put in place to address them.

The Hon. ROD ROBERTS: I cannot quote your evidence exactly, so we will dance around here a little bit and we will work it out between us, but you said before that there is a high rate of criminal activity by Indigenous people, but you led to the fact that there are reasons and factors for that. Could you elucidate that for us?

Assistant Commissioner CRANDELL: I think it becomes difficult when police are dealing with some members of the Aboriginal community because they will inherently have criminal histories that prevent police making a determination to take them out of the criminal justice system or not proceed, particularly if there are judicial offences that have been proven such as not appearing at court or other offences that have been proven of a like nature to the offence that is being looked at right now in relation to bail and in relation to what put the person before the court. The other important fact is the consideration for community safety and the protection of victims.

I have heard, and I am aware, that police officers can issue warnings and cautions or even court attendance notices for breaches of bail, but each determination must be made and turn upon each fact that is before that police officer. If the police officer does not take positive action and that places a victim at risk then that risk returns to that officer and to the NSW Police Force. It becomes a very difficult situation to determine whether a person does not require placement before a court immediately where bail is refused or where the conditions are imposed in order to get that person before the next available court.

The Hon. ROD ROBERTS: Just going to your submission under the heading of "Victimisation". We are looking at the tragic figures, I describe them as, of assaults upon Aboriginal people and in particular Aboriginal females. Can you take us a bit further into the STMP part in relation to DV, what that is about and why it is there?

Assistant Commissioner CRANDELL: Yes. DV-STMP is a particular strain or a particular field within which domestic violence offenders are targeted by the police. There are different ways to target those domestic violence offenders. Predominantly it is by way of compliance—checking on AVO conditions, checking on any court-imposed conditions and making sure that victims are kept safe. Victims in all those matters are contacted and advised of the police intention to target those particular perpetrators. We have found, and it has been found by BOCSAR, that there has been a 43 per cent reduction in the likelihood of a serious offence or a domestic violence related offence being committed in the 12 months following that placement on DV-STMP. That is a significant outcome, it is a significant finding and that will drive us to make sure that we use DV-STMP as much as possible to prevent recidivism in terms of domestic violence and then drive down that crime.

The Hon. ROD ROBERTS: You say you make contact with the victim of domestic violence offences and say that you are going to—enforce is not the word but enact the STMP. What is the victim's reaction when you speak to them?

Assistant Commissioner CRANDELL: They need to be supportive. Sometimes the domestic violence response teams will spend a great deal more time, depending on victim concerns et cetera. The whole idea of the process is to give that victim support and make sure that victim remains protected. When we see some of the tragic outcomes that occur because of domestic violence in terms of homicide et cetera, we believe we are on the right track in terms of continuing on with the DV-STMP process.

The Hon. ROD ROBERTS: Further on page 2 of your submission you talk about the Australian Bureau of Statistics. It says:

... the imprisonment rate of Aboriginal people nationally decreased by 2%. In NSW the reduction was 7.5%.

Can you give us your thoughts as to why that might be the case?

Assistant Commissioner CRANDELL: That has been over the past 12 months. I know there has been a 3 per cent reduction in bail refusal rates by the police and that may well be connected with COVID. There has also been around about a 3 percentage points reduction from the courts in bail refusals. It was interesting that over that last 12-month period that we have seen—I would say that is significant reduction in New South Wales.

The Hon. PENNY SHARPE: That 12 months is to when—most recently?

Assistant Commissioner CRANDELL: That is the most recent 12-month period.

The Hon. PENNY SHARPE: I am interested in the COVID period. Thank you.

The Hon. ROD ROBERTS: I want to ask about recruitment of Indigenous police officers. Your submission talks about 3.1 per cent of employees in the New South Wales police service being Indigenous or identify as Indigenous. What active steps do the police take to recruit Indigenous people?

Assistant Commissioner CRANDELL: There are quite a number of steps. The Indigenous Police Recruitment Our Way Delivery Program [IPROWD] program is one of our flagship programs that provides support not only to prepare Aboriginal people for police employment but also for employment within any other government agency. We have representatives who not only look to recruit Aboriginal police officers and other employees but also prepare them for that recruitment. Then, if it is an Aboriginal police officer, the program provides support to guide them through the Charles Sturt University accreditation process, which is 12 months after attestation.

That program is extremely successful and has been ongoing for several years. It brings us closer, I believe, to the Aboriginal community and shows some positive pathways, not only in the sworn field but also in the unsworn field. IPROWD is one way and our recruitment branch actively looks to recruit Aboriginal people. The reason we do that is because we want to be representative of the communities we serve. The larger the proportion of Aboriginal people we have in the NSW Police Force, the better. That gives us an understanding of exactly some of the difficulties that are faced in Aboriginal communities.

The Hon. ROD ROBERTS: We have heard from a number of witnesses that there are a number of social factors that influence why Indigenous people might fall into a life of crime, including a lack of housing, employment opportunities, good health services, et cetera. Do you agree with that? Do you think that is a driving factor towards somebody falling into a life of crime?

Assistant Commissioner CRANDELL: Yes, absolutely. I think there becomes a cycle of violence and a cycle of poverty that affects many Aboriginal people. I have been to Aboriginal missions in the north and south of the State and I have seen some of the conditions under which, particularly children, live. In my view, any child in that sort of environment would not prosper and would not necessarily be given the opportunities that other children would see as natural.

The Hon. ROD ROBERTS: Sure. I do not wish to make light of this—I not want it to sound that way at all because they are serious issues—but that requires a multiagency-driven response.

Assistant Commissioner CRANDELL: Yes.

The Hon. ROD ROBERTS: Where I say I do not want to make it sound light but that is not really the responsibility of the NSW Police Force, is it?

Assistant Commissioner CRANDELL: No, it is not. However, I would say that there is a great opportunity for us to engage with other service providers through the STMP-III program. The engagement of those service providers, whilst difficult, would be extremely beneficial. That is an area of focused deterrence that we could capitalise on if we could access the priorities of drug and alcohol counsellors as well as the Family & Community Services priorities. I do believe that we can make a big difference if we could work with them early in any sort of potential offending cycle. Yes, we want to be part of that whole process but we want it to be whole-of-government; it cannot just be the police on their own. It absolutely needs more services and more commitment from the rest of the Government.

The Hon. ROD ROBERTS: We have heard from various organisations and individuals that deaths in custody, whether they be in police custody or Corrective Services custody, should be investigated by an Aboriginal-led and staffed investigation team—I suppose you would call it. Could you explain to the Committee how difficult, onerous or unique it is to investigate such a death, whether suspicious or not?

Assistant Commissioner CRANDELL: Yes. It is a complex process in any death but particularly if it is a death as a result of a critical incident. If it is a police shooting, a death in custody or the result of a police pursuit—whatever that might be—it is a very involved, lengthy and intricate investigation process. The skills to properly investigate that are not something you simply acquire overnight. It takes a great deal of time and effort to gather that experience and that know-how, particularly if you are performing an oversight role or an overview of what has occurred and what investigative processes have been undertaken. If you have a look at the coronial system in New South Wales now, the Coroner oversees the police investigation.

That is for good reason because the Coroner is legally qualified and has a team of people who can oversight with confidence and with the appropriate qualifications that would allow any level of oversight to be robust and certain. It would be extremely difficult to simply—I know I have spoken about it before but the Aboriginal community liaison officers would not have that capability. None of those officers would want that capability because they perform a completely different function. If we were to be serious about it then we would have to have experienced investigators. Whether from the Aboriginal community or otherwise, they would need some experience in relation to investigative practices and processes.

The Hon. ROD ROBERTS: Just further to that, in your own experience, for a detective to lead an investigation into a critical incident and be appointed to lead that particular investigation, how many years of experience as a detective would you normally have to have?

Assistant Commissioner CRANDELL: I would say a minimum of 10 and, even then, I would say that would be at the early phase because critical incident investigators are now generally Detective Inspectors of police. They then report to and their work is reviewed by a separate review team, which is also generally led by a Detective Inspector. Detective Inspectors do not come around for—it is certainly not a 10-years-from-the-academy scenario. I would suggest that they would have, on average, 20 years of experience as a police officer and then an absolute minimum of 10 years as an investigator.

The Hon. TREVOR KHAN: I am relying on your statement because I have been deficient in not being here. The second last page of your statement deals with Indigenous recruitment. I am not being in any way critical but are you able to give us some breakdown of the rank and experience of the 470 police officers who are identified in that section on notice? It partly flows from my friend's question with regard to detectives. I am interested in, for instance, whether or how many Aboriginal detectives there are, for a start. But other ranks are equally important.

Assistant Commissioner CRANDELL: Sure, no problem.

The Hon. TREVOR KHAN: Would it also be possible, in providing those statistics, to identify the number of female Aboriginal police officers and which ranks they fall into?

Assistant Commissioner CRANDELL: Certainly.

The Hon. TREVOR KHAN: That then brings me back to page 3 of your statement, which deals with victimisation. We have received a good deal of evidence relating to domestic violence circumstances and women being charged in domestic violence circumstances where they may in fact be the long-term victim, if not the victim on the instance that brings the cops to the house on that occasion.

Assistant Commissioner CRANDELL: Yes.

The Hon. TREVOR KHAN: I am interested in whether this is one of the reasons we have seen an increase in the incarceration rates of women. Have you any views as to those matters and how better the police may approach identifying who is, in a sense, the "real" victim?

Assistant Commissioner CRANDELL: Yes. I would like to have a deeper dive into that question. If I could take it that on notice and offer you something—

The Hon. TREVOR KHAN: I am not going to be critical of any question you take on notice.

Assistant Commissioner CRANDELL: Sure. If I can take that on notice and possibly offer a preliminary view. I accept without hesitation the fact that Aboriginal women would be victims of domestic violence far higher than any other section of our society or community.

The Hon. TREVOR KHAN: Or men?

Assistant Commissioner CRANDELL: Certainly men.

The Hon. PENNY SHARPE: But women as well.

Assistant Commissioner CRANDELL: But even in terms of the women cohort, I would say they are far more represented.

The Hon. TREVOR KHAN: Let us be clear: You identify that because of issues of housing, disadvantage of a whole variety of circumstances and all the other things you pointed to before. Is that right?

Assistant Commissioner CRANDELL: Yes, I do and I would also say that there is a fair rate of under-reporting in that community as well. When you say police go to the house and the female has been a victim on a number of other occasions, I would absolutely accept that. If police get that determination incorrect and take away the perpetrator and accuse a perpetrator who is actually a victim, then we do have a judicial system that can come in and have a look at those individual circumstances. I am not sure though that it is that simple and that is why I would like to take that away on notice and let me have a look at exactly those reasons for that higher victimisation rate of Aboriginal women. That would be something that my command can do. I am more than happy to take that on notice.

The Hon. TREVOR KHAN: Sure.

The Hon. PENNY SHARPE: You will have to take this on notice, but my understanding is that the Aboriginal Legal Service, the Women's Legal Service and others have been raising this issue for quite a while. I am interested if you can provide to the Committee what interaction police have had specifically in relation to this matter and whether it has been discussed, whether it is through the Domestic Violence Death Review Team—although that is probably not the right place.

Assistant Commissioner CRANDELL: I know what you are saying.

The Hon. PENNY SHARPE: I am just saying we have had a lot of evidence. This is not a new issue. It has been raised a lot, so anything you could provide to us would be great.

Assistant Commissioner CRANDELL: I am more than happy to take that away and I will give you advice on exactly who we are consulting.

The Hon. TREVOR KHAN: This is not simply related to the Aboriginal community, but I am interested in essentially the systemic racism that arises out of either legislative change or directions that may be made or policy changes within the police that lead to essentially an outcome. In this area of domestic violence I am interested as to whether you might have a view that there has been a toughening up of the response by police to domestic violence incidents and whether the impact of that has, in a sense, had a consequential effect on arrest rates and incarceration rates for domestic violence in the Aboriginal community.

Assistant Commissioner CRANDELL: I do have a view. My view would be that absolutely we have taken very, very seriously our obligations to investigate domestic-related allegations and wherever there is evidence available to draw a charge and arrest then we would look to undertake that action. We would also look to protect a victim with bail conditions et cetera and if not bail conditions then bail refusal to put them before court and make sure that the interaction between those two people is restricted. The good reason we do that is because of the alarming rate of female homicide in not only this State but Australia—female predominantly, not always but predominantly. So we are very attuned to that. Whilst we have the legislative ability, under the Act, not only to investigate but also to look for firearms and to do whatever we can to protect victims of domestic

violence, yes there is an increased level of response and there is an increased level that would invariably overflow to incarceration rates.

The Hon. TREVOR KHAN: You may or may not even on notice be able to do this, but when you deal with the issue of bail and show cause offences there is a capacity for a prosecutor to give notice where a magistrate has granted bail on a show cause offence so that the matter pops off to the Supreme Court in fairly quick order. I think it is within three days or something. Is that right?

Assistant Commissioner CRANDELL: Yes.

The Hon. TREVOR KHAN: Frightening that I found this out, but do you know if statistics are kept on the number of occasions when prosecutors have exercised their right for show cause offences?

Assistant Commissioner CRANDELL: I would say so, and I am happy to take that on notice and provide an answer.

The Hon. TREVOR KHAN: Can you see if you can give us some granular breakdown in terms of those instances when they have occurred and, if it is possible, if they relate to Aboriginal offenders?

Assistant Commissioner CRANDELL: Yes, certainly.

The Hon. TREVOR KHAN: On this final area in victimisation, I am interested—and I know—of the very high rate of sexual assault of women in the Aboriginal community. It goes back in part to the employment issue. I have a concern that a lot of these women are relatively young and I am wondering what is being done within the NSW Police Force to provide, in a sense, dare I say gendered support for young women who may be seeking to make a complaint of a sexual assault.

Assistant Commissioner CRANDELL: At the moment we are looking at a complete review of our sexual assault procedures to become more associated with victim support to provide the greatest possible victim support, particularly in relation to sexual assault offences. If I can take that on notice? I know I have taken a lot on notice.

The Hon. TREVOR KHAN: I am not being critical.

Assistant Commissioner CRANDELL: If I can take that on notice I would prefer to do so and that would give me an opportunity to perhaps show you and the Committee the way forward as we see it. I am meeting with the Commissioner on Wednesday and we are going through exactly what you have asked about. We are going through that chapter and verse.

The Hon. TREVOR KHAN: You would agree with me, would you not, that particularly with sexual assault matters the under-reporting that you are concerned about in domestic violence equally or even more relates in terms of sexual assaults?

Assistant Commissioner CRANDELL: Yes, and the concern that we have is that when people come to report sexual assaults the natural assumption—and a reasonable assumption—is that the police will investigate and prosecute. Not every victim wants that. Sometimes victims simply want to be heard. Sometimes they might want to place a complaint and leave it there. Sometimes they might simply want to let the police know about something that is occurring. I think we have to be very sensitive to those victims, and I do believe that a change in our approach is required to accommodate those sorts of people. It should not necessarily be that a victim says, "I don't want to go to the police because as soon as I do that the police will take over and force me into a court scenario."

The Hon. TREVOR KHAN: Sure. But you would agree with me that if you have got a white 45-year-old copper that the prospect of that victim being prepared to move forward is probably significantly reduced?

Assistant Commissioner CRANDELL: Absolutely. I absolutely agree with that and I think that we need to look at exactly how we bring those victims to the table.

The Hon. TREVOR KHAN: I was not suggesting that you were not alive to the issue.

Assistant Commissioner CRANDELL: No, no.

The Hon. ROD ROBERTS: In everyday practice though, and I am assuming that it would have got even better over the years, if a female comes forward with a complaint of sexual assault, whether she be Indigenous or other it does not matter—and if it is a female victim, because there are male sexual assault victims, normally a female police officer will be the contact officer not the white 45-year-old fat Detective Sergeant.

Assistant Commissioner CRANDELL: Yes, most certainly. The other issue is the initial contact point. So is the initial contact with a police officer, is it via a telephone call? How does that work? But you are right that in terms of the investigation, it would invariably be—well, not even the investigation. The initial inquiry once it is known I would expect it to go to whichever gender but certainly female if the victim is female.

The Hon. ROD ROBERTS: And there are specialist sexual assault investigators now, aren't there?

Assistant Commissioner CRANDELL: Yes.

The Hon. ROD ROBERTS: And child mistreatment officers as well. I do not know what the terminology is now but there are specialist investigators being recruited and trained throughout the police force to look after those particular crimes.

Assistant Commissioner CRANDELL: Absolutely. That is the area of operation that we are actually looking at now to see whether or not that can be improved in terms of victim support, yes, but also getting the best possible result for those victims that do come forward.

The Hon. TREVOR KHAN: Could I just go to page 4 and this relates to the Suspect Target Management Plan [STMP]. Again, none of this is a criticism; I just want to understand the statistics. You say that 16 Aboriginal young people are listed as active under STMP, which is 5 per cent of the total STMP cohort. Are you able to give me an age breakdown of those 16, particularly the numbers that are between 18 and 16, 16 and 14, and under 14?

Assistant Commissioner CRANDELL: Sure. I can tell you now that there will not be any under 14.

The Hon. TREVOR KHAN: That would be great.

Assistant Commissioner CRANDELL: Because the Commander of the Capability and Youth Command—as in Assistant Commissioner—must authorise any child under the age of 14 to be the subject of STMP. The position that the NSW Police Force will take in relation to any person targeted under STMP-III is one of support and not putting them into the criminal justice system. That is the starting point for all of them. But I am happy to take that on notice and give you those—

The Hon. TREVOR KHAN: And if you are able to break it down by male and female, taking an entirely binary approach—

Assistant Commissioner CRANDELL: Certainly.

The Hon. TREVOR KHAN: In terms of the five per cent of the total STMP cohort, does that mean that those 16 Aboriginal young people constitute five per cent of the total cohort, adult and young?

Assistant Commissioner CRANDELL: Yes. That is correct.

The Hon. TREVOR KHAN: That is over-representation of young Aboriginal people, is it not, in the exercise?

Assistant Commissioner CRANDELL: I would think not.

The Hon. PENNY SHARPE: Sorry, what does that mean in terms of the under-18 cohort? I had missed that. So five per cent includes adults. How many young people are there total? If you could provide that, that would be great.

Assistant Commissioner CRANDELL: I would have to take that on notice. I will add one thing for clarification. The cohort size will change as people come in and out, so as people are put in and then taken away. It is just a snapshot point in time.

The Hon. PENNY SHARPE: Sure. I am happy for you to take it from today. That is fine.

Assistant Commissioner CRANDELL: Sure.

The Hon. PENNY SHARPE: Whatever these figures were. Rather than giving us a new set, whatever the date you ruled off on that would be great.

Assistant Commissioner CRANDELL: Yes. More than happy to do that.

The Hon. TREVOR KHAN: Alright. So that is your statement. We will put that aside. I have got to go back. I am on so many inquiries I do not know whether I am Arthur or Martha. But I think on the first day of this inquiry—and I do not know if you have had an opportunity to look at the transcript—one of the issues that we were looking at was how the police investigated critical incidents in the context of deaths in custody. I think the

evidence was—you do not have to trust me on this and correct me if I am wrong—that there used to be a specialist police unit that investigated the offences and that now that has been scrapped. It falls essentially to local commands to appoint detectives to investigate each critical incident. Is that right?

Assistant Commissioner CRANDELL: No.

The Hon. TREVOR KHAN: Right.

The CHAIR: Just before you answer, that certainly was the evidence that we received.

The Hon. ROD ROBERTS: I think where we are getting confused is—and I am not suggesting Mr Khan is confused.

The Hon. TREVOR KHAN: I often am.

The Hon. ROD ROBERTS: Where we are at crosswires is that there was always an original jail squad. Do you remember that? There were specialist detectives—

The Hon. TREVOR KHAN: That might have been when you were in there in 1954.

The CHAIR: That is not the question that Mr Khan just asked.

Mr DAVID SHOEBRIDGE: Mr Khan, I have the evidence from Mr Evenden in front of me.

The Hon. TREVOR KHAN: There you go.

The CHAIR: Read where it is from.

Mr DAVID SHOEBRIDGE: This is from Legal Aid. Mr Evenden is one of its senior solicitors. He says:

Can I just quickly revisit the point of police investigations, we have made a number of recommendations. One of them in relation to deaths in custody specifically is that a couple of years ago, the police devolved their investigation function from the Corrective Services Investigation Unit, which was a number of experienced police investigators—detectives—who were doing that work all the time. They now have a situation where police area commands individually investigate deaths in custody. The product of that someone who has never investigated a death in custody could be the investigating officer in one of these matters

Assistant Commissioner CRANDELL: Yes, that is a little bit different to the critical incident—as opposed to a death in custody. A death in custody is not necessarily a critical incident unless there is—

The CHAIR: Really?

Assistant Commissioner CRANDELL: No. Because a person could die of natural causes. In a custody setting that is not a—

The CHAIR: But until a matter is investigated, how would you know?

Mr DAVID SHOEBRIDGE: Apart from that, is Mr Evenden's evidence correct?

Assistant Commissioner CRANDELL: Yes, it is, in terms of the investigation. There was an investigation undertaken by the Corrective Services Investigations Unit. That has now ceased, as I understand it. The local area commands—as in detectives and investigators—undertake investigations into deaths depending on where that custody facility is. A critical incident though is a completely different scenario in terms of the investigation process.

Mr DAVID SHOEBRIDGE: Mr Evenden was deeply critical of the change in policing strategies and resourcing.

The Hon. TREVOR KHAN: I think that is another overcooking of it. He was critical.

Mr DAVID SHOEBRIDGE: He was. He says:

In some cases we have had Aboriginal death in custody matters with some coroners falling over themselves—

I could read it in detail, but what he says is that there is a whole lot of discrete information about how prisons work—paper trails, prison processes—and that, unless you are experienced with that, you do not know the right questions to ask and you cannot investigate it. He said the problem is now that police do not have that experience and are not asking the right questions and he is getting the paperwork. I would invite you to read pages 41 and 42 of the transcript of Mr Evenden's evidence. Is that right?

Assistant Commissioner CRANDELL: Sure. Look, I think there may be merit in that argument. I guess what I would say also is that, as police officers remain in commands that do house correctional facilities,

they would obviously become more and more attuned to the processes and procedures undertaken within that correctional facility. To my mind, they would build up an area of expertise—not an investigator but a team of investigators. I know how our investigators are trained in the NSW Police Force and it would seem to me to be acceptable that they do those investigations. I think they would be more than qualified to do those sorts of investigations.

The Hon. TREVOR KHAN: That brings me to the Tane Chatfield matter. Have you had the opportunity to read the transcript from the last day of evidence with regard to the investigation into Tane Chatfield's death?

Assistant Commissioner CRANDELL: I have read a number of documents and a number of transcripts. That does not ring a bell with me.

The Hon. TREVOR KHAN: I invite you to have a look at the transcript. The issue that particularly excites me is the family's evidence of the lack of contact from the police investigators. Take it that I have read other things, so not everything that is said and no rules of evidence apply here. It is a long time since I have practised in Tamworth, but I know that the police there generally do a good job. But I am interested in, if you would like to take it away and see if you can find out, what the level of interaction was both early on and throughout the investigation with the family.

Assistant Commissioner CRANDELL: Sure. Happy to take that on board.

The CHAIR: In relation to increases in Indigenous imprisonment, there was a Bureau of Crime Statistics and Research paper in November 2017 that looked at the increase in Indigenous imprisonment between 2012 and 2016. There were four main drivers. Two of them were the following. One was an increase in proportion of First Nations defendants being refused bail. I assume that is at police request or prosecution request at least. Secondly, there was an increase in the length of time being spent on remand by First Nations defendants refused bail in large part because of the growth of court delays at the New South Wales District Court level. Bearing those two things in mind, what responses have the police service or police force taken to take account of those two factors in significantly driving increase in First Nations people in custody?

Assistant Commissioner CRANDELL: Police determination in relation to bail is generally—in fact, is always—a short-time incarceration. It will always be before it then goes to a court. The police prosecution may request bail refusal or conditions depending on the circumstances, but the length of time in custody after a bail determination would be a court determination, not a police determination.

Mr DAVID SHOEBRIDGE: But it is much harder to get bail from the court if you are starting from behind bars because police have refused bail. You accept that, Assistant Commissioner.

Assistant Commissioner CRANDELL: I cannot answer that. I am not a judge or a magistrate. I do not determine that, whether a person comes before a magistrate in custody or otherwise.

The CHAIR: But even where the court refuses bail that is usually at the request or the proposition of the prosecution or the police. Is that not the case?

Assistant Commissioner CRANDELL: Yes, I would agree with that.

The CHAIR: The second question is in relation to oversight. I notice in your submission you say there is a breadth of oversight bodies but you do not have any particular views. I ask you to take this on notice: We have received a body of evidence that says you need a new investigative body to assist looking at deaths in custody. We have had a variety of views about whether that should be an Indigenous-specific body or a more generalised body, perhaps with a specialist Indigenous capability. But the issue is where such a body should rest. Should it rest with the NSW Coroners Court—which makes sense, given that the Coroner drives a lot of these inquiries—or, because of the delays in the coronial jurisdiction, should it rest with LECC, or be standalone? Albeit the NSW Police Force may have no particular view, but can you take on notice whether you have any views about any iteration of that proposal?

Assistant Commissioner CRANDELL: Absolutely.

Mr DAVID SHOEBRIDGE: I think there will be some more questions on notice about specific data, but do you have a response to or an explanation for the data contained in the BOCSAR report that was released either at the end of last year or the beginning of this year that concluded:

In the past 10 years the number of Aboriginal people charged by police in NSW has increased by more than 67 per cent. For non-Indigenous Australians the increase has been just 8 per cent ...

Do you have an explanation for that, Assistant Commissioner?

Assistant Commissioner CRANDELL: I do not, but I am happy to take that on notice, if you would like me to, and offer you an explanation.

Mr DAVID SHOEBRIDGE: Do you have a response to the position of BOCSAR executive director Jackie Fitzgerald? She stated:

I didn't expect to see that sort of increase over ten years ... Particularly when those increases are happening in the face of falling crime rates.

Do you have a response to that?

Assistant Commissioner CRANDELL: I do not, but I am happy to take it on notice.

The CHAIR: I thank you for your evidence and your insights. You have taken a number of matters on notice. The secretariat will be in touch with you just to make sure you properly understand what has been taken on notice and what the expectations are in terms of response. I believe responses are due 22 January 2021.

Assistant Commissioner CRANDELL: No problem.

The Hon. TREVOR KHAN: So you get time off for Christmas.

Assistant Commissioner CRANDELL: Lovely. Thank you, Chair.

(The witness withdrew.)

LEA DRAKE, Commissioner for Integrity, Law Enforcement Conduct Commission, affirmed and examined
GARY KIRKPATRICK, Executive Director, Law Enforcement Conduct Commission, sworn and examined

The CHAIR: I welcome our next witnesses, from the Law Enforcement Conduct Commission. Commissioner, we have a submission from the commission, being submission No. 44. Do you wish to give a brief opening statement? There is no obligation to do so.

Commissioner DRAKE: I had not thought to do so. Ours is a practical submission, rather than dealing with the more complex and sorrowful problem of Indigenous incarceration. That is not an area of expertise for us, so we did not make any submission about those matters. We have confined our submission to a practical outcome that we think the Government might—or might not—find attractive for resolution of particular matters where there has been a death or serious injury in custody, of the kind that we do in relation to the police, which we call a critical incident. About those practical matters I am here to answer any questions or expand upon any issue that the Committee might think relevant.

The CHAIR: Thank you, Commissioner. I might briefly commence questions. We have received a significant body of evidence from a variety of stakeholders that suggests there might be some utility in having a new investigative function looking at deaths in custody—obviously being aware that there are a number of existing bodies that already look at parts of the picture. Some submissions—say, for example, from the Jumbunna Institute—state that, given the difficulties being experienced by First Nations people in this area, it should be an Aboriginal-led and -staffed body with that particular focus. Other submissions have said it should be a more broadly focused investigative function in relation to all deaths in custody.

The question has arisen of where such a body might sit. Some views proffered suggested the NSW Coroners Court, because the Coroner already accesses the investigative functions of the police in conducting its valuable work. Others have suggested, because the coronial jurisdiction appears to be resource-poor and have what I think can be fairly regarded as unfortunate time outcomes and delays, that maybe such a new investigative function should rest with the LECC or perhaps in some other location. Does your body have any particular views about this matter? What are those views, if you have any?

Commissioner DRAKE: I think, in the first place, that involvement of Aboriginal persons in the investigative branch of any body would be a good thing. There are some suggestions that the NSW Coroners Court should have an Aboriginal liaison officer, and if the jurisdiction was to remain there I think that is a good suggestion. It is also, I think, the suggestion of the New South Wales Bar Association. However, we already have the function for critical incidents—that is, deaths or serious injury of persons in police custody. Mr Blanch was the Chief Judge of the District Court and a Supreme Court judge, and is now Chief Commissioner. Both he and I think that we can perform this function if the Parliament desires us to do so. We are not here touting for work, but everyone agrees that this function is best performed by an organisation that is independent and that has judicial expertise.

Both the Chief Commissioner and I have that judicial expertise, and we are independent. We already have the police oversight. I think Corrective Services NSW is a similar organisation: it is paramilitary, and it has a hierarchical structure similar to that of the police. The NSW Police Force is already involved in investigations of deaths in custody and serious injury with the police, so there is already some crossover. There is a bit of a gap, if police are investigating a Corrective Services NSW death, in us finding out about any misconduct in that investigation. To have both jurisdictions together would not be a strain for us. We have an existing court with a proper physical structure. We have two judicial officers who can perform that function, and we have a team of analysts, investigators and oversight specialists who perform that function already.

Deaths in custody, as I understand it, can occur with the police, Corrective Services NSW, and youth detention centres. If the Government decided it wanted us to perform that function, it would have to amend the legislation to include that area. That is not a big deal for us. That would require some staffing in addition, but it would not require the wholesale creation of a new body. We would absorb it in our existing functions. As Commissioner, I do have that space to do that work already, as does Mr Blanch. We would require some minimal funding for additional officers. The involvement of an Aboriginal liaison officer, in my view, would be essential.

The difficulty in this area is the entrenched resentment and sorrow that people feel because of the delay. If an investigation is conducted quickly and independently, and people can see the result and the attention, then they have more faith in the process. If you were to lose a child in these circumstances and the coronial inquest

was years later, you would feel—as I have met people who feel this way—bereft, suspicious and aggrieved. That sorrow can only be dealt with by independent and speedy resolution of the issue. Even if the issue is that there is no misconduct—that whatever happened is unfortunate, to say the least, but not criminal, not careless or negligent, but just something that happened—even if that is the answer and there is no-one to blame, to find that out early is just.

At the present moment you could die of old age, and that is just not okay. Entrenched sorrow and resentment is what emerges here. We experience this problem at the moment. In the current critical incidents space, there is a continuing problem. It is not just for the families of the person killed or injured. I cannot do an inquiry into a critical incident until the police have finished their inquiry. The police cannot finish their inquiry until the Coroner finishes their inquiry. So I can see something that needs attending to and unless I call it a maladministration, which is stretching it—

The CHAIR: That is a very high-level claim, to be able to find that.

Commissioner DRAKE: Yes, and I would not do that because it would be perverting the intent of that section. I cannot touch that misconduct until the police are finished and then whatever the length of time is—and it is a very long time—until the Coroner is finished, by which time everyone is angry and aggrieved. The grief is worse and there is no setting it aside. But it is not just the family. I have talked at length to the Police Association and the Professional Standards Command of the NSW Police Force about this. For the officer whose conduct is being investigated in the NSW Police Force—and it would be the same for Corrective Services—this sword is hanging over their head for years.

Mr DAVID SHOEBRIDGE: Everybody wants it ended.

Commissioner DRAKE: And they need to know that the LECC at least does not find any misconduct and cannot see anything bad so that at least they can move on. People say that it does not matter until there is a finding, but mud sticks and rumours abound. Police officers' careers are affected by the outstanding investigation and the delay in the Coroners Court. Many officers in those circumstances medically retire under the strain. When someone dies, that is bad enough. Officers worry about their liability and culpability in that situation and they fall by the wayside, as anybody would in reasonable circumstances. You have the suffering family of a dead or injured person, the suffering family of the police officer, medical retirement and the loss of a good officer. I am sitting there twiddling my thumbs because I cannot do an investigation and clear the officer until the Coroner gets to it. I want to be blunt about this: it is not a good outcome.

The CHAIR: Those are the matters that you touch on in paragraph (d) of your submission.

Commissioner DRAKE: I do not remember where I touched on it.

The CHAIR: That is the legislative change that you advert to there. If there was that small legislative change—

Commissioner DRAKE: That would help.

The CHAIR: —then if you saw something you could attend to those matters and address it in short order, rather than a delay of months or often years.

Commissioner DRAKE: Yes.

The CHAIR: That would be to the good of the families of any injured or deceased as well as the police and their families.

Commissioner DRAKE: Yes, and that is something that would be necessary for police now. But if the jurisdiction was expanded to include Corrective Services officers in that situation then it should apply to them also. The expansion of the jurisdiction is a matter for you, the Parliament, not for us.

The CHAIR: Yes. I think the Ombudsman in its submission made the finding that other than a coronial inquiry, there was not quite the same investigative function in relation to Corrective Services officers as there was for police.

Commissioner DRAKE: There is not.

The CHAIR: So that is a missing piece of the jigsaw puzzle.

Commissioner DRAKE: There is an absolute gap. Police have a grade A situation. They have an exceptionally competent Professional Standards Command, who we work in conjunction with. I could not say more in praise of the Professional Standards Command, but we can intervene when we want to. We have grade A

oversight and critical incidents jurisdiction, impeded only by that limitation that I have spoken of. But from what I have seen—and I have read the other submissions—Corrective Services is without that oversight. I do not see any equivalent role in the inspector's jurisdiction, the Ombudsman or youth detention centres. It is a hole. It is really just a question for the Government. We can do that work if you want us to. You have to decide if you want. Mr Blanch is of the same mind. He had nothing to add to my submission when I asked him then. I asked him today and he said, "No, that's it. We can do it if you want to."

The CHAIR: My last question is about a memo prepared for the chief commissioner and yourself from the prevention and education team in relation to findings about the disproportionate use of police powers on Aboriginal persons. I think this high-level summary is a document that you have provided.

Commissioner DRAKE: I gave it to you today because I wanted to provide some background about work that we have already done about Aboriginal citizens' involvement and interaction with the law.

The CHAIR: Do you wish to speak to this now? That would be very useful.

Commissioner DRAKE: Sure. I have kept a copy for myself.

The CHAIR: I have circulated a copy to the Committee members and we can take this as a tabled document if you are comfortable with that.

Commissioner DRAKE: Yes.

The Hon. TREVOR KHAN: Or a supplementary submission.

Commissioner DRAKE: It is really a background paper, but you can call it what you like.

The CHAIR: We are happy to take it as a supplementary submission if you would like to move that way, Mr Khan.

The Hon. TREVOR KHAN: I would.

Mr DAVID SHOEBRIDGE: I support that.

Commissioner DRAKE: It is just the background to our involvement in Aboriginal affairs in what we have done, but we do not put ourselves forward as experts in Indigenous incarceration because it is not our expertise.

The CHAIR: No. What should we glean from this document that you have just provided?

Commissioner DRAKE: Two things. In all of the areas in which we have conducted operations—subject target management, consorting powers and strip-searching—our findings have confirmed what is generally anecdotally thought to be the case: that Aboriginal youth and adults are disproportionately involved in police operations. We have been working with the police in this area. Sometimes I notice—for instance in the Redfern Legal Centre's submission—we are accused of cooperating with the police in not making every single finding that is possible and trying to find a way forward. Perhaps it is because I come from conciliation and arbitration. We have developed a new policy on subject target management, particularly involving youth. A new policy as part of our overarching strip-search report will be before the Parliament next week, where there has been a focus on young people being strip-searched.

I suppose that the idea behind those reports is to find a new way forward, to get the police in cooperation with us to develop a new policy and to make changes. They do not go as far as some people want, they do not go as far as the Redfern Legal Centre thinks we should and they are not perfect in every respect but they are a move forward. There have been particularly large numbers of Aboriginal youths involved in subject target management for a long time. The new policy—policy number three—is out and working and we have agreed with Deputy Commissioner Hudson to review that in three or four months' time.

Six months was the turnaround and maybe it will be five with COVID as we have all moved out a little bit. I only give you the paper to identify the fact that this commission has had a great deal of experience in dealing with problems that affect Aboriginal adults and youth, but in the end it does not really address what you want to do about getting deaths in custody dealt with quickly. Truly, hand on heart, I do not think that anything will resolve this except prompt and independent review. Promptness is the key here. It is an endless grief to everybody: police, Corrective Services officers and the families of anyone injured or deceased.

The CHAIR: Thank you, Commissioner. I think we can all agree that promptness is indeed the key.

Mr DAVID SHOEBRIDGE: The conclusion of this memo on 23 November is:

Notwithstanding police approaches, the type of policing interactions that occur with Aboriginal people in their communities and the mechanisms employed by the NSW Police Force to ensure the needs and entitlements of Aboriginal people are met directly impact the current rates of Aboriginal over-representation and must be acknowledged in this current debate.

Commissioner DRAKE: Yes, but they are changing. I do not want to sound like Pollyanna, but that is the situation. But at least two new policies that we are working on at the moment are changing that interaction and I am hopeful that the results will be good.

Mr DAVID SHOEBRIDGE: Well, you would say, and perhaps the results would suggest that, that having independent oversight, having somebody outside the organisation point out issues about practice that may be biased against First Nation peoples, ends up assisting the organisation.

Commissioner DRAKE: It does. It does assist the organisation. Do you mean our oversight?

Mr DAVID SHOEBRIDGE: Yes.

Commissioner DRAKE: You bring to the attention of a senior officer a problem. In my experience under Mr Fuller is that when you bring that matter to his attention, he does his very best to fix it. It takes a little time. It takes more training. Practise in policing has entrenched some attitudes. You get young people out of the academy who get trained in a certain way. They are practising policing for a while and older officers demonstrate methods that are not necessarily the best and you have to retrain, but I think that they are heading in the right direction. I do not think everything is perfect. But if you do not have oversight—and this is I think the problem in Corrective Services—if you do not have high-level oversight, things do not stop. As one police commissioner said to Justice Adams when he did this job, "If you don't have oversight, it could turn on a sixpence." I think that there is a lack of trust in the public for oversight in the other areas which needs addressing.

Mr DAVID SHOEBRIDGE: Well, there is no question there is a lack of trust from the First Nation's community—

Commissioner DRAKE: Yes.

Mr DAVID SHOEBRIDGE: —about the investigation and the non-independence as they see it of investigations of deaths in custody. But I suppose I was asking this: Sometimes that is seen as a threat by the organisation but from your experience with police there is as much opportunity as threat in having an independent oversight body.

Commissioner DRAKE: Yes. I think that when LECC started out we were perceived as a threat. I think some officers still see us as a threat but my overwhelming experience in the last year and a half has been a change in that: cooperation, joint education programs, feedback that results in a different policy. I am sounding like Pollyanna and I am sorry, but it is gratifying and I think it is coming from the top. You still get an officer or officers who see every opportunity for oversight as an intervention and there is the: what would you know et cetera? But it is a different game from when I was young and practising in the law. The standard of police officers, the level of conduct, the things we investigate are so much different than they used to be.

But I think His Honour says leadership from the top and in my case I always deal with the union as well. You have to take the Police Association with you in this change. You know, there are some things that are not necessarily in their members' interests that they oppose from a result of an attitude of traditional opposition: for instance, body worn videos. In my experience, body worn videos clear an officer 90 per cent of the time and at the moment the policy is turn them off or on at your discretion. In my view there are some instances, particularly in dealing with First Nation peoples, where they should be on all the time. I would prefer the protocol for them to be on or give us an explanation if they are not. That is what I would prefer. In my experience, although the association started off with an attitude of you should not have to have them on, I think the experience for officers is that they invariably provide support.

The CHAIR: Protection.

Commissioner DRAKE: It is a rare occasion—

Mr DAVID SHOEBRIDGE: It is like a taxidriver's dashcam.

Commissioner DRAKE: Yes.

Mr DAVID SHOEBRIDGE: It is better to be on than off.

Commissioner DRAKE: Better to be on than off and you have to have a good explanation in a conflict situation for, surprisingly, turning it off. If you have had it on, why did you turn it off?

Mr DAVID SHOEBRIDGE: Yes.

Commissioner DRAKE: But, you know, it takes a little while for that kind of change to happen. I think more and more officers are leaving them on and I think it would be a good thing if the protocol was on.

Mr DAVID SHOEBRIDGE: Could I ask you about to what extent is the staffing and/or leadership of LECC are First Nation staff and/or leaders in the LECC?

Commissioner DRAKE: I do not know.

Mr DAVID SHOEBRIDGE: Can you provide that on notice?

Commissioner DRAKE: I could, yes. I do not know. I mean, in my old job my associate of 20 years was Aboriginal but I actually have never asked that question at LECC.

Mr DAVID SHOEBRIDGE: Well, given the proportion of police in activities that involve First Nation peoples do you think that one of the important strategies the LECC should have would be involving, employing and engaging First Nation peoples inside the organisation?

Commissioner DRAKE: I think that is a strategy every employer should have, not just LECC, but I do not think it adds anything to our role. But it should for the police. We are overlooking what the police do. I think it should be more and more important for the police to have that Aboriginal involvement and staffing and liaison officers and for all courts where Aboriginal people come into contact with them. I do not have any objection to there even being a quota in relation to LECC or any other organisation but it should be overwhelmingly a common requirement.

Mr DAVID SHOEBRIDGE: Given the extent to which First Nation people are overrepresented in policing activities and given the data that shows First Nation peoples are overrepresented in our jails—grossly overrepresented in our jails—do you see any merit, if there was going to be a move towards granting LECC jurisdiction in those two distinct areas for deaths, in having a First Nation commissioner for the Law Enforcement Conduct Commission?

Commissioner DRAKE: No.

Mr DAVID SHOEBRIDGE: Why is that?

Commissioner DRAKE: Well, unless you want to replace me with one. I have enough space in my work to do it, as does Commissioner Blanch, we think, given the numbers. If you had a part-time commissioner to top that up if it was necessary and that person was Aboriginal—but I do not want to spend what is a decreasing budget allocation to this organisation money to hire a person, particularly if there was not enough work for them to do. Mr Blanch and I have looked at our workload and our budget and we could do this work already and would be happy to do it if the Parliament wanted us to. But I do not have any objection per se to there being an Aboriginal commissioner but I would not want to hire one just to hire one. I would have to find particular work. I do not know what the numbers of work would be if we took off a commissioner on the Corrective Services work. That would have to be looked at and in that case, if there was enough work for such a commissioner an Aboriginal person would be perfect. But this is a workload budget matter and I do not want to say yes we should do that if I do not know what the workload is.

Mr DAVID SHOEBRIDGE: On the assumption it was fully funded, though, but it did not come out of the existing budget, and on the assumption—

Commissioner DRAKE: No, I would not have any objection at all and I think it would be a good thing if it is fully funded. But, you know, I always take—

The Hon. TREVOR KHAN: The glass is half full approach?

Commissioner DRAKE: —promises about fully funding.

The CHAIR: It is a Treasury matter. It is the glass is half empty.

The Hon. TREVOR KHAN: Oh yes.

Mr DAVID SHOEBRIDGE: Well, it is a glass unknown if it goes into Treasury.

Commissioner DRAKE: If I got a fully funded person of that kind, then I would be delighted. But, you know, it really is a question of workload.

The CHAIR: It just goes to this issue: In terms of the First Nation peoples evidence we have heard about the existing work of the Coroner and the police even working for the Coroner is that there remains, perhaps understandably, profound mistrust of the Police Force as an institution. Leaving to one side and not being critical of any one individual, there just seems to be this resistance to police involvement in investigations, even when they are working under the supervision of the Coroner. So in terms of a new investigative capability there was a desire, at least on the part of some people submitting, that there should be First Nation personnel heavily involved.

Commissioner DRAKE: Well, it would give you your credibility back.

The CHAIR: Yes, it would. I think that is where Mr Shoebridge was coming from.

Commissioner DRAKE: It is a budget matter for us and workload but it would give you your credibility back and at present, with Aboriginal people, there is none.

The CHAIR: Yes.

Commissioner DRAKE: There is only grief and loss and desperately something needs to be done to give speedy resolution and confidence back. If that did it, it would be a good thing. I, as deputy commissioner of this organisation, have to put up with what I see as a budget problem for me. We can do this with the addition of some staff. Mr Kirkpatrick has done some work on what that would be. It is not very much. But if we had an independent commissioner to do some of the work that would come in for Aboriginal deaths in custody from youth detention centres and critical incidents as well as from Corrective Services and we had an Indigenous commissioner it would be a blessing really.

Mr DAVID SHOEBRIDGE: It would overcome some of the trust deficit that is in both policing and Corrective Services?

Commissioner DRAKE: Certainly. How can it not, so long as the person was independent and judicially trained, or legally trained in any event? You cannot expect me to say everything is a good idea when fully funded has been a matter that I have had some sceptical approach to before.

The CHAIR: Understandably, Commissioner.

The Hon. ROD ROBERTS: Commissioner, notwithstanding the delay at the moment when you go to oversight the police critical investigations because of the Coroner's delay et cetera, how do you find the standard of the investigation that is undertaken?

Commissioner DRAKE: Good. But that is the problem. It is a good investigation by the police and we watch it and we tick, tick, tick along with it and we get to a certain point and it is all but done and then we sit and the police officer is out there with this question mark over his career. The family wants to know. I could suspend that file and put it in storage waiting and that is just no good. The investigation is good. We have expertise, the Police Association attend, we mostly attend—

The Hon. ROD ROBERTS: Could I rudely interrupt you there. Just for clarification and for other Committee members' benefit, when you say you attend, can you just elaborate on that?

Commissioner DRAKE: There are specific staff members who only do critical incident work. Presently there are three. We look at what happened in the critical incident and if we think that somebody should attend the scene of the event then we send somebody. The Police Association sends somebody, we send someone and of course the police have experts who are there. The most experienced expert at a critical incident is usually the Police Association person because they go all the time. But we do not go to every single one. We do not go to suicides or clear cases and we tend, because of funding, not to go to regional because we just do not have the funds to do that level of oversight.

But wherever we think it appropriate we send an officer of the LECC who keeps out of the way. We can listen to the investigations. We do not interfere in the investigations. We listen to the interviews sometimes. Our presence tends to inhibit an officer's desire to cooperate in the investigation, so we keep away. Overwhelmingly, our conclusion is a very satisfactory investigation by the police, which is why I would like to be able to put a stop to it then and there and say either, "No misconduct. Officer cleared. Off you go," or, "Misconduct. Something to happen." We have had them for years and years. It is just heartbreaking.

The CHAIR: Who does the regional visits given the restraints on your budget?

Commissioner DRAKE: No-one at the moment.

The CHAIR: That work is simply not performed?

Commissioner DRAKE: We perform it differently. We cannot actually go to the scene and partly that is because you could not get to the scene in time. But we do attend the interviews and investigations of some of those if we think they are relevant. If there is a shooting in Orange that occurs at 11 o'clock at night, we cannot get there at a relevant time anyway. But in some cases we try to go—in Newcastle or Wollongong. It is just too big an ask. But we get to look at the situation report and other documents.

Mr DAVID SHOEBRIDGE: We have evidence, and I cannot recall the witness, it may have been Legal Aid, that the restraint in section 114 (4) (3) (c) of the LECC Act, which provides that in terms of oversight in critical incidents the commission may only be present during the interview of a police officer with the consent of the person being interviewed. That was problematic; the consent was almost never given and was a constraint that should be lifted. Do you have a view about that?

Commissioner DRAKE: I would not lift it. We get to read the transcript. We can watch the interview sometimes outside. There is a difficult situation in New South Wales where police officers can get their back up if they think the evidence might incriminate them. Our presence sometimes impedes the frankness of the interview that might take place. I do not find it an impediment to us getting to the truth. We have trained investigators who are police officers from other States, we have analysts and other people who are experienced in this work and forcing our way into an interview would simply, in most cases where the officer does not want us there, cause them to refuse to be interviewed. In many cases if they are interviewed—I do not know why the solicitors refuse many times to allow them to be interviewed because in most cases the result of the interview would be that they would be cleared, there would be nothing to see. Even if that power was there, Mr Shoebridge, we would not very likely exercise it and if so rarely.

The Hon. PENNY SHARPE: I have one question going back to the data. We heard from the New South Wales police about the way you identified people with the Suspect Target Management Plan. Your analysis suggests that 72 per cent of the investigation of young people that have been identified by the police were possibly Aboriginal or Torres Strait Islander. The police, under their system, said it was around 49 per cent. Is that correct?

Commissioner DRAKE: I cannot remember what they said.

The Hon. PENNY SHARPE: It was substantially lower than what you said.

Mr DAVID SHOEBRIDGE: Thirty-seven, I think.

The Hon. PENNY SHARPE: Given your evidence that you have a reasonably good interaction with New South Wales police and the commissioner in relation to getting to the bottom of those issues, is resolving the issue of data something that you have been involved in?

Commissioner DRAKE: No, but my prevention education team have, and I put my money on them.

The Hon. PENNY SHARPE: The figures are pretty good.

Commissioner DRAKE: There has just been a new subject target management policy, STMP-III it is called, that has taken on a lot of the recommendations that we made. We focused on youth rather than adult subject target management. We had problems with people being locked up at night three times because somebody had not told the shift after that the shift before had been and all sorts of conduct of that kind. Just inappropriate frequency and not up-to-date information from region to region—someone moves and the information is not carried over. A lot of that has been fixed. I am not certain with the subject target management III that it is all fixed, but Mr Hudson has undertaken, now that COVID has eased a bit, to let our staff go to their training sessions and we are going to check and we are going to renew and comment criticise or not criticise, and make further recommendations in six months.

My appointment runs out in April 2022 and I want subject target management policy III ticked or crossed in the middle of next year so that it is a finished project. I think if we can get that fixed it would be good. But just because Aboriginal persons are 25 per cent as opposed to 3 per cent of the population, of course they are a huge proportion of the subject target management and going and knocking on a young person's door is just likely to make them hate the police and see themselves as victims and get into a fight next time.

I had a son who was subject to a subject target management practice and I found myself developing the same attitude every time the police knocked on my door five at a time in their riot gear in the middle of the afternoon. It is a good aggressive policy for keeping an eye on people that you actually think have a criminal intent. But people could get on the list and never get off it. One of the things that is happening with subject target management policy III is that there is a review, when it has worked, when people have moved on with a new set of friends, got their life together, got a girlfriend, whatever causes them to improve—taking them off is one of the

things that I think makes a difference. It is an aggressive, in your face, angst-making process otherwise. Just checking on you three times a night does not improve your attitude. Did that answer your question? I did go off on a tangent.

The Hon. PENNY SHARPE: You almost got there. The issue for me is that I am concerned about the discrepancy between how the police identify someone as possibly Aboriginal or not. I am wondering whether you think the STMP-III is going to resolve that matter. The assistant commissioner was not clear about that for me. What is your understanding of the resolution of the issue?

Commissioner DRAKE: If you like, I can provide you with material from our prevention education team on that question and that might assist you. I cannot do it myself.

The Hon. PENNY SHARPE: That would be terrific.

The CHAIR: We might take one other step and also provide to you the relevant portion of the opening statement from the Police Force that we had just before your evidence so that you can see what they said.

Commissioner DRAKE: Yes, thank you.

The CHAIR: Perhaps you can take on notice any response your organisation has to that evidence from the police.

Mr DAVID SHOEBRIDGE: Basically, they challenge your numbers.

Commissioner DRAKE: They do, frequently.

The CHAIR: We just want to know who we should have the most regard to?

Commissioner DRAKE: Trust me.

Mr DAVID SHOEBRIDGE: I think that is what the police said as well.

Commissioner DRAKE: Yes.

The Hon. PENNY SHARPE: I was very interested in the figures that your prevention people provided around the consorting review. Across all ages you have found that 40 per cent of those subject to consorting orders were Aboriginal. Is that right?

Commissioner DRAKE: That is what they say. That has only just been funded, that review. We had to get additional staff. We got the job but no staff and we said we will have some staff with that.

The Hon. PENNY SHARPE: It was one of those where you were promised full funding for.

Commissioner DRAKE: Yes, full funding. They are in the middle of that and I can do the same thing for you: get that team to provide where they get the information from and what it says.

The Hon. PENNY SHARPE: I would like that and I am also very interested in the number of children and young people. The police found that 25 per cent of them were Aboriginal. I am particularly interested, if you have a breakdown in age, in the under-14s that are subject to consorting.

The Hon. TREVOR KHAN: And 14 to 16. That is interesting.

The Hon. PENNY SHARPE: All of them.

Commissioner DRAKE: I will get that to you. Could you, when you have a chance to look at the report in more detail, just set out the particular questions that you would like answered and I will have them addressed directly.

The Hon. PENNY SHARPE: Yes, I will. As I said, this is the first time that anyone has raised the issue of consorting. In all of the areas we have been looking at no-one has really raised this and I was struck by the figures. I will have a think about it.

Commissioner DRAKE: I will provide it to you for background for the work that we are doing, so you can see it. It is not really part of the solution, I do not think. It is just an example of the problem.

Mr DAVID SHOEBRIDGE: I think that reflects a lot of the data that the Ombudsman pulled out in their review towards the end of their oversight time. There were some police commands where 90 per cent of the consorting orders were made against First Nations peoples. I think there is some historical data there that suggests there is a problem.

Commissioner DRAKE: Yes.

The Hon. PENNY SHARPE: I have one more question based on this very interesting memo. I was interested in the strip searching part of it. On page 3 you talk about the total number of people stripsearched was around 8.9 per cent of people in the field, but almost a quarter of people were stripsearched in custody. I am wondering for the reasons for that or whether you can speculate on that?

Commissioner DRAKE: I am sorry. I do not understand the question.

The Hon. TREVOR KHAN: About point 6 on page 3, is that what you want?

The Hon. PENNY SHARPE: Yes. I am not a lawyer or a police officer so I have not spent very much time in police cells or with operations. It might be an obvious question for others. My question is that Aboriginal people are 17 per cent of people that are searched, but the interesting part that I found was that people being stripsearched in the field or in public, around 9 per cent of those people are Aboriginal but almost a quarter of people stripsearched in custody are Aboriginal people.

Commissioner DRAKE: That is because a quarter of people in custody are Aboriginal.

The Hon. PENNY SHARPE: That is what I was checking; it is because of that.

Commissioner DRAKE: It is a high proportion in the field also.

Mr DAVID SHOEBRIDGE: It is 12.6 per cent.

The Hon. PENNY SHARPE: For young people.

Commissioner DRAKE: One of the reports I published this year is about the strip search of a young man in a country town. He was walking down the street in his shorts and they took him back to the garage at the police station, pull his shorts down and leave only his t-shirt on. They do not call his father. They do not call anybody. That stopping in the street and taking him back to the station is an Aboriginal thing, I think. It is identify an Aboriginal boy in the street and they are more likely to stripsearch him than another boy in the street. We have done a number of strip searching reports and on 15 December we are presenting our overarching report to Mr Ajaka and Mr O'Dea and it deals with these kinds of situations. That is why I think there is a tendency to identify an Aboriginal boy as more likely to be stripsearched. That is just anecdotal from what I have seen.

That particular report identified an educational problem in the police and Deputy Commissioner Lanyon and myself and the head of PSC have devised a set of questions prepared by counsel who appeared in that Moree matter. We are going to do a sort of Socratic question and answer with the young police officers. The superintendent unfortunately has moved from that town to another one but we are going to follow him to the next town because he is in favour. We are going to try and use this as a tool because online learning only goes so far. Some of the things that these police officers thought was an entitlement, even after they knew they were coming to the LECC and they had studied up, bore no relation to reality. It is an educational problem. We are going to try this ask a question, get an answer, no downside for getting it wrong, your superintendent is there and we are going to see how it works.

We have had these questions and answers prepared since March but we have not been able to visit anybody and do them, but we are going to do it in the new year with Deputy Commissioner Lanyon. We have the approval of the commissioner and hopefully that thinking you are entitled to stop a First Nations boy on the street because he might look troublesome and search him just because will change. I think it is changing. Certainly whenever a superintendent has a positive view and is starting to do these educational things it changes, but it is a big job. When you look at the level of lack of education and lack of understanding of LEPPRA, even after they know they are coming to tell me about it, it is quite shocking. You can only work on it and with goodwill make some changes. I seem like I am talking too much. I will stop now.

The Hon. PENNY SHARPE: That has been helpful, thank you.

The Hon. ROD ROBERTS: I have a question arising out of that.

Mr DAVID SHOEBRIDGE: Let us rewrite LEPPRA and make it understandable by ordinary human beings.

The CHAIR: I think that may be beyond our remit today.

The Hon. ROD ROBERTS: I agree entirely with the commissioner.

Commissioner DRAKE: Excellent man.

The Hon. ROD ROBERTS: I was a police educator for a number of years. I believe there is a complete deficiency in the training system for police at the moment and clearly that is evident with what you are saying at the moment. To take that a step further: In your investigations and communication with the younger officers, do you think they are being reckless and wilful as to their powers or do you think that they just do not know them?

Commissioner DRAKE: They just do not know. The online learning is not good enough.

The Hon. ROD ROBERTS: Waste of time.

Commissioner DRAKE: Waste of time. Not entirely a waste of time, but not as good as face to face. It has to have the involvement of the superintendents and sergeants at ground level, which is this plan that I have in mind, and you have to take those old hands out who teach them bad habits. There is a problem in some country areas of lack of rehab and local youth support. In the town that we did do this there were nine FACS positions and two of them were filled. The young police officers on the ground are performing welfare work, social work. The local Legal Aid solicitor and the inspector in that town do the Police Citizens Youth Club every Saturday night. They pick up kids and they deliver them to their parents, or they do not deliver them to their parents, depending on the situation. They may carry them around. What happened, I think, is from overfamiliarity emerging. This is just me thinking how does this happen here in this town?

There is quite a serious drug problem and the police are becoming social workers and it blurs the line. They become very familiar and they exceed their powers because of that familiarity. It is not ill-intentioned but it is just not okay. Somehow you have to stop that but you cannot get FACS workers to these bad towns without a hardship allowance. Whilst we pay that to construction workers to work in the heat we do not pay it to FACS workers to go to bad towns. You end up with no FACS workers, limited rehab and young police officers on their own on the street doing their best. When they are trying to do their best they exceed their powers. It is not good—not good for them and not good for the kids they stop. I feel like I am giving a lecture here. I do apologise.

The Hon. TREVOR KHAN: That was depressing.

Commissioner DRAKE: It is not depressing, really, if we are doing something about it.

The Hon. TREVOR KHAN: That is absolutely correct. I will not ask anything on that because I think once your report is tabled many of the questions will be answered.

The CHAIR: The issue will be more clearly drawn.

The Hon. TREVOR KHAN: I think that is right. I want to go to some structural issues. One of the issues that has been raised more in questioning than in submissions is what should be the role, and in a sense the placement, of the Inspector of Custodial Services?

Commissioner DRAKE: I do not understand what the Inspector of Custodial Services does. I read their submission, but do they just inspect jails?

The Hon. TREVOR KHAN: Yes.

Commissioner DRAKE: Well, I do not think they have a place in this. That is what I think.

The Hon. TREVOR KHAN: That probably answers it. There is a question about resourcing in all of these things and the question becomes whether it should be standalone or whether it should be rolled into one of the other integrity units.

Commissioner DRAKE: We just keep creating structures and spending money. I do not think that it requires a separate organisation but that is a matter for government.

The Hon. TREVOR KHAN: I think that answers the question. Just not your organisation would be the appropriate location for the Inspector of Custodial Services, I take it?

Commissioner DRAKE: I think custodial services, Corrective Services, should be—the critical incidents, deaths or injury in Correctives Services and misconduct in Corrective Services should be with the LECC. That is what I think.

The Hon. TREVOR KHAN: That answers part of it. Not only should the critical incident issue rest with LECC but also the misconduct.

Commissioner DRAKE: Serious misconduct only. I mean, the police do serious misconduct. I think the police should look after their own misconduct and they mostly do. We only look at serious misconduct and we oversight what they do. If you have a body like LECC watching, people behave better.

Mr DAVID SHOEBRIDGE: But there has got to be a limit on the number of bodies. You do not want a bee watcher and bee watcher-watcher, like Dr Seuss would tell us.

Commissioner DRAKE: That was the way it was before. You had the Ombudsman and the Police Integrity Commission out there both doing the same thing in different buildings, paying for two structures et cetera. The Tink report brought it into one place. I think it works. I would not create a new body. Aboriginal people are tired of new bodies and new stories. What they want is fast justice—independent, prompt and clear.

The CHAIR: Thank you, Commissioner and Mr Kirkpatrick, for your time, your insights and your evidence today. You have certainly given us quite a bit to think about. The Committee has resolved that questions taken on notice be returned by Friday 22 January 2021. The secretariat will be in contact in relation to those matters you have taken on notice and we will get you that information to inform the matters that we seek your responses on.

(The witnesses withdrew.)

(Short adjournment)

MICHAEL COUTTS-TROTTER, Secretary, Department of Communities and Justice, sworn and examined

PETER SEVERIN, Commissioner, Corrective Services NSW, sworn and examined

LUKE GRANT, Deputy Commissioner, Corrective Services NSW, affirmed and examined

CARLO SCASSERRA, Assistant Commissioner, Governance and Continuous Improvement, Corrective Services NSW, sworn and examined

PAUL O'REILLY, Executive Director, Youth Justice NSW, affirmed and examined

MIKE WHEATON, Director, Policy and Practice, Youth Justice NSW, affirmed and examined

CANDICE NEILSON, Director, Strategy and Engagement, Youth Justice NSW, affirmed and examined

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

Mr COUTTS-TROTTER: Can I just start, on behalf of all my colleagues, by acknowledging that we are meeting here on Gadigal land and pay my respects to Gadigal Elders past and present and those of the Eora nation. I would also like to extend my sincere condolences to the families of First Nations people who have died in custody in New South Wales. First Nations people are over-represented at every point of the justice system in New South Wales and throughout Australia. It is a longstanding problem that for Aboriginal adults has mostly been getting worse and not better. Aboriginal young people are even more starkly overrepresented, but that position is steadily improving. Trite as it may be to say so, the causes of this over-representation are complex but they do include the effects of colonisation and dispossession, disconnection from family and community, poverty, trauma and discrimination.

Informed by the past our department is trying to improve how we work with Aboriginal people and communities to address the factors that can lead to engagement with the criminal justice system. We are increasing our efforts to seek the views and expertise of First Nations people and we are listening to and learning from their knowledge, strength and resilience. All deaths in custody, as the Committee well knows, are referred to the Coroner and investigated by the police. The Corrective Services NSW investigations branch also conducts investigations, and reviews if we have adhered to our own policy and procedures. We have confidence in the rigour and independence of the coronial process but there is always room for improvement. In particular, we will work towards reducing delays where we can and improve how we communicate with and support families through the process.

Families can find the investigation and inquest processes slow, alienating, bureaucratic and impersonal. Some of that is a product of the efforts to conduct these processes as thoroughly and as objectively as possible, but we do understand that this can exacerbate a family's pain and delay getting the answers they seek about how and why someone they loved died. In our experience the coronial courts do not hesitate to make recommendations to improve policy management or physical surroundings to reduce the risk of death in custody. Implementing coronial recommendations has helped us to build safer facilities and better understand and respond to the needs of high-risk inmates.

Sadly, people die in custody each year from natural causes, old age and, less commonly, by suicide or as a result of violence. We make great efforts to prevent deaths in custody and have accepted and acted on nearly all recommendations of past inquiries and inquests. While it is of no comfort to grieving families, once in custody in New South Wales, Aboriginal people are less likely to die than non-Aboriginal people. In the past 10 years among Aboriginal prisoners, there are 0.09 deaths per hundred inmates per year. The figure for non-Aboriginal prisoners was 0.26 deaths—a rate of death nearly three times higher in that period. This does not necessarily align with community perceptions, but it is consistent with the findings of the 1991 royal commission. We have listened to the evidence of previous hearings and we will continue to do so. We look forward to receiving the Committee's report once completed and to answering questions put to us today. Thank you.

The Hon. PENNY SHARPE: I wanted to ask about what monitoring across government there is of the royal commission into deaths in custody in terms of the recommendations and whether there is any active monitoring across which agencies in relation to that.

Mr COUTTS-TROTTER: I might pass to Luke Grant, my colleague, on that. But of course the Deloitte report from 2018 I think outlined that most jurisdictions have responded well to implementing those recommendations of the royal commission, and I think New South Wales' performance was good as well.

Commissioner SEVERIN: I might make one comment to start off and then hand over to Mr Grant. There has been a Commonwealth decision quite a while ago, about 15 years ago, to stop formal reporting on the Aboriginal deaths in custody recommendation implementation. That is not to say that—

The Hon. PENNY SHARPE: That was to the Commonwealth, yes?

Commissioner SEVERIN: Even at State-level formal reporting, which happened until then. That does not mean that jurisdictions do not continue to monitor the implementation of the recommendations or anything that has arisen out of that.

Mr GRANT: I was probably just going to reinforce what Peter Severin said. Back in 1997 there was a national summit on Aboriginal deaths in custody in Canberra. The summit was attended in particular by the Aboriginal justice advisory councils that were established as one of the first recommendations of the royal commission. We had one in New South Wales at the time; we do not have one at the moment. All of the councils came together and decided that they would be, instead of that, producing individual State-based national justice plans. I just happen to have at my fingertips the NSW Aboriginal Justice Plan that was finally introduced in about 2004. So it took some time from that agreement to pursue this process in that way to adopting this new plan.

We stopped formally reporting—it was very onerous reporting. I used to spend a lot of time doing that myself, reporting on those recommendations in the nineties. In terms of people's perceptions about it, I would encourage the Committee to read the rather amazing 20-year anniversary statement that Hal Wootten wrote. Hal Wootten was the New South Wales commissioner, the Supreme Court judge and also the founder of the law school at the University of New South Wales, the Aboriginal Legal Service—a formidable person in this arena. There is talk at the end of it, which I had intended to bring but forgot to bring, where he said something like—first of all, there is no silver bullet. What the commission discovered and put in place at the time were the views that they had formed at the time based on their views of 90 deaths and based on the knowledge and the skills of the people at the time.

Whilst that was very important at that time, people now should move forward. The data that we have now at our fingertips, the information that we have is so different that we should not be necessarily encumbered by those recommendations alone. Having said that, we reported on it and reached a point in reporting where we were satisfied that we had gone a significant way towards addressing the recommendations. There were a small number of them that could not be recommended for practical reasons because there were changes in circumstance and changes of roles and so on, but that is basically why we stopped reporting at the time.

The Hon. PENNY SHARPE: The justice plan, I assume you would say, picked up the recommendations of the royal commission within it.

Mr GRANT: It embraced similar themes and expressed them in a different way, but the difference between this plan and the royal commission's plan was this was an Aboriginal committees driven—an Aboriginal people's document that was prepared by Aboriginal people and it was in place for some years. Subsequently, in New South Wales we had Two Ways Together, which was the Aboriginal Affairs State plan that took over from that beyond that time. So it has morphed in several phases.

The Hon. PENNY SHARPE: Where do the Closing the Gap commitments fit into that? Are they all sort of part of a continuum?

Mr COUTTS-TROTTER: The Closing the Gap commitments—obviously all jurisdictions, including New South Wales, have to deliver implementation plans to the Commonwealth by 30 June next year. We will be, I think through Minister Harwin, making submissions through to Cabinet for those implementation plans to be endorsed and then put to the Commonwealth and then made public so we can be held to account.

The Hon. PENNY SHARPE: The reason I am asking is that almost every First Nations group or individual who has appeared before us for this inquiry has noted their ongoing frustration that yet another inquiry is being held. They point to two documents, and I will get to the second one in a minute, but they point obviously to the royal commission and say, "Look, the answers were there. Nothing has really changed." I accept Mr Grant's evidence that of course the data is better. I suppose I just want to put that there. That leads me to my second question, which is that the other document that people point to is the Australian Law Reform Commission report, which is obviously far more contemporary; I think it is 2018. Are you able to tell me how the department responds or has responded to that report?

Mr COUTTS-TROTTER: No. Sorry, I'm just looking for some help from colleagues. It raises both thematic issues and specific recommendations.

The Hon. PENNY SHARPE: What is the requirement? It is an Australian Law Reform Commission report. I would assume there is no formal requirement for New South Wales to report against it.

Mr COUTTS-TROTTER: No, but—

The Hon. PENNY SHARPE: But I am interested in how it is being picked up and applied across particularly this cluster.

Mr COUTTS-TROTTER: It is obviously an important contribution to the policy issues at play. The essential themes in that report and the themes in the agency, when I speak to the agency, particularly the justice part of the agency's response with the over-representation of Aboriginal people in the justice system—there is one to reduce or avoid Aboriginal people's contact with the justice system and then to try to reduce the length of time that Aboriginal people may spend in custody and then reduce the rate of Aboriginal reoffending. And there is a range of initiatives and interventions aimed at those three broad goals that basically align with what we have heard from major reviews of the field for a very long period of time. The challenge is to find those initiatives that reduce or avoid Aboriginal people's contact with the justice system and then if the contact happens try to resolve the community harms without drawing people unnecessarily deep into the justice system where they find it increasingly hard to get out of.

The Hon. PENNY SHARPE: I should probably know the answer to this, but I don't. That makes the fairly obvious point—

Mr COUTTS-TROTTER: It does.

The Hon. PENNY SHARPE: —which is that reducing people's contact with the criminal justice system in the first place is probably the best lever we have got. But we also know that governments bring forward a whole bunch of laws aiming to do one thing that can actually perhaps have a disproportionate impact on Aboriginal people. At the Cabinet level in New South Wales, where in the decision-making processes is there some assessment? Without going into Cabinet discussions, where is the assessment around the impact? For example, in the past there have been things like family impact statements as part of Cabinet minutes. Is there anything that actually goes to this issue?

Mr COUTTS-TROTTER: In our department, any policy or significant procedural administrative proposal coming to our departmental board has an Aboriginal impact statement developed by our Aboriginal outcomes team, so our Aboriginal colleagues working in the department to identify the impact of proposals on Aboriginal people explicitly, because Aboriginal people are over-represented in every single one of our services with the potential exception of disability and that is not a good thing; that is a bad thing.

The Hon. PENNY SHARPE: That is a problem in itself.

Mr COUTTS-TROTTER: Yes. We have tried to change the way we approach decision-making to have better regard for that and to ensure that non-Aboriginal people—by and large, our board—making decisions are not oblivious and are procedurally required to think more carefully about the impact on Aboriginal people. I do not think that there is an Aboriginal impact component in material that goes to Cabinet, but within our cluster, within our portfolio, it is front of mind all the time.

The Hon. PENNY SHARPE: What triggers a review of that? The LECC came and saw us; I do not know whether any of you saw some of that. They provided us with some information, for example, on the consorting laws where they talk about 40 per cent of people subject to consorting orders are Aboriginal people. My understanding of the consorting laws was we were supposed to be dealing with organised crime—

The Hon. TREVOR KHAN: And bikies.

The Hon. PENNY SHARPE: —and bikies, rather than Aboriginal people. For me, there is a very stark and clear example where there is obviously a disproportionate impact on people in relation to those consorting laws. In terms of what you just described on the way in—I do not think this report has been made public, but it is about to be. Does that trigger some sort of assessment in terms of the advice that then goes to government?

Mr COUTTS-TROTTER: Yes, it would. The mechanism we use to try and bring people who have statutory independence within the justice system together to talk about these kind of issues is the Criminal Justice Transformation Board, which is a rather grand and slightly pompous name. The aim is to get Legal Aid, the DPP, the Bureau of Crime Statistics and Research [BOCSAR] and other parts of Youth Justice, Corrections and law reform policymakers together to try and understand the impact across a whole complex system of these kind of changes. That is precisely the kind of thing that would go to that group for discussion and review. That would

equip, I hope, members of that group to try and reach agreement about some of the things that could be done in response to it.

The Hon. PENNY SHARPE: I have got two very quick ones. We had a lot of evidence about over-representation of First Nations women in the justice system and they are a very large proportion, although it is quite a small number who actually end up in custody. The one issue that has been raised with us with a number of the women's legal and Aboriginal legal services is this cumulative impact of women being identified as aggressors when it comes to domestic violence incidents. The argument is that essentially they are victims over a long period of time, so in this particular moment in time there are real issues there. Given the remit again of the cluster and the work that is being done around domestic violence, can you tell us where that is up to in terms of discussion? Is it something that the department is aware of? Is there work being done on that? Is there some sort of examination of that particular issue? It has been raised with us quite a lot. You can take it on notice. That is fine.

Mr COUTTS-TROTTER: I will take it on notice and provide specifics. The short answer is yes, but I will come back to you on the detail of that. It was flagged as well in the discussion paper on coercive control.

The Hon. PENNY SHARPE: It is gaining momentum. It is all right. I might come back to you later. I have got another question, but I will wait.

The CHAIR: With a lot of the evidence that we have received in relation to the nature of different oversight bodies—we know that the Law Enforcement Conduct Commission does oversight of police critical incidents; we know that the Coroner investigates various deaths, including deaths in custody. But there was a concern we have heard repeated about the length of time it takes for there to be coronial inquiries and outcomes from those. A lot of that criticism is not directed at the judicial officers but at the level of resourcing of the Coroners Court. Could I ask you to address yourself to if there are any plans to significantly increase the resourcing of the coronial jurisdiction in light of those sorts of comments? Secondly, the review of the Coroners Act started six years ago, but we still have not seen the outcome of that. Through budget estimates I have asked on a number of occasions where that review is up to. Are you able to address those two issues?

Mr COUTTS-TROTTER: The statutory review of the Act will be responded to once the so-called coronial delay task force, which was a task force established by the Attorney General and the health Minister, reports to Ministers and to the Government, and I am anticipating that that task force will report very early in the new year. So the two things are bound up together. The question of resourcing for the coronial function, of course, is an issue that the Chief Magistrate has pushed particularly hard and has pushed in a written submission to the Committee. It is something that is under consideration with government, but that is all I can tell you at this point.

The CHAIR: That is fine. There have been discussions about a new investigative body or an enhanced investigative function to look at deaths in custody, and some have suggested that that should be a new bespoke Indigenous-led and staffed body to look specifically at those issues. Other submissions put its focus more broadly and have suggested it could either be located as part of the Coroners Court and the Coroner's suite of resources or that enhanced function could be reposed in the Law Enforcement Conduct Commission. Does government have any view about these matters or are there any insights you can offer as to the need for such a function and where it might properly rest?

Mr COUTTS-TROTTER: I will turn to my colleagues who have much longer experience of actually working within the current oversight framework. My view on behalf of the organisation would be that we would greet with an open mind any proposals that the Committee would make. We would be foolish not to. Every system can be improved. My colleagues would, I think, start from the place that an advocate for change inside a complex system has to have a good reason to make those changes, but we would greet it with an open mind. We have to.

Commissioner SEVERIN: I can make one comment and refer to a practice note that was issued in Victoria which I understand was talking about the different demographics there of Aboriginal people. But I believe that is certainly a good step, a very proactive step, in not changing the arrangements but enhancing the arrangements for looking at Aboriginal deaths not just in custody but in general that are subject to coronial investigation.

Mr COUTTS-TROTTER: I should add that we are in discussions at the moment with the Coroner to provide what would be described as Aboriginal family support officers through the coronial court to provide better support to Aboriginal families and to adopt potentially some of the ways of working that are clearly having an impact in Victoria.

Commissioner SEVERIN: That is essentially what they have done with the Koori engagement unit and a much faster process for Aboriginal deaths.

Mr DAVID SHOEBRIDGE: The Coroners Court is in the middle of some kind of review, maybe even with the assistance of an external provider, about engagement with First Nations people.

Commissioner SEVERIN: Yes.

Mr DAVID SHOEBRIDGE: I think we have sought some contribution from the Coroners Court to the inquiry, but they have referred everything to you. So can you give us some details about where that review is up to and who is doing it?

Mr COUTTS-TROTTER: I am aware that there is work being done on a new practice note that would really set and change policy and procedure for how the Coroner deals with the deaths of First Nations people. I know that from a department perspective we have been talking with the Coroner and the Coroner's office about providing some Aboriginal roles in support of that.

The CHAIR: In relation to deaths in custody in the corrections systems, I think the submission we had from the Ombudsman is that apart from a coronial inquiry there is not an oversight mechanism for deaths in the corrections system like there is, for example, with LECC's oversight of police critical incidents. Is that a correct understanding and is that a missing piece of the oversight puzzle that needs to be put in place?

Mr COUTTS-TROTTER: I might invite Carlo Scasserra to comment on that if you would not mind, Chair.

Assistant Commissioner SCASSERRA: We do have an oversight. We operate two rounds of oversight. We have a management of deaths in custody group that oversees every death in custody and looks at the recommendations which are made from that. They are to act quickly and respond to the information which is provided including our own internal investigation report. I think it is important to note that we sit outside of the operating areas of the business—

The CHAIR: Nevertheless, you are still part of Corrections.

Assistant Commissioner SCASSERRA: Yes, we are within Corrections but we do sit outside of the operating arms of the business for that purpose. We also operate an oversight and review committee. The function of the oversight and review committee is to look at all recommendations which are made to Corrective Services and to give every recommendation that comes through importance and follow it through to outcome as well. We have responded to the vast majority of recommendations and we continue to respond to those recommendations.

The CHAIR: Mr Coutts-Trotter, in your opening statement you were talking about the relative numbers of First Nations deaths in custody and non-First Nations deaths in custody. I think they were measured as deaths per 100 inmates?

Mr COUTTS-TROTTER: Yes, per year.

The CHAIR: I am not a statistician, so just for me do you have what those figures might be on an annual basis? For example, in a given year there might be X number of deaths in custody; how many of those are First Nations people?

Mr COUTTS-TROTTER: Happy to provide that year by year for the Committee. I have seen data from 1990 onwards, so the last 30 years, if that is of help.

The CHAIR: That would be very useful. I do not want to put you to too much trouble, but is it possible to have those figures recut excluding natural causes?

Mr COUTTS-TROTTER: Certainly. Yes, we can do that. The data I refer to—the way we have looked at deaths in custody was for all deaths in custody. If you look at it for unnatural deaths in custody such as suicide, overdose and homicide, then actually the ratio between the probability of an Aboriginal person dying by unnatural causes and the probability of a non-Aboriginal person dying by unnatural causes—it is still a bit more than three times more likely that a non-Aboriginal person will die of unnatural causes. The other thing I picked up in reading in preparation for this was that the assessments done by Justice Health of people on entry to the prison system of course assess people and then further assess people at risk of self-harm, and Aboriginal people are twice as likely to be assessed at risk of self-harm. There is a high underlying risk there but actually the system seems to respond pretty effectively in knowing that and doing something about it to prevent completed suicide.

Mr DAVID SHOEBRIDGE: Do you have the relevant data not as against the proportion of Aboriginal people in jail but against per 100,000 people in the community?

Mr COUTTS-TROTTER: Sure. It will be disproportionate, Mr Shoebridge, for the simple reason that Aboriginal people are far too likely to be in jail.

Mr DAVID SHOEBRIDGE: And so you can cut this data in 10 different ways but what Aboriginal—

Mr COUTTS-TROTTER: It was not trying to be a debating point. I just felt, coming to this Committee, it was an important point to make that Aboriginal people are far more likely to be in prison but once in prison—actually on those measures prison is a safer environment for Aboriginal people over that period of time.

Mr DAVID SHOEBRIDGE: In terms of the likelihood of an Aboriginal person dying in jail compared to a non-Aboriginal person dying in jail—

Mr COUTTS-TROTTER: Much higher.

Mr DAVID SHOEBRIDGE: Much, much higher. Do you have that rate?

Mr COUTTS-TROTTER: We can get that for you. Yes, absolutely.

The CHAIR: My final area of questioning for you today is in relation to what you were touching on before about one of the ways to try to reduce First Nations incarceration being to try to reduce First Nations interactions with the criminal justice system. I have just been looking at a couple of Bureau of Crime Statistics and Research reports. One is bureau brief No. 118 from 2016 and one is bureau brief No. 126 from 2017.

The first one looks at arrest rates in the 15-year period to 2015. It found that in that 15-year period there was nearly a 40 per cent decline in First Nations arrests for violent offences and also a one-third decrease in arrest for property crime. But in that same period of time there was a 40 per cent to doubling of incarceration due to a combination of a higher rate of bail refusal, a higher rate of arrests that led to convictions and a higher likelihood of imprisonment on conviction. The second brief confirmed those findings but found that the increase in incarceration was again driven primarily by bail refusal and then a delay particularly in the District Court and spending time on remand.

Mr COUTTS-TROTTER: Yes.

The CHAIR: There seems to have been, if you like, a diversion from the criminal justice system by not arresting people but those that are in the system appear to be dealt with more harshly. Then you have got those other systemic issues of being on remand awaiting trial.

Mr COUTTS-TROTTER: I know you do have Jackie Fitzgerald from BOCSAR appearing before the Committee tomorrow and I am sure she can go into that in more depth, but from talking with Jackie over recent days and looking at the data from February 2014 to February 2020—just before the COVID effect, which is unusual—the drivers for the imprisonment of Aboriginal people are, as you say, changes to bail laws and an increase in bail refusal which disproportionately affected Aboriginal people. Aboriginal people as a result of those changes were more likely to be bail refused than other people affected by those changes—or the changes had that effect. Ms Fitzgerald reports an increase in total legal actions and that is assault, of which about one-half is domestic assault, and breaching community orders. The two major components there are breaching apprehended domestic violence orders and breaching bail conditions. They are the two major areas of growth together with people charged with intimidation and stalking offences.

The CHAIR: Again, primarily in the domestic violence space?

Mr COUTTS-TROTTER: I think so, yes.

The CHAIR: So a concomitant increase of domestic violence offences in the same period.

Mr COUTTS-TROTTER: Yes, but she can explore the data with you more.

The CHAIR: No, it is fine. In a policy sense how do policymakers or service providers, such as in the criminal justice system, respond to this sort of desire to try to keep First Nations people out of custodial systems faced with these sorts of challenges?

Mr COUTTS-TROTTER: I think some of the things that have been deployed and have been in part evaluated but not completed in their evaluation—there was the work of the Dubbo bail support project, which did not have the effect, it seemed, of significantly reducing the rate of bail refusal. The lessons learnt from that were that people who are the subject of bail conditions, Aboriginal people, often do not know that when the

circumstances change they are able to change that to seek variation to their bail conditions. Life moves on but they are stuck with bail conditions that are just going to be breached. There are lessons there.

The What's Your Plan? initiative is a way of trying to better explain what people's apprehended domestic violence order [ADVO] responsibilities are. Putting them in language that more people can understand more easily, using so-called behavioural insight techniques to get people to make a commitment up-front about what they would do if certain things happened that might cause them to breach that ADVO—that is under evaluation at the moment. Then of course we know that justice processes that are more Aboriginal community led, such as circle sentencing, have had an impact on reducing both imprisonment and reoffending. We know that the Magistrates Early Referral into Treatment [MERIT] program has had an impact on reducing reoffending. There are some things quite a long way in the justice system that are seeming to work reasonably well, but as I say I think nearly all of those, with the exception of MERIT, are waiting on a final evaluation.

The CHAIR: Two propositions that have received strong support in submissions to our inquiry so far are initiatives such as the Walama Court model and also justice reinvestment. Can you give us any insight into what government thinking might be on each of those?

Mr COUTTS-TROTTER: Justice reinvestment and Walama Court, together with a range of other proposals, remain under consideration by Government as part of a so-called criminal justice reform part two.

The Hon. PENNY SHARPE: When is that due to be completed?

Mr COUTTS-TROTTER: I could not tell you.

The Hon. TREVOR KHAN: Can we just go back to the Coroner practice notes. Where precisely is it up to in terms of the development of this project?

Mr COUTTS-TROTTER: I understand there is a draft note that is being consulted on with stakeholders. I have not yet seen it but I have asked for a copy. It is very well developed. I know the Chief Magistrate in his submission to the Committee said that that would be happening and it is his prerogative, but I understand it is very close to complete.

The Hon. TREVOR KHAN: Is there any reason why, if you get a copy of it, we cannot have a squiz?

Mr COUTTS-TROTTER: Other than offending the Chief Magistrate, which would be a very good reason not to!

The CHAIR: Perhaps we could put it in a more diplomatic way: We would like to see that if it is able to be provided to us, even on a confidential basis.

Mr COUTTS-TROTTER: Yes, of course.

Mr DAVID SHOEBRIDGE: Yes it would be useful on a confidential basis but I would have thought, given the level of interest on this across some very informed stakeholders in the community, some kind of public engagement process would be merited for going through something as important as changing the practice note to deal with Aboriginal deaths in the Coroners Court. It may not be natural for courts to do that, but I think there would be a strong argument for there being a public engagement between the draft and the final.

Mr COUTTS-TROTTER: I will make sure that we draw the attention of this afternoon's *Hansard* to the Chief Magistrate's office.

The Hon. TREVOR KHAN: This is mainly directed at Commissioner Severin. You may or may not be aware that we took evidence from the Chatfield family. I think it was last Friday—

Mr DAVID SHOEBRIDGE: Thursday.

The Hon. TREVOR KHAN: I will come to specifics with regards to it. Would you agree with me that Tamworth jail however described by name—at least in my time up there—was essentially a remand jail?

Commissioner SEVERIN: That is correct. It is also a jail that processes a lot of inmates coming in because of the courts it services. It has got a number of sentenced inmates and a lot of those are locals who really would like and want to stay there. With the changes that we are now making to the prison bed program as a result of the new infrastructure, we will further reduce the footprint. The minimum security component will go and again that will mean that we will continue to use it as a prison rather than a transitional centre because it is too important in that particular geographic space.

The Hon. TREVOR KHAN: Sure. I understand the difficulty in terms of the movement of the prisoners. My assessment in the past was—and I think it is probably still the case—that the prison population there is overwhelmingly Aboriginal, is it not?

Commissioner SEVERIN: Yes. I would have to take the exact number on notice but given the areas they service like Moree and other parts of that part of the State, the north-west, I would assume that that is correct.

The Hon. TREVOR KHAN: There is no trick in this; it just seemed to me that that was always the case.

Commissioner SEVERIN: No, I just have not got the exact number at present.

The Hon. TREVOR KHAN: I particularly noted Mr Coutts-Trotter's observations that suicide or suicidal ideation, at least at the time of intake, is much higher amongst the Aboriginal population. Let me ask you this: Would you be aware of the recommendations that were made by the Coroner in about 1997 or 1998 into the death of Mitchell Woodhead at Tamworth jail?

Commissioner SEVERIN: No, I am not.

The Hon. TREVOR KHAN: Let me assure you, that was a suicide by hanging at Tamworth jail back then. Are you aware of any other Coroners' reports that relate to deaths at Tamworth jail? That is not a trick question. I do not know.

Commissioner SEVERIN: Chatfield, obviously, I am fully aware of. I am not aware of any others off the top of my head.

The Hon. TREVOR KHAN: Having visited the cells, and I mean literally the cells from time to time there to visit prisoners, the issue of hanging points in those cells has clearly been a live issue for what really is decades now, is it not?

Commissioner SEVERIN: Hanging points have been a live issue certainly for as long as I have been in Australian Corrections which is since about 1989. If I can just elaborate a little bit in that regard, we would not build a new cell that has ligature points for maximum medium security. The response that New South Wales gave consistent with every other jurisdiction following the original royal commission was that instead of removing every hanging point—the logistics of that are almost impossible and I will get to the detail in a minute—we focus very strongly on good assessment, we focus on creating safe cells where we can place those that are at particular risk of self-harm or suicide and we focus on active engagement with offenders instead of just static observation.

We are picking up on the signals that may give cause to concern. Mr Coutts-Trotter was already referring to that. When a person comes into custody with a Justice Health assessment that is just a starting point that indicates risk of self-harm or risk of suicide, and it is a multidisciplinary team approach. I think it is fair to say that that has worked quite well. That is not to in any way take away from the fact that we had very unfortunate deaths, both of Aboriginal and non-Aboriginal people, in custody.

Hanging point removal is a very complex issue and that is not because every hanging point is obvious. It is also because you have got—like Tamworth—your service pipes running through your cells. We have cladded them away now following the Chatfield death. That is a stopgap measure. To remove every hanging point would almost be—it would be better to build a new prison instead. It would be so prohibitively expensive. What we are doing instead is not to say we are tolerating hanging points. Wherever we can remove a hanging point that is obvious—we had tubular beds. Quite a number of hangings were on the actual bedframe.

The Hon. TREVOR KHAN: Indeed, Mr Woodhead's was in that circumstance.

Commissioner SEVERIN: We are replacing those, and have done well before my time, with beds that do not have any obvious hanging points and we continue to do that. More importantly, as I said, every single cell that we have designed and built for maximum medium security prisoners as part of the recent program and preceding programs has been one where any known ligature point has been eliminated. However, I put my emphasis far stronger on engagement and proactive management of risk than the static way of trying to eliminate any possibility. I hope that answers your question.

Mr DAVID SHOEBRIDGE: It is not just Tamworth. Parklea has seen repeated deaths by hanging, going back as long as I can recall. Do you agree with that, Commissioner?

Commissioner SEVERIN: Yes, I do. Again, I am not suggesting that the rate of deaths is particularly high. It also comes down to the cohort that is kept there, but Mr Scasserra can talk to that. We are actually in the process of eliminating hanging points in those parts of Parklea that we can now access much easier because they

are not operational at the moment because we are building extensions to Parklea. Once you can actually empty out a whole block it becomes a much easier way of dealing with hanging points than it is when you have an operating prison.

Mr DAVID SHOEBRIDGE: Commissioner, when I asked you about this on 9 September last year, I asked you about the fact that it was more than 2½ decades after the Royal Commission into Aboriginal Deaths in Custody and one of the key recommendations was removing hanging points. I asked you what, if any, program was in place. Your answer was, "We do not have a program of retrofitting existing cells." Then you said that any cell that is being built will not have a ligature point. So is that still the case that there is no program of retrofitting existing cells?

Commissioner SEVERIN: There is no program; there are projects. As I said, we have projects. Like we are doing the same at Junee at the moment, we are doing the same at Parklea, and we have done it at Tamworth and we will continue to do it. But it is not a program of work under our capital works program and so the answer that I gave you in September last year is still accurate.

Mr DAVID SHOEBRIDGE: You also said, "There have been many estimates undertaken as to what it would take to retrofit existing cells." What estimates?

Commissioner SEVERIN: An estimate obviously includes a building estimate, an estimate by quantity experts that can identify how much it would cost to retrofit a cell. Again, I do not think I made any specific reference to a specific estimate but I am certainly across situations where we have done—not just here but elsewhere, I have undertaken work to that effect to identify if it was something that was able to be done easily or if it involved a more onerous approach.

Mr DAVID SHOEBRIDGE: Commissioner, given your previous evidence was that many estimates have been undertaken as to what it would take to retrofit existing cells, can you provide us on notice with what those estimates have shown and when they were done?

Commissioner SEVERIN: Certainly. If they are still available from whenever they have been undertaken here in New South Wales, I am more than happy to do that.

Mr DAVID SHOEBRIDGE: I have particular concern about the hangings. Any death in custody by hanging is deeply unacceptable, highly traumatising for family and tragic for the individual. But both Parklea and Tamworth have a lot of remand inmates. All of the evidence would suggest that they are some of the highest risk cohort in terms of death by suicide, because the system does not know much about them; it does not have any medical evidence and it does not have a history. How is it that so many remand prisoners, many of them Aboriginal, are still being put in prisons with hanging points?

Commissioner SEVERIN: The short answer is that that was the only accommodation available at the time that the places were commissioned for the accommodation of remand prisoners. As I mentioned, we have undertaken the largest expansion of infrastructure that this State has ever seen in our prisons, and we are able to reconfigure the system accordingly, which we have done at Parklea. In Tamworth, the answer to Mr Khan was clearly one of saying, "Can we tranche the whole role and function of the facility?" We cannot do that at this point in time. That is not to say that we are ignorant of the fact that the centre is quite old. However, I cannot overemphasise the fact that we have put a lot of energy and effort into proactive measures to prevent people from committing suicide or self-harm at Tamworth, Parklea and every other reception facility that accommodates remand prisoners across the State.

Mr DAVID SHOEBRIDGE: But we do not have to go back in ancient history, Commissioner. There was a death from hanging in Parklea in the last 12 months.

Commissioner SEVERIN: Yes, I am not disputing that.

Mr DAVID SHOEBRIDGE: You said that there was some distinction between programs and projects. Commissioner, can you tell us on notice what all of the projects or programs are for removing hanging points in the cells at the moment, and what that will mean when it is completed in terms of how many cells still have hanging points?

Mr COUTTS-TROTTER: What has changed since the Commissioner's evidence in September is that we have had our departmental and cluster budget rebased. It is a much more certain budget in four years now. We can now rely upon a minor capital works program that was unavailable to the department previously. I have seen a draft proposal for the coming year's minor capital works program and it contains a whole range of projects, a couple of million dollars' worth of projects, to remove hanging points. It may be a question of semantics about

whether we have a program or not, but we definitely have a committed minor works program that is making a priority of tackling some of this.

Mr DAVID SHOEBRIDGE: We will get the answers on notice about how many cells that has retrofitted, how many will be retrofitted and how many will still be left with ligature points.

Mr COUTTS-TROTTER: Okay.

Mr GRANT: Might I just emphasise the point that the Commissioner made in terms of our risk assessment approach? We have made a massive investment in trying to identify people at the point of arrival in custody and at various points through custody. We have been running that system for some time. To give you context, and I think Mr Coutts-Trotter gave you a generalisation about it, but in the period since 2015 there have been two Aboriginal prisoner deaths attributed to suicide and they both occurred in the same year. In a five-year period there were four years where there were no Aboriginal suicides. During that same period, 7,500 Aboriginal inmates were identified through the screening reception process as being at risk. Measures were put in place for those people through things like having a mandatory notification process, putting in place an immediate support plan and providing arrangements for those people, which would have included, for a large number of them, having them during the high-risk phase in cells that have had the hanging points removed.

Back in the nineties all correctional centres created cells where hanging points were removed. The process has been to assess people as well as we can—it is obviously not a perfect system—to ensure that those people who have the highest level of need are managed in this environment, using the least restrictive model of care. In terms of the total number, the figure is actually a pretty good result. The two instances that occurred are very tragic and obviously we would try to avoid them. We are trying to do things to change that, but our systems that are in place have worked relatively well to manage a very highly volatile, high-risk population over an extended period of time.

Mr DAVID SHOEBRIDGE: Mr Grant, I am not suggesting there is not a major role for active management. Clearly, that is part of the strategy. But removing hanging points has been a recommendation from the royal commission, which is now well over 2½ decades in the making. The fact is that remand prisoners, where you have the least amount of information, the least amount of medical history and the least amount of organisational knowledge, are being put in cells with hanging points. Surely you would acknowledge that is a problem?

Mr GRANT: We do have a lot of information on people. Sadly, a lot of people have been in the system before. We have quite a bit of information. We have professional people who are eliciting responses from people in reception interviews. We gather information about them that actually enables us to make relatively good assessment of who is and who is not at risk. It seems to be quite effective.

Mr DAVID SHOEBRIDGE: There is a lot to cover.

Mr GRANT: I will also clarify that the royal commission recommendation did not say, "Remove hanging points from jails." Recommendation 165 encouraged correctional authorities and the police to screen cells for hanging points. That is actually what we did at the time. Back in 1995 we spent about \$2 million removing obvious hanging points. As time has moved on, we keep on identifying additional opportunities. When we built the Metropolitan Remand and Reception Centre [MRRC] in 1995, we built those cells, notionally, with suicide prevention in mind. By 1997 we had about six people who found various ways of dying in that place. Some of them included things we could never have imagined people would have used to kill themselves. Our process is to rectify any obvious hanging points as they emerge, but our general strategy is to use a risk-based approach and to manage those people who are at risk in safer environments. That happens quite effectively.

The CHAIR: Would a start be to not have First Nations people, particularly on remand, in those cells? Is that a practical solution at least to minimise the risks?

The Hon. TREVOR KHAN: You cannot do it at Tamworth.

The CHAIR: That is why asked if it is practical and, if not, what is practical?

Mr GRANT: Mr Khan, in Tamworth we have removed the more obvious hanging points since the death of Tane Chatfield. We would not have enough cells, to be honest. There are all sorts of other considerations in cell placement, like who you put someone with when they can be with someone else. Depending on which centre they have arrived in, it might be hard to enforce a rule like that.

Commissioner SEVERIN: It would also mean that, unless we build new infrastructure in those spaces, we would have to move inmates over large distances to other places and return them to court. But, most importantly, they would be moved away from where their families are.

The CHAIR: Even just focusing on the remand prisoners?

Commissioner SEVERIN: Yes.

The Hon. TREVOR KHAN: Commissioner, I do not want to re-litigate the Tane Chatfield inquest—I do not think that would be fruitful for any of us—but I am interested in some evidence that we received last week, particularly as it related to the communication or engagement with the family at or about the time of his movement to hospital. Again, please understand that the evidence we received on Friday was, in a sense, not the subject of a lot of questioning because of the delicacy of the matter that we are dealing with. The transcript is what the transcript is, but I wonder if you could go through, perhaps with reference to Chatfield, but not necessarily in that case, what you do in those circumstances?

Commissioner SEVERIN: I might start with a very generic explanation.

The Hon. TREVOR KHAN: Yes, please do.

Commissioner SEVERIN: Mr Grant was very much involved in that personally and can make very specific comments. Our practice particularly in relation to First Nations people who die in our custody obviously involves compulsory notifications to various bodies: the Aboriginal Legal Service, Aboriginal Affairs and the families. It also regularly involves an offer to meet with me personally within the first little while. Our Aboriginal Strategy and Policy Unit is very proactively engaging in every single case with family. At times that is quite complex and difficult, because of the trauma involved. What we have changed is an approach that was very cautious and based on legal advice in the past, where you really cannot say anything because it is all in front of the Coroner. That just simply does not wash with family. Family want to know what actually happened. They want to know what we can talk about.

The Hon. TREVOR KHAN: Indeed, it increases the level of suspicion.

Commissioner SEVERIN: We have started providing a lot more information that is not sensitive in the context of compromising the coronial investigation and the coronial inquest, but giving family information that is relevant to answer their questions and also to deal with their grief. I might ask Mr Grant to talk a little bit more specifically about the Tane Chatfield matter.

Mr GRANT: I do not want to go into all of the details. I just want to say one thing from the outset: The death of Tane Chatfield was very distressing for the staff in the centre as well. I know it is very shocking for the family. I visited the centre a couple of days after the death and one of my intentions on that visit was actually to have contact with the family. That contact did not occur and I personally followed up with the family. After going through an exhaustive process to find a mutually convenient date, I had a meeting with them in Armidale for a full day and one of my colleagues met them for a second day. So, we had two full days of discussion, but when I went up there—

The Hon. TREVOR KHAN: Sorry. I do not want to interrupt, but do you know how long after that meeting took place?

Mr GRANT: What I am going to tell you now is that when I went up there I wrote some notes, because I thought one thing that we are really interested in, as the commissioner mentioned, is trying to maintain contact with families to the extent that we can. It is quite distressing for us to hear—when a lot of our staff make great efforts to maintain contact with families—that we are being misrepresented, I believe, in forums like this. If I can go through some of the details—

The Hon. TREVOR KHAN: Well, Mr Grant, can I just assure you of this: We get told a lot of things and we understand the circumstances in which we are being told them are often a long time after. Stories get very muddled. So, that is why I made the point that we did not seek to cross-examine family members, because nothing will be gained by it. The advantage of you being here today is that you have the opportunity of balancing the material that we have got. So, we are actually interested in hearing both sides of the equation.

Mr GRANT: Thank you very much. I will not go through this in detail. I can provide some more in detail, but it gives you an indication of the efforts that were taken. This was following his—the fact that Tane was not originally dead. He was in hospital, in a terrible state. On Wednesday the twentieth, the person who was in charge of the jail at the time met with the family at the hospital. The family were briefed about all the available information they had. On the Thursday there was a request from the family to meet with the inmate who found

Tane and the governor of the jail said he would follow that up with them. They then attended on the twenty-first at the centre again. The governor and one of his senior staff attended Tamworth Hospital to speak with the family and to provide available information to the family on the circumstances of the incident.

I have not prepared this for today, by the way; this is just from my notes at the time. The family were thankful of the staff actions and expressed their appreciation for contact with the staff. They were advised that, discovering the inmate, the staff had quickly taken action that resulted in an immediate medical response. All efforts to assist the family were taken. Approval was given to the family to speak to the inmate or to visit or come by phone. The family were in contact with the Services and Programs Officers [SAPOs] and they are currently waiting on the outcome of medical advice. On the Friday the same person met with the family again regarding the arrangements to come and meet the prisoner who discovered Tane on the Sunday. On the Saturday the same person met with the family again at the centre when the property was collected. That was the manager of security—the person in charge of the centre.

On the parallel days, the Services and Programs Officers and one of the non-custodial staff on the twentieth made numerous attempts to contact the next of kin, to describe and to go into some details. They spoke to the family and received telephone calls from Tane's sister and grandparents. On the Thursday they spoke to the Chatfield family in the morning at 10 o'clock to check on their welfare and any changes to his condition. They spoke with Tane's sister; that was on the Thursday. On the Friday this person, the Services and Programs Officer, met with the family and the manager of security in the centre. The family expressed their gratitude to the staff and their concern for the other inmates at the centre. Staff assured the family we would continue to assist them whenever and wherever we could. On the Monday they attempted to contact the sister again to check on their welfare and were unable to make it.

They spoke to the partner on that day and the partner thanked the SAPO for her ongoing support on the Monday. On the Thursday they had another conversation with the partner. On the Thursday, separately to this, our regional Aboriginal Project Officer arrived in the centre, went to the hospital in the morning, met with the family at 10.30 a.m., returned to the hospital at 3.30 p.m. and met with the family, staying until 6.30 p.m. On the Friday he attended the hospital again and spoke with the family, then had a telephone call with the family that evening and had numerous calls over the subsequent days. So, that was the immediate events where a large number of staff, I believe, did everything we would expect them to do to try to maintain support for a family that was going through a terrible process. As I said, subsequent to that, we reached out on multiple occasions to try and meet with the family and eventually did that.

As I said, I went and spoke with the family for literally a whole day in Armidale. One of my colleagues—we have got a really fabulous Aboriginal woman who is our principal manager for Aboriginal services, Louise Lynch. I would like to name her and put on the record that she goes to an extraordinary length with the families of Aboriginal people who have died in custody, to make sure that their needs are being met. Louise spoke to them for two days and then offered to follow up because in this instance—you would probably be aware—a lot was hanging on video footage. She offered to show them the video footage. There were several cancelled appointments and finally she had some further contact with them. So, I think there was an enormous amount of effort taken. We take it really seriously. We are very aware of our responsibility and we are very aware of how distressed family are. Our staff are distressed as well and we try to look after everyone under these circumstances.

The Hon. TREVOR KHAN: I am grateful, thank you. I do not have anything more.

Mr DAVID SHOEBRIDGE: Could I suggest to you that one of the primary concerns the Chatfields had in terms of the engagement with your organisation was that a matter of days after Tane's death, you, Commissioner, or someone on your behalf—before any investigation had come anywhere near conclusion—made a public statement that there were no suspicious circumstances in relation to his death? Do you understand how making that statement so early on, before an investigation is anywhere near concluded, would lead to mistrust from the family?

Commissioner SEVERIN: I am actually almost certain that it was not the Chatfield case. What happened was there was a comment made by one of my assistant commissioners as part of a response to the media that used that turn a phrase. It became very clear very quickly that that was not interpreted in the way it was intended to be interpreted. We have not used that that turn of phrase again for exactly those reasons. I am happy to be corrected on that. But certainly in the context of the formal statement we have not used "no suspicious circumstance", which literally relates to the fact that there was no evidence provided at that point in time that it was a murder or a death that was caused by a third party. So, as part of our learnings we have changed the use of that phrase. We are not using it for any death.

Mr DAVID SHOEBRIDGE: Indeed, in the Chatfield case you told NITV in October 2017—again, very soon after Mr Chatfield's death—that Mr Chatfield's death was not:

... contributed to by other humans ...

Do you remember saying that?

Commissioner SEVERIN: Obviously I need to take that on notice. I do not remember saying that. I am not suggesting that I did not say it.

Mr DAVID SHOEBRIDGE: I think implicit in your earlier answer is that those kinds of statements early on in an investigation will inevitably undermine the family's confidence in the independence of an investigation. I think that is implicit from your earlier answer. Is that right, Mr Severin?

Commissioner SEVERIN: As I mentioned before, any kind of comment that is seen or can be interpreted in a way that "no suspicious circumstances" was interpreted is one that clearly we do not use. At no time through the Chatfield inquiry was there a suggestion that there was a third party involved. If I made that comment on NITV television then I am not disputing that.

Mr DAVID SHOEBRIDGE: Again, just so I can close this chapter of this inquiry with yourself, do you accept that if that is an accurate recollection of what you said, making that kind of statement—particularly coming from you, as the head of the organisation—before the investigation is concluded undermines confidence from the families that there will be a full and frank, independent investigation?

Commissioner SEVERIN: I am not arguing that it does not. But I can also say that obviously I did not make that statement in the context of trying to in any way interfere with investigations or pre-empt outcomes of investigations, because the investigation obviously is quite separate to Corrective Services. It is undertaken by the police in direct relationship to the coroner.

Mr DAVID SHOEBRIDGE: We will come back to that. I have the Aboriginal Strategy and Policy Unit's Aboriginal deaths in custody policy directive from your organisation. It is the current one. It was put in place on 4 March 2019. It makes no reference at all to there being an invitation for the families to speak with yourself or any senior officers. It is not part of the formal policy, Mr Severin?

Commissioner SEVERIN: Again, I would have to take that on notice. I do not have any reason to dispute what you are saying, but that is not to say that I do not offer families to meet with me. It does not need to be written in policy for me to do that; likewise, Mr Grant as my deputy in my absence has done exactly the same.

Mr DAVID SHOEBRIDGE: Where it says about providing information, the only information it says that is proactively provided is name of the deceased, date of birth, declared deceased time, correctional centre location where death occurred, and confirmation that police contacted the Aboriginal inmate's next of kin. But there is nothing in here about providing any information to the families until you go down to the discussion about the police. Do you accept that there is no policy in place to proactively provide information to families.

Commissioner SEVERIN: I have to take that on notice. I do not have the policy in front of me.

Mr DAVID SHOEBRIDGE: Well, I am happy to give you a copy of the policy.

Mr GRANT: I will stand corrected if it is not true but I think that policy is the policy of the Aboriginal Strategy and Policy Unit rather than the policy of how the commissioner will behave. It is intended to govern their involvement with the deaths in custody, not the organisation's involvement. That is my understanding.

Mr DAVID SHOEBRIDGE: Is there any policy in place that says Corrective Services will provide any proactive information to families?

Commissioner SEVERIN: I do not think there is a policy in place. There is certainly a practice that we have adopted. No, there is no policy that actually explicitly says that.

Mr DAVID SHOEBRIDGE: When you say it is a practice, can I say—and you may contest the information—that every submission from an Aboriginal family where there has been a death in custody has had the same basic conclusion that there was no proactive provision of information. Often the first time they got details was when the brief of evidence went to their lawyers for the coronial investigation.

The Hon. TREVOR KHAN: We know some of that is wrong, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: And that information gap is quite traumatic for them. I know you contest it to a degree in regards to the Chatfield family, but would you accept that you have heard this criticism in other cases.

Commissioner SEVERIN: I certainly have heard concerns raised by families about us not being in a position to provide every bit of information because it is subject to investigation. But most importantly, from providing literally no information to providing as much information as I possibly can without unduly interfering in a police investigation, has been a very proactive step that we have taken very consciously in the context of deaths in custody to try to address as much as possible or alleviate as much as possible those concerns. That is not to say that families will ever be satisfied in a situation of extreme trauma and grief, ever satisfied that they have been told everything that is to be told. I can recall a number of occasions where I was not in a position to provide information because it was not appropriate for me to do so, but generally we have, from literally sharing nothing to sharing as massively as possible, changed our processes.

Mr DAVID SHOEBRIDGE: Just earlier this morning we heard from the sisters of Nathan Reynolds. His death was in September of 2018. I found them two compelling and direct witnesses. They said the only credible information they got about the death of their brother was from another inmate who they have telephone contact with. They did not find any credible information at all from Corrective Services again until they got the brief of evidence.

Commissioner SEVERIN: So I met with the sisters immediately after the incident. I shared with them all the information at that point in time, which no doubt would not have been as comprehensive as it was when the brief of evidence was completed, but it was more around the development of events on the evening this very unfortunate death occurred. Their main concern at the time was that they had not been nominated at the next of kin in the official record. We explained, obviously, that for privacy reasons we are not allowed to contact anybody. We have to stick with what our records allow us to do because it is the deceased's express wish. They nominate the contact person and the other persons that we can contact. That is not to say that we do not try to also identify, together with the NSW Police Force, if there are other people who should be notified.

Mr DAVID SHOEBRIDGE: Can you take us through who in Corrective Services is sent to a cell to gather evidence and secure the scene when there is a death in custody?

Commissioner SEVERIN: Yes, I can,

Mr DAVID SHOEBRIDGE: Tell me what happens, Mr Severin.

Commissioner SEVERIN: There is a first responding officer in all cases. That could be one or more staff who initially render assistance, first aid, until Justice Health comes and Justice Health takes over. My staff are not authorised to stop any kind of assistance, even if it is evident to them as laypersons that the person might be dead. That is a health responsibility to declare somebody deceased. The ambulance is notified at the same time, so once the person has been removed by generally the ambulance, the scene is secured. It is incumbent then on the officer in charge to ensure that it is secured as a crime scene. That means that any person that might be accommodated in the same cell is removed from that cell. The cell is locked and secured, with everything remaining in place as it was for the police to undertake the forensic investigation once they are notified.

The Corrective Services investigation does not involve a forensic investigation—we do not have that capability. It is not our role—of any evidence inside the cell that was part of the crime scene. That is the prerogative of NSW Police Force. Any records that exist are secured. That includes CCTV footage if there is any. Any documentation that is relevant in relation to the deceased is secured and then made available to the police upon the commencement of the investigation. The area where the death occurred can only be reused once declared by police as no longer being considered a crime scene. Corrective Services' investigation surrounds more the individual who died, the procedures that guide the management of that person, the procedures that were in place or the processes in place at that particular time, and also, of course, interviewing any staff member involved or anybody else that can make relevant comments, including other prisoners.

Mr DAVID SHOEBRIDGE: That is a particular unit within Corrective Services?

Commissioner SEVERIN: That is right. It is the investigations branch for Corrective Services NSW

Mr DAVID SHOEBRIDGE: So to the extent you are looking at the systemic issues in the lead up to a death in custody, that systemic review is undertaken by Corrective Services, but the forensic investigation in the cell about the immediate cause of death is undertaken by police.

Commissioner SEVERIN: No, a police brief is obviously much broader. They also look at systemic issues, they look at processes, procedures. They work on behalf of the Coroner. They work with the Coroner in getting their brief together. Our investigation is—and Mr Scasserra can give you more detail on that—clearly about the issues relating to Corrective Services, and the advantage that we have as a result of doing this investigation is that we can start making changes, adjustments or modify documentation processes immediately once it becomes an issue.

Assistant Commissioner SCASSERRA: We respond as soon as we can from the investigation unit. Clearly we are based in Sydney—we do not have officers all around the State—so police are often in situ way before we arrive, but sometimes we can both arrive simultaneously. We do everything from the detainers which held the person et cetera—the lawfulness of being held—all the way through to our policy procedures, and the way in which we had managed the individual during their period of time with us. So, again, it is a systematic review, and we are looking at where we could have or where we had proceeded to follow our policy procedures and practices as best as possible.

We do interview witnesses, including our own staff, including other inmates—anyone who is relevant to the review that would give us an insight into what occurred and probe into the lead-up, and obviously the incident itself, so we try and be as thorough as possible. We do have a separate mandate. Our report goes to the Coroner, so it is not held internally and distributed internally without the Coroner being served a copy of that report. We do file it under their Act as well for their review. We do provide witness statements as required to the Coroners Court as well, in terms of how we reviewed and why we reviewed various aspects.

Mr DAVID SHOEBRIDGE: Who checks, over time, the systemic implementation of those recommendations? Because obviously the Coroner tends to be focused on individual cases. Who is following through, over time, the systemic implementation?

Assistant Commissioner SCASSERRA: As I said, we have an oversight review committee, so we are rating internal reviews. That is where that information comes as well. That review committee looks at all recommendations that we make, whether it be our own internal recommendations and reviews or whether external bodies. So we keep track of those reviews.

Mr DAVID SHOEBRIDGE: Do you accept that the absence of having external scrutiny of that—the systemic response—and the absence of an independent external body to check on that—it is probably unfair to put to you, Mr Scasserra, so I will put it to the Commissioner—it may be unfair to put to him as well, but I will do it anyhow.

The Hon. TREVOR KHAN: Fairness has never been a problem, has it?

Mr DAVID SHOEBRIDGE: I am aware of the resolution.

The CHAIR: It can always be taken on notice.

Mr DAVID SHOEBRIDGE: The absence of an external independent body to hold you to account over time is a problem in the system?

Commissioner SEVERIN: I am very confident that the internal review and monitoring and the assurance is robust. We do have other ways of actually being—we do get scrutinised in other ways, through official visitors, through the Inspector of Custodial Services. The Coroners Court has a representative on that oversight deaths in custody committee, so I am quite confident that the scrutiny and the rigour is robust. That is not to say that I would not be quite amenable to consider any suggestion to strengthen that or to augment that in a meaningful way. I am very open to that. But, at the same time, I need assurance from that committee that things that we undertook to do have been done, and I get that assurance on a regular basis.

The Hon. TREVOR KHAN: Again, I do not want to litigate the Tane Chatfield matter, but that was the subject of this internal review process essentially immediately following the death?

Assistant Commissioner SCASSERRA: Correct, yes.

The Hon. TREVOR KHAN: Was there anything that was identified in the Coroner's findings and recommendations that came as a surprise in the light of that internal investigation? Or were the two what one could describe as reports simpatico?

Assistant Commissioner SCASSERRA: I would not always say that reports are aligned with each other. Obviously there is differences in terms of how people describe what they have seen and how they describe the scenarios, et cetera, and policy and procedure in the way in which they review that. I think the Coroner takes

a different aspect of that, and obviously they have a number of experts that also assist them. But, look, it was not—

The Hon. TREVOR KHAN: What particularly interests me is: Did you identify what seems to have been in the Chatfield case the problems of his intake back into the prison system in the same way that seems to have been ventilated quite widely in the inquest? There were problems in terms of him coming back from the cells at Tamworth Police Station, were there not?

Assistant Commissioner SCASSERRA: Yes. Look, without having a copy of the report in front of me—we also identified that, yes, in the internal report, yes.

The Hon. TREVOR KHAN: You did? Good. That is fine.

Commissioner SEVERIN: And the same with the pipe in the cell that we have screened.

The Hon. TREVOR KHAN: I could understand that the internal process would have thrown that up straightaway, but there were some obvious—and again, it is easy after the fact in these things, but there clearly were some—I will call them "management" or "procedural" issues that were identified in the Coroner's findings, and I was just wondering if they were picked up as well through the internal process?

Assistant Commissioner SCASSERRA: Again, a lot of the internal—and not just talking about Mr Chatfield—ones to critically evaluate our response to our own, as I said, policy procedures and how we operate. So while we are within Corrective Services, we do not sit—I made the point before—with the operating areas for exactly those reasons, so that way we are free to make such comments.

Mr DAVID SHOEBRIDGE: Nobody is suggesting that there should not be an internal review being done by correctives—you would hope that would be automatic in any organisation—but can't you collectively see the benefit in having an independent body with an independent mandate, that will have the trust of the families in particular, sitting there beside you and undertaking that independent review? Can't you see how that would bridge the trust deficit that so clearly exists between the Aboriginal community and Corrective Services?

Mr COUTTS-TROTTER: As I understand the capacity of the Coroner—and it is always a Coroner or a deputy State Coroner who takes charge of these investigations—they really do have the capacity to direct that police investigation. They get transparency from the internal work, they can and do provide feedback about that, I understand. But I do not want to sound defensive about this. If in thinking about this and hearing all the evidence you have heard you have got a sharply focused recommendation or recommendations for improvement, the starting point would be, "Well, okay, Assistant Commissioner Scasserra and Commissioner Severin, prove to me that this doesn't make sense." There is a problem of trust. It is confounded by a variety of factors.

The CHAIR: Including delays in the coronial jurisdiction.

Mr COUTTS-TROTTER: Including delays in the coronial decision-making process, and it leads to a lot of profound and, I think to some extent, avoidable anguish in the lives of families, and we do want to avoid that.

Mr DAVID SHOEBRIDGE: I think it might be appropriate on notice to put some questions to you about some of the evidence we had from the Chatfields about the loss of individual evidence, the loss of that kind of material. I do not know if it is useful to explore here, but you can expect to get some questions on notice—at least from myself—putting that to Corrective Services so you can respond on notice to those issues.

Mr COUTTS-TROTTER: Sure.

Mr DAVID SHOEBRIDGE: But when you look at the different bodies' oversight in deaths in custody, we have police, we have the Coroners Court, we have Corrective Services. There may be a role for the Inspector of Custodial Services, an official visitor may have some role, the Ombudsman may have some role.

Mr COUTTS-TROTTER: Could have a role, yes.

Mr DAVID SHOEBRIDGE: If you wanted a coherent oversight model for deaths in custody, you would not start here, would you?

Mr COUTTS-TROTTER: I do not know if I am prepared to accept that proposition. It is the model we have got. Any proposals to change it would need to be tested against the status quo, unsatisfactory as it clearly is in some aspects, but I do not think anyone is proposing starting from scratch. It is rather: How do we improve upon the framework that currently operates?

Mr DAVID SHOEBRIDGE: What is the current role for the Inspector of Custodial Services? What systemic role does it play in the system that you can point to?

Mr COUTTS-TROTTER: You are talking about the adult system here? Because it has a slightly different role in the inspector system.

Commissioner SEVERIN: The inspector has no role in independently overseeing individual deaths in custody.

Mr DAVID SHOEBRIDGE: Or even complaints?

Commissioner SEVERIN: However, the inspector oversees the standards and the approach that we take to manage facilities, and has a range of standards that she assesses us against. That looks at wellbeing, risk management and individual approaches to dealing with cohorts of offenders who might present with particular complexities, including self-harm and suicide. So it certainly contributes indirectly, as does every report that you would have seen from the inspector who can draw those conclusions, from her perspective, to making some meaningful suggestion for system enhancement and improvement.

Mr GRANT: And there is nothing in legislation to stop the inspector doing a thematic review of deaths in custody. The inspection is usually done on the basis of themes, so the inspector could choose to do one of those at whatever interval she wished to.

Mr DAVID SHOEBRIDGE: But the inspector has previously given evidence about not having enough resources to do her current mandatory statutory review obligations.

The Hon. PENNY SHARPE: I have one question for Youth Justice—you did not come along in vain.

Mr O'REILLY: We are always happy to provide assistance.

The Hon. PENNY SHARPE: You might have to take this question on notice. I am trying to understand how many young people under the age of 14 have been detained in recent years and whether they are Aboriginal or non-Aboriginal. If you could point me to where that dataset is kept or if you could provide that for as far back as you can—the past 10 years or so—that would be traffic.

Mr O'REILLY: We can find information over the last period. I can tell you what is happening today, if that is helpful?

The Hon. PENNY SHARPE: Yes, that is good. I am very pleased that the numbers have come down so that is all good but you can see the question we are asking. We have had a lot of evidence around criminal responsibility and raising the age. I know that you do not want to comment on that because that is a Government decision, but I am interested in how many children under 14 have been in detention in previous times and whether they are Aboriginal or not.

Mr O'REILLY: I check that number periodically. I have been in the role for just over a year and a half and it is generally between three and six young people. It is six today and most of those young people are Aboriginal, whenever I check. But we can come back to you on notice with some more concrete data.

The Hon. PENNY SHARPE: Yes, some detail of the ages.

The Hon. TREVOR KHAN: Sorry, in providing that data are you able to separate it out between remand and sentence?

Mr O'REILLY: Yes.

The Hon. PENNY SHARPE: That would be good.

Mr DAVID SHOEBRIDGE: It would be close to 100 per cent remand, though, would it not?

Mr O'REILLY: It would be very high.

The Hon. ROD ROBERTS: Could you also add to that report what offences they are in there for?

Mr O'REILLY: Possibly—if we can, we will, yes.

The Hon. PENNY SHARPE: It is a complicated question and I do not expect you to answer off the top of your head today.

Mr DAVID SHOEBRIDGE: What, if any, program is in place to ensure that New South Wales is compliant with the Optional Protocol to the Convention against Torture [OPCAT]? I understand we need to have a National Preventive Mechanism in place by 1 January 2022.

Mr COUTTS-TROTTER: We do, and I am sure you would know that the New South Wales Government's position has been to support OPCAT in principle, subject to resolving financial and operational considerations. There are ongoing discussions with the Commonwealth through the Commonwealth Attorney-General's department between New South Wales and other jurisdictions and the Commonwealth to land that.

Mr DAVID SHOEBRIDGE: Do you accept that New South Wales is not OPCAT compliant at the moment?

Mr COUTTS-TROTTER: Yes, that is right.

The Hon. TREVOR KHAN: Can I just go back to Commissioner Severin. Commissioner, where you talked about—I will call it a death in custody, and you talked about the stages—was that for every death in custody?

Commissioner SEVERIN: That is correct, yes.

The Hon. TREVOR KHAN: So if there is a death in a cell that does not appear to be a suicide but simply seems to be a medical death, it is treated in the way—

Mr COUTTS-TROTTER: It is treated as a crime scene.

Commissioner SEVERIN: Even a death in a hospital. So any death in custody is treated like that, with the exception being a person in home detention. Technically, that is a death in custody but we do not go in there and recruit our staff; it is done by police.

The Hon. TREVOR KHAN: No, that is a bit hard.

Commissioner SEVERIN: Any death in an institution, which includes transport arrangements such as a death in one of our vehicles, is treated exactly the same way.

The Hon. TREVOR KHAN: Do I take it then that you are quite comfortable that any evidence relating to the circumstances surrounding a death within the cell is essentially retained, obviously apart from what is literally on the prisoner, because of those quarantining circumstances you spoke of?

Commissioner SEVERIN: I am.

The Hon. TREVOR KHAN: Was there any problem in the Chatfield case with the loss of any relevant evidence?

Commissioner SEVERIN: Not to my knowledge.

The Hon. TREVOR KHAN: My final question arises out of the evidence. Was there any suggestion that there was some issue—I suspect it relates to some conversation that you had, Mr Grant—with regards to the ligature? The assertion was made at one stage that it was a blanket and at another stage that it was a sheet. One or the other of them went missing. Do you have any recollection?

Mr GRANT: I cannot recall that.

The Hon. TREVOR KHAN: That is fine.

Mr DAVID SHOEBRIDGE: They were some of the matters that I was going to ask on notice—the potential of two ligatures and some other paraphernalia from the cell. The suggestion was that that was not secured and it disappeared. Of course, there is the very real concern about what, if anything—and, again, we are not here to re-litigate the coronial—

The Hon. TREVOR KHAN: No, but it is just a question about whether the procedure—and, again, I accept what you say, but whether stuff falls through the cracks for one reason or another. I absolutely understand that in the context of what is on the prisoner you are not going to have control over that in the circumstances of attempting to deal with the patient at the stage of removal from the cell. The cell itself interests me in terms of this.

Mr GRANT: There is also a lot of initial emphasis on resuscitation and people put all their effort into that. A detail of that case, which I add not just for colour but because it was extraordinary to me and I have never

seen this in all my years in prison, is that the prisoners in the wing that Tane Chatfield died in collectively got together and signed a card thanking the prison officers in that wing for their incredible efforts trying to preserve the life of Tane Chatfield. It was quite an amazing and moving thing that prison officers in that centre were really proud of. They went to a lot of effort to try to resuscitate him and keep him alive and the prisoners acknowledged that at the time.

Mr DAVID SHOEBRIDGE: But in the absence of independent oversight, every single evidentiary gap—whether it is one exhibit that may not be there from the cell, paraphernalia from a prior cell or, in the case of the Dungays, a small segment of CCTV footage that is missing—has the risk of being seen by the family as the conspiratorial actions of the system to prevent the truth. I must have heard that time and again from families. Every single evidentiary gap is treated as conspiratorial because they do not feel like there is anyone independent in their corner. I am not putting everything back on Corrective Services but you must have felt some of that yourselves. Mr Severin?

Commissioner SEVERIN: Yes, we do and that is not to say that there is any evidentiary gap. I have to trust the investigations that commence. If there are evidentiary gaps they would be brought to our attention very quickly. That is not to say that families do not have a very strong concern about the circumstance of any death that occurs that involves their loved ones in a prison.

The CHAIR: The time for questioning has elapsed. The Committee has resolved that answers to questions taken on notice will be returned by Friday 22 January 2021 and the secretariat will be in touch in relation to those. There may be some further questions placed on notice by Committee members subsequently and the secretariat will also be in touch with you about that.

(The witnesses withdrew.)

The Committee adjourned at 17:49.