

REPORT ON PROCEEDINGS BEFORE

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

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

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday 8 December 2020

The Committee met at 10:45.

PRESENT

The Hon. Adam Searle (Chair)

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

The CHAIR: Welcome to the Select Committee inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody. Before we commence, I would like to 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 their 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 Bureau of Crime Statistics and Research, Aboriginal Affairs NSW, NSW Health and the Inspector of Custodial Services. I thank every witness for making the time to give evidence to this important inquiry.

Before we commence, I would like to make some brief comments about the procedure for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they may make to the media or to others after they complete their evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that respect, it is important that witnesses focus on the issues raised by the inquiry's 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 or table documents they should do so through the Committee staff. To aid the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphones. For those with hearing difficulties present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers.

JACKIE FITZGERALD, Executive Director, NSW Bureau of Crime Statistics and Research, affirmed and examined

The CHAIR: I welcome our first witness. The Bureau of Crime Statistics and Research [BOCSAR] helpfully provided us with a number of documents yesterday, which I certainly found very useful and helpful.

Ms FITZGERALD: I did.

The CHAIR: I think you have also provided more today.

Ms FITZGERALD: I did follow up because the secretariat suggested there was an interest in some of our prior work. I just brought that up to date.

The Hon. TREVOR KHAN: Excellent. Well, that cuts out that line of inquiry.

The CHAIR: Certainly we have been having a read of some of your earlier work in relation to First Nations people's incarceration. Did you want to speak to the material that you have provided in the way of a short opening statement?

Ms FITZGERALD: I am in your hands. I will not make an opening statement. I am happy to walk through the pack if that is useful, but I am also just happy to open up to questions.

The Hon. TREVOR KHAN: I reckon walk through the pack.

The CHAIR: Let us walk through the pack. I think that we would find that very instructive and useful.

Mr DAVID SHOEBRIDGE: Or start with a kind of step back. You are very familiar with all of this data. Take us through the pack by all means, but could you give us a kind of step back on what the data broadly shows in terms of—

Ms FITZGERALD: Yes, so we will try to do it in a kind of dialogue. Feel free to interrupt. We will make it as interactive as we can. I will take us to the Australian Bureau of Statistics [ABS] figures on the second page actually to—

The Hon. NATALIE WARD: Sorry, which page?

Ms FITZGERALD: Sorry, the second slide—in the PowerPoint pack which has got that. This is the ABS figures—just to get the external validity of the ABS in there. They have got the pattern of Aboriginal over-representation. Of course, it is terribly high. It is 9.2 times higher than the non-Aboriginal rate and obviously increasing. The ABS figures do not show an increase in the rate of over-representation. They do show stability at that really high level. We will kind of unpack that. That is not exactly how the New South Wales or our data that we sit on pans out, but some of those figures do show that the general increase that we are seeing for Aboriginal people is consistent with non-Aboriginal increases. It is just that the base level representation is so much higher for the Aboriginal population. If we just move to the third page, we show the similar figure for young people. This is a different picture altogether. There is longstanding decline in the volume of young people in custody. I have not focused much on young people for that reason, but we can cover that off. I have entirely focused in my pack on adults.

I made that decision to try and limit the volume of material, but I realise that that is a deficit there. Of course, young people are very much—that level of over-representation is falling. It still remains higher, but that gap is starting to narrow. If we go to slide four, this is where we start to unpack the adult prison population. This is all of Aboriginal adults in detention in monthly figures. That top grey line is the total volume. The orange line is the sentence volume and the blue line is the remand volume. All of those patterns are increasing. I have added here some of the key legislative points in time. I am tending to start in 2013-14 and look up to the present day. That takes us prior to the most recent Bail Act reforms that came in 2014. I am tending to draw a line slightly before the COVID-19 interruption because we could have a whole other Parliamentary inquiry on that. But the general pattern is that 2013 up to 2019. The key point here is that all of these series are increasing, so we are reporting a 37 per cent increase in the total Aboriginal adult population.

But you can also see—and I have circled those figures—a very large increase in the remand population, so a 74 per cent increase in the remand population versus the 22 per cent in the sentence prisoner population. Although you can still tell that the sentence prisoner population is much higher than the remand population, that 74 per cent increase translates to about 57 per cent of the total increase. The takeaway here is that that big driver is that change in—an increase in the remand population and a general increase really commenced in earnest after

those bail reforms. You can see the pattern there. We had two-stage changes in those bail reforms. January 2015 is when those show-cause amendments came in. That really did increase the remand population and changed bail decisions measurably. I will come to some recap of our research on that later on. You can also see that we have put the most recent sentencing reforms. You can see a small dip in the sentence population following those reforms, but the prison population has continued to increase following those reforms. Are there any questions on that page?

Mr DAVID SHOEBRIDGE: I do have a question. There is a big rise in the remand population in the last quarter of 2019 and leading into 2020. Going through that whole history, it is the steepest rise.

Ms FITZGERALD: It is a very large rise. I cannot tell you exactly what precipitated that rise, I am sorry. I can take it on notice. It is an unusually large increase that we saw just prior to the pandemic interruption, absolutely.

The Hon. TREVOR KHAN: I am sorry, this may take us off the track. The January 2015 bail amendments introduced the show cause, and then the unacceptable risk—

Ms FITZGERALD: It preceded that. That was about seven months prior.

The Hon. TREVOR KHAN: Sure, but it is a two-stage test now: the show cause in respect of what you could generally say are serious indictable offences and then the unacceptable risk category.

Ms FITZGERALD: That is right.

The Hon. TREVOR KHAN: Apart from identifying that it seems to have generated a rise, are we able to say that people are being refused bail on the basis that they are unable to show cause as to why they should be released on serious indictable offences? Are they being trapped on the first leg or the second leg?

Ms FITZGERALD: I actually do cover this. It looks like around half-and-half. For Aboriginal adults, slightly more fail to meet the unacceptable risk test. I think 41 per cent fail to meet the show cause test. That does not tell us whether they were able to show cause and then they cascaded down to the unacceptable risk. It just shows the actual reason that they did not satisfy show cause and then it does not really go any further.

The Hon. TREVOR KHAN: No, it does not go any further after that. Yes, you are gone.

Ms FITZGERALD: That is right. We do not cover that in a lot of detail.

Mr DAVID SHOEBRIDGE: But just on that, in the lead-up to the 2015 amendments it also shows a change in practice or something happening in the courts.

Ms FITZGERALD: Do you mean the decline?

Mr DAVID SHOEBRIDGE: In the lead-up to January 2015, you see a rise in the remand population specifically. You see it tracking up. After the 2013 amendments come into effect, you see it trending down.

Ms FITZGERALD: Yes.

Mr DAVID SHOEBRIDGE: And then in the lead-up to the 2015 amendments coming into place, you see it trending up. Do you tend to find that when there has been a greater amount of political debate, pressure on judges and anger about remand and bail decisions being made? Do you tend to see the behaviour changing before the legislation is even in place?

Ms FITZGERALD: I think that two things could be happening. There could be an anticipation of the change, which had probably been announced by then and people knew what was coming. It could also have been the embedding of the previous reform, the original Bail Act 2013. You probably recall that there started to be murmurs about that Act before it had necessarily been embedded. There was potentially a kind of reading of the public mood by those bail authorities, or it could have been in anticipation of changes that had already been announced.

Mr DAVID SHOEBRIDGE: My memory was that the Opposition ran a really loud attack upon the bail laws that whole summer.

Ms FITZGERALD: It was a very hot topic that summer. The tragic events of the Lindt Cafe siege were also in that same January 2015 period and that individual was also on bail, so that is another factor here.

The CHAIR: Essentially you had a series of changes to the law by the Parliament and a clear message being sent to the bail authorities, which the bail authorities were acting in accordance with and in anticipation of.

But nevertheless, that trajectory is entirely explicable by the increased political pressure on the bail authorities to tighten up on bail.

Ms FITZGERALD: Yes. It is also possible that there was just the embedding of the practice that was intended by the original Bail Act 2013, but we will never know whether that was how that would have played out.

The CHAIR: But the Parliament said to get tougher and the bail authorities did.

Ms FITZGERALD: That is right, yes.

The CHAIR: No mystery there.

Ms FITZGERALD: Yes. I apologise that I have not done a lot of breakdowns by gender, but the second slide does break down the populations by gender. We have a series for Aboriginal women and a series for Aboriginal men. These charts show that the increase over the period from February 2014 to February 2020 is actually slightly less than the increase for Aboriginal men. There was a point several years ago when that was not the case, where the female population was increasing at a faster rate than Aboriginal males, but you can see that the Aboriginal female population has been almost steady for the past three or so years. We still did see a big increase in the years following the 2014 reforms. The takeaway message is that there is a slightly lower increase for Aboriginal women, but still a large increase, and we are still seeing the effects of those remand decisions playing out in a similar way for both genders. Sixty per cent of that April increase is due to the remand population for women and 57 per cent for men, so not a lot of gender differentiation there. You could take those things a long way and look at a big offence profile for each gender. I have not done that but we can if it is required.

The Hon. TREVOR KHAN: Just in a statistical sense, is that graph of the remand population—whether it be male, female or both—an effect of the number of bail refusals or of the length of time that people are in custody following a refusal of bail? Does that make sense?

Ms FITZGERALD: Yes, it does. Two things can affect it; you are absolutely right. The length of the stay or the volume of people coming into remand could be the important determinant. We are definitely seeing an increase in the volume. The length of stay on remand has increased a little bit, but overall sentence lengths have actually not changed much.

The Hon. TREVOR KHAN: No, I accept that sentence length has not changed but has the length of time on remand increased?

Ms FITZGERALD: Slightly. The total length of stays in custody have not really changed and we will come to that. It is difficult because people on remand do tend to move to sentence custody and their time on remand is considered in that duration. It would be possible to get some savings in court time or prison time by shortening the period on remand, but I do not think that is the biggest lever. Changing the volume of people coming into prison would have a much greater impact than the length of time on remand because a lot of people will serve the same time, whether it be on remand or in official sentence custody. We have tended to look at it in totality rather than in those segments. There are, of course, people who exit remand into the community to wait for their prison sentence there. Their time on remand is not usually that long. It is not inconsequential but I do not read it as being a large driver. We do cover that a little bit.

This next chart shows the nature of what Aboriginal people are in prison for. This is the total prison population. In the voluminous number of emails that I sent you this morning, I also sent a similar chart split by remand and sentence. That actually plays out quite differently so I might talk to that a little bit. You can see that the assault population is the biggest category. About half of that group, 28 per cent of the total, are in prison for assault. About half of those individuals are there for a domestic-violence-related assault. The next most common category we have is a breach of community orders or parole, break and enters and it cascades as follows. I will talk to the differences that we see when we split those categories by remand and sentence. They are quite different.

The CHAIR: Just before you move on, the other 9 per cent?

Ms FITZGERALD: That is a combination of the small-volume offences. We have traffic in there, and I would not be able to remember them all now, but it is the tiny segments of 20 or 30 or so individuals.

The CHAIR: I was looking through that list of offences and there are not too many where a court could really divert an offender into some form of non-custodial regime, given the nature of those offences, other than perhaps breach of community order or parole. All of the rest seem to be of a pretty serious nature.

Ms FITZGERALD: Yes. The story fleshes out a little bit more if you look at it split by sentence and remand. Sorry, I did not include that in the pack, in retrospect. On the face of it, all of those offences are criminal

offences and they all look serious. By splitting it into remand and sentenced, you bring to it a consideration that those individuals on remand have not yet been adjudicated by a court, whereas those who are sentenced have been. That changes the perceptions a little bit. One point to note is that this group that has breached community orders of parole are almost all in actual sentenced custody. These are people who have generally been issued a community service order or a supervised order, they have breached that and then they will serve their sentence in custody. We are not seeing a lot of those individuals in remand.

The Hon. TREVOR KHAN: Because of the nature of them. They are probably going to be short, are they not? If you have breached a community corrections order or a conditional release order, you are likely to be breached, come before the court and pretty well punted straightaway, would you not?

Ms FITZGERALD: What would happen is that, generally, with the sentencing reforms at the moment, most of those individuals will go to the State Parole Authority [SPA]. They have been sentenced, they receive an intensive corrections order [ICO], for instance—

The Hon. TREVOR KHAN: I am differentiating from intensive corrections because intensive corrections will go to the State Parole Authority. The others will not; they will come back before the Local Court or the District Court.

Ms FITZGERALD: Yes. They will go to court. If the court adjudicates or determines that they consider that they should go into sentenced custody, they will be considered to be a sentenced prisoner because they have already committed that offence. I will not bore you with technicalities, but there are some technical elements of where those individuals are. It is not considered to be a new offence.

Mr DAVID SHOEBRIDGE: Are these sometimes considered the justice offences?

Ms FITZGERALD: Yes. I have tried to unpack the justice offences. You can see that here. We tend to refer to the catch-all of breaches and apprehended violence order [AVO] breaches. As it turns out, there are not many AVO breaches in prisons. When you split it out, there are around 20 or so Aboriginal people in prison for breaching an AVO. It does tend to be those breaches of community orders that are the driver. When we talk about justice procedures in court, it does seem to be a lot of those breach offences.

Mr DAVID SHOEBRIDGE: Parole.

Ms FITZGERALD: Parole breaches also, that is right. Those are definitely in this category of 16 per cent.

The Hon. TREVOR KHAN: It might be later in your pack, but do we know whether the breaches are made up of breaching a supervision order, a place or contact restriction, or are they in the nature of further offence breaches?

Ms FITZGERALD: That is a good question. Unfortunately, we do not know what the nature of those breaches are.

The Hon. PENNY SHARPE: Is that data not collected?

Ms FITZGERALD: We do not have access to the State Parole Authority data.

The Hon. PENNY SHARPE: Why is that?

Ms FITZGERALD: Historically, it has never been within our remit, but we are very much about data, so we would absolutely be open to it.

Mr DAVID SHOEBRIDGE: You would be keen to get it if you could.

Ms FITZGERALD: Yes. Those decisions are absolutely a gap in our knowledge.

The Hon. TREVOR KHAN: If we are to have more reliance upon, for instance, intensive correction orders as a form of imprisonment, then the safety with judicial officers in using that alternative is dependent upon how successful or otherwise they are as a tool. Similarly, from the Government's point of view, or from any government's point of view, you want to know if you are trying to push people this way rather than to full-time custodial orders.

The CHAIR: Does it work?

The Hon. TREVOR KHAN: You would want to know that it works, or does it?

The Hon. NATALIE WARD: Or have feedback.

Mr DAVID SHOEBRIDGE: But is the metric the point at whether those intensive correction orders work, whether or not someone breaches them, or whether or not someone's behaviour changes at the end of an intensive correction order and you do not get recidivism?

The Hon. TREVOR KHAN: There is probably an element of both.

Mr DAVID SHOEBRIDGE: The number of breaches gives you a sign of what is going on.

The Hon. ROD ROBERTS: About their behaviour.

The CHAIR: If these are being routinely breached and they are just not working, then it is an ineffective tool. If people largely adhere to them, it certainly works as a form of imprisonment. There is the issue of behaviour change thereafter. That is more difficult.

The Hon. TREVOR KHAN: Recidivism is a tool and one of the papers refers to—

The Hon. PENNY SHARPE: I am also interested in the nature of the breaches, because there is a big difference in the breaches. Some breaches are clearly egregious. Some would argue some of them are fairly minor.

The CHAIR: We might have to ask the State Parole Authority for its data.

The Hon. NATALIE WARD: We have had examples of that: did not have an Opal card, could not get there, could not make the appointment or missed the doctor's appointment. I think that is important.

Mr DAVID SHOEBRIDGE: Do you have any breakdown on the nature of the breaches?

Ms FITZGERALD: We do not. As I said, we do not have the SPA breaches and I am not aware that we have the precipitating events before the court adjudicated breaches, but I will double-check that.

The Hon. TREVOR KHAN: A lot of that will come from the community corrections anyway. On many of them it would be a community corrections officer saying, "The person has not turned up for their community service work order," or what Ms Sharpe would describe as a technical breach, but others would come before the court, when the person has been refused bail, charged with another offence and, in the course of your sentencing you are also looking at revoking their community corrections order or their conditional release order. I would have thought there are two sources of information, rather than one.

Ms FITZGERALD: Mr Shoebridge, on that point the treatment of breaches of intensive corrections orders are relevant to the effectiveness of those orders. We know that the sentencing reforms have changed the sentencing practices of the courts, but we are still unsure of whether there has been a change in people eventually ending up in custody because of breaches.

Mr DAVID SHOEBRIDGE: Yes, exactly.

Ms FITZGERALD: That is certainly something that we need to better understand.

Mr DAVID SHOEBRIDGE: Particularly if you are on a lengthier intensive correction order than you would have got as a custodial offence.

The Hon. TREVOR KHAN: No, you cannot do that. You have to sentence the person to imprisonment for a period of time—

Mr DAVID SHOEBRIDGE: And then convert it to an ICO.

The Hon. TREVOR KHAN: —and then decide whether it is going to be by way of an intensive correction order. I read the bench book over the weekend. You cannot do it that way; you cannot extend the period in the intensive correction order. That is wrong at law.

The CHAIR: We are having a policy debate.

The Hon. TREVOR KHAN: Yes.

Mr DAVID SHOEBRIDGE: I wanted to unpack assaults. This is with an eye to the next slide as well, the role of assault, because that is such a broad spectrum of criminal behaviour. Do you have any insight into that?

Ms FITZGERALD: Unfortunately, we do not have data for six years ago or whatever it is for the historical domestic violence split. We can see that in the present day the change—about half of those individuals are there for domestic violence. We can also see in the court data that I supplied that the big increases in assault are in volumes of domestic violence charges for Aboriginal people. It does seem that the driver is an increase in domestic violence related assault.

The Hon. TREVOR KHAN: No—is it?

Mr DAVID SHOEBRIDGE: An increase in policing.

The Hon. PENNY SHARPE: There has been a huge focus on it.

The Hon. TREVOR KHAN: It is an increase in police policy in pursuing charges relating to domestic violence assaults, is it not? Or are you saying that there is suddenly a—

Ms FITZGERALD: Well, I think—two things. We have seen an increase in the clear-up rates for domestic violence related assaults, but we have also seen a slow increase in the volume of domestic violence assaults coming to police attention. So, we do not really know at all whether that is an increase in reporting or an increase in prevalence. That is just the underpinning situation.

The CHAIR: There certainly seems to be an increase in charging and convicting.

Ms FITZGERALD: There has definitely been an increase in charging. I think the clear-up rate now—about 65 per cent of domestic violence assaults reported to police result in a charge. That was 60 per cent or so five years ago, so it is definitely increasing the volumes of charges.

Mr DAVID SHOEBRIDGE: How does it compare against the non-Aboriginal prison population?

Ms FITZGERALD: I have not actually looked at that, I am sorry. The population—the split of offence types?

Mr DAVID SHOEBRIDGE: In terms of the surge in people in jail for assault.

The Hon. PENNY SHARPE: That actually goes to my question, which is: I would be very interested in this graph for non-Aboriginal, in terms of the prison by offence, just to compare. I think that might actually be quite instructive.

Mr DAVID SHOEBRIDGE: These two graphs—six and seven.

Ms FITZGERALD: Great.

The Hon. TREVOR KHAN: Indeed if we go back to the domestic assaults, it would be intuitive, would it not, that if particularly women see that the police are turning up and dealing with violent men it is likely to lead to a greater level of reporting because of—in a sense, you are not just pushing it uphill by making a phone call which is ignored.

Ms FITZGERALD: I think there is probably a lot in that statement, Mr Khan. I would probably be on the edge of my expertise to talk to it. I think the relationship for victim-survivors and the criminal justice system is a vexed one. Victim-survivors probably do not always appreciate the criminal justice interventions in a way that you might expect, but I would not like to suggest that that is my expertise.

The Hon. TREVOR KHAN: That is alright. A lot of people who have given evidence to this inquiry were—anyway. I will not go into that.

The CHAIR: Being at the edge of their expertise was not an issue.

Mr DAVID SHOEBRIDGE: I know it is a matter that Ms Sharpe has raised repeatedly and I have heard Mr Khan raise it as well. Women victims calling the police—and we have heard this from witness after witness. Women victims calling the police on domestic violence and finding themselves then charged and convicted and jailed—do you have any insight into that in the data?

Ms FITZGERALD: We have not probably done enough in that as we should have done. I know it is an emerging concern, but I might take that away and see if there is something that we can do on that.

Mr DAVID SHOEBRIDGE: Is this data on page seven all Aboriginal adults, men and women?

Ms FITZGERALD: It is.

The Hon. PENNY SHARPE: Split by gender, I reckon.

Ms FITZGERALD: If we split by gender—

Mr DAVID SHOEBRIDGE: Yes. From my understanding of the evidence we have had, what I have taken away from it—and I may have read it into the evidence. This is a practice that has been becoming obvious in the last few years. That is how I read the evidence. I do not know about you, Ms Sharpe.

The Hon. PENNY SHARPE: Well, it is definitely—people have talked about it. The women's groups are raising it.

The Hon. TREVOR KHAN: I think they have and it might be, but if there is a changing of police policy so that they are being—and this is a pejorative term, but I think it is probably correct—intolerant of domestic assaults in a way that they were not before—

The Hon. PENNY SHARPE: Well, it is the automatic AVO stuff.

The Hon. TREVOR KHAN: Exactly.

The Hon. PENNY SHARPE: It is the changes to the AVOs that allow people, the minute they attend a scene—

The Hon. TREVOR KHAN: They have got to do something.

The Hon. PENNY SHARPE: With the permission or not of the victim, whoever the victim is, it happens anyway. I wonder when that actually came in, because I reckon that breakdown would be quite interesting.

Mr DAVID SHOEBRIDGE: Clearly a woman pushing back and striking back after prolonged periods of domestic violence and perhaps intimidation and coercion—a woman striking back. The problem is that police then see a sentinel event of whatever happens.

The Hon. NATALIE WARD: Well, an incident of assault.

Mr DAVID SHOEBRIDGE: An incident. The whole oppressive relationship and behaviour is much harder to put into a criminal charge, whereas that is what has really caused the issue.

The Hon. TREVOR KHAN: I think what you would find is, in those, in terms of the AVO you might well find that there are duelling AVOs that are put in place. You can actually deal with historical matters through an AVO, but the nature of charging is—

Mr DAVID SHOEBRIDGE: A sentinel event.

The Hon. TREVOR KHAN: —incident-specific, yes. That is the nature of our criminal justice system. I do not think there is any way of getting around that.

Mr DAVID SHOEBRIDGE: Ms Fitzgerald, can the data give us any insight into that if we break it down by gender?

Ms FITZGERALD: Well, I am curious to see what the offence split is for women. The increase in the prison population for Aboriginal men is slightly higher than the increase for Aboriginal women, but I think it is a relevant point to see whether we are seeing the same offence classifications play out. I would encourage you to take a look at this chart. So, it is a similar chart to these two but for the remand and the sentence split, which is quite interesting. I think that that assault does—

The Hon. TREVOR KHAN: Is that the one-pager?

Ms FITZGERALD: It looks like this. I do not know if Sarah managed to print those. It has got three charts down the bottom.

The CHAIR: Is it in the pack?

Ms FITZGERALD: No, it is not in the pack. It was in an Excel file I sent this morning.

The CHAIR: I am told it is in the large version. What is the heading? It says, "New South Wales custody statistics. Aboriginal adults on remand. Sentence custody." Yes.

Ms FITZGERALD: Yes. On the left-hand side we have got the offences for which people are in remand custody and the middle chart is the sentence custody. You can see that assault is the dominant changing—and I have plotted here the change in volume from the first time point to the second time point, which means you do lose those high-volume offences. But if we are focused on the change it does pick that up. Assault is the biggest changing contributor to both of those populations. But, as I said, that "breach community custody order" is really just contributing to that sentence custody volume. You can also see that this intimidation and stalking offence has increased a lot for both the remand and the sentenced prisoner population.

The Hon. TREVOR KHAN: I have seen this in the three papers that you might have been referred to and in your material. The stalking and intimidation offence—are we able to identify in any way who the victim

of these stalking intimidation charges are? I.e., is this a charge that is being applied in the context of a domestic relationship?

Ms FITZGERALD: We can do that. I can get those specific figures for you. It is generally used in a domestic violence situation.

The Hon. TREVOR KHAN: That is what I am guessing. The only time I ever saw it, years ago, was in that context.

Ms FITZGERALD: We actually have a study where we are looking at police narratives to unpack the nature of the offences that are captured in this category and with reference to the intended or the potential new offence of coercive control, to see how the behaviours that are captured in that category of offending relate to the notion of coercive control.

The Hon. NATALIE WARD: Could I ask a follow up to that? You have broken down "assault, DV-related" and "assault, non-DV related" but not in the intimidation and stalking. Is there a reason why you do not break down intimidation and stalking to DV and non-DV related?

Ms FITZGERALD: No, we can do that. You must be looking at the court figures.

The Hon. NATALIE WARD: I am sorry. I skipped over.

Ms FITZGERALD: That is fine.

The Hon. NATALIE WARD: You had broken that down and you were talking about whether it was DV or not.

Ms FITZGERALD: I just tried to balance the volume of material and the assault split, because it is playing such a big part. My belief is that the intimidation and staking is mostly domestic violence, but we can do that number split for you, absolutely.

The Hon. TREVOR KHAN: In that regard, again going back a decade and a half, stalking and intimidation was often a charge which was laid at the same time as a breach of an AVO.

Ms FITZGERALD: Yes.

The Hon. TREVOR KHAN: I am not quite sure which would have been the more serious; I cannot quite remember. But if you have got somebody who is convicted of a breach of an AVO and a stalk-intimidate, how does that show in your statistics?

Ms FITZGERALD: We are choosing a single offence for an individual.

The Hon. TREVOR KHAN: So do you choose the most serious offence and put that in that way?

Ms FITZGERALD: In the court data we choose by the offence that the court gives the most serious penalty to.

The Hon. TREVOR KHAN: Right.

Ms FITZGERALD: And in the custody data, that actually comes to us from Corrective Services, so I am sure they have a method there.

The Hon. TREVOR KHAN: This is not on the same charge, but in terms of the sexual assault component, are you able to break that down between, say, sexual assaults in a domestic relationship and otherwise?

Ms FITZGERALD: Not really, unfortunately.

The Hon. TREVOR KHAN: That is fine.

Ms FITZGERALD: We can do a child-adult split for victims.

The Hon. TREVOR KHAN: That would be useful in itself

Mr DAVID SHOEBRIDGE: These graphs also show—there is a horrible story on one view that the big surge of Aboriginal people going into jail for a variety of offences, but they also show that where the State Government and Parliament changes the law to try to keep Aboriginal people out of jail, and in this regard, traffic offences, it has actually worked. If you have focused reforms you realise there is a problem, you come up with legal remedies and then you resource them, you can actually get Aboriginal people out of jail. Am I reading too much into the traffic offences?

Ms FITZGERALD: No, the traffic result is real.

The CHAIR: There is also the public order offences as well. That is down by 55 per cent.

The Hon. ROD ROBERTS: Robbery is down by 8 per cent.

Mr DAVID SHOEBRIDGE: Stronger economic times maybe. The traffic offences?

Ms FITZGERALD: The traffic reforms of 2017 where the sentences were deliberately changed. That does seem to have had a marked impact on Aboriginal people in prisons.

Mr DAVID SHOEBRIDGE: So we can do it.

Ms FITZGERALD: Yes.

The Hon. TREVOR KHAN: That is interesting in the context of the 2017 BOCSAR paper, one of the graphs in there was with regards to traffic offences that were showing significant increases.

Ms FITZGERALD: It seems as that has been addressed in part. The volume of Aboriginal people in prison for traffic it is now quite low—20 people, February 2020, or 29 potentially. It is much less than it was historically.

Mr DAVID SHOEBRIDGE: It is down from 90 to 29.

The Hon. TREVOR KHAN: The other point I was going to make to counter Mr Shoebridge's point is if you have another policy objectives. Mr Shoebridge refers to keeping Aboriginal people out of jail, which I absolutely understand. But if you have another policy objective and that be to deal appropriately with domestic violence, and you litter that all through the Crimes (Sentencing Procedure) Act in terms of judges and magistrates having to consider the issue of the safety of the victim when imposing an intensive correction order or a community corrections order, your policy objective may actually, in dealing with domestic violence, may actually explain the increase in the figures that is shown in your graphs as well.

Ms FITZGERALD: That is absolutely true. We have competing priorities crashing into each other in that policy of extreme proactivity by the police with regards to domestic violence. It does seem to be—

The Hon. TREVOR KHAN: One of the big drivers?

Ms FITZGERALD: One of the big drivers, that is right.

Mr DAVID SHOEBRIDGE: None of this data gives us an insight into whether or not that actually reduces offending or makes women safer though, does it?

Ms FITZGERALD: It does not, no. The other thing that is implicit in the remand figures are those changes in the Bail Act. Part of this increase in the changes in remand population are a result of increased volume, but a lot of them are also probably equally related to the changes in bail decision-making as a result of the Bail Act. It is not all about the volume, although it is a big component, the volume of police activity. There is a lot of information in the offence types. This next chart—unfortunately my numbers dropped off so the heading here is "Factors influencing the prison population".

Basically, the prison population is a function of the number of people coming in to prison and how long those people stay in prison. This picks up Mr Khan's point earlier about the length of stay in custody. That chart at the bottom is the actual duration for people who are leaving custody and how long they spent in custody. The blue line is the Aboriginal length in custody and the orange line is the total for everybody released from custody. A few points to note here are that generally the custodial length is pretty steady, so there is a bit of an increase between 2013 and 2014. It actually peaked in 2016 but right now we are back to where we were in 2014. Over that longer period, not so much change in the custody duration. Of course, it is notable that the Aboriginal people spend less time in custody when they go to custody.

The CHAIR: If you jump forward a few slides to recorded criminal incidents it talks about the average duration of a prison sentences. For First Nations people, the duration was eight months versus 11 months for the general population. That is reflective of a line of reporting in one of those earlier BOCSAR papers that suggested that maybe in some sentencing for similar or the same facts, sentencing magistrates or judges might actually give First Nations offenders not the benefit of the doubt but slightly lower sentences sometimes. Would that reflect that? Or is there a different reason for that?

Ms FITZGERALD: That is a different issue. I think, because of the nature of the volume of priors that Aboriginal people have, they are more likely to be considered for a sentence of imprisonment. The offence that

they are appearing for might not necessarily be a particularly severe offence but their priors really put them in the way of a prison sentence. Given that, a shorter sentence might be appropriate.

The Hon. TREVOR KHAN: And can I say, one of the problems is not only the number. If the previous convictions or the sentencing record includes breach of conditional release orders, they are going to have a problem in terms of continuing to give one of the alternatives to full-time imprisonment.

Mr DAVID SHOEBRIDGE: Do we have a like-for-like comparison for the same offence? An Aboriginal and a non-Aboriginal comparison?

Ms FITZGERALD: I think you get closest to that in the Weatherburn and Thorburn paper where they did do the controls.

The CHAIR: This is the one where it tried to control for the variables.

The Hon. TREVOR KHAN: Very complicated.

The CHAIR: Essentially the summary, correct me if I am wrong, was that in trying to control for all the variables First Nations offenders were 1.2 per cent more likely—

The Hon. TREVOR KHAN: It was 1.1 per cent. It is on page 450.

The CHAIR: I thought it was 1.2 per cent.

The Hon. TREVOR KHAN: You might be right.

The CHAIR: It was 1.2 per cent more likely.

The Hon. ROD ROBERTS: Less than one percentage point is on page 1 of the summary.

The Hon. TREVOR KHAN: No, he read deeper than me than the summary on the front page.

The CHAIR: I thought the difference was a marginal probability of imprisonment greater than 1.2 percentage points between Indigenous and non-Indigenous offenders.

Ms FITZGERALD: On that, the takeaway is that those kind of legal factors that prior convictions are the main driver of that. The takeaway from that is that that is a main factor there. A one percentage point change in the imprisonment rate is not nothing though.

The CHAIR: So there is still a bias against First Nations offenders potentially?

Ms FITZGERALD: Potentially. The limitation of those studies is you do not know whether you are really able to control for everything that you would like to control for. Either because Aboriginal people have a characteristic we have not controlled for or for other reasons, that seems to be a difference in the sentencing. I the authors would like to make the point that those legal factors are the main considerations in the sentencing that authorities take into consideration, but there still is this small unexplained difference in the Aboriginal sentencing. So the short sentences is not—I do not think you can read into that anything about a bias or a differential in the sentencing approach of magistrates or judges, it is just a factor of the nature of Aboriginal people's priors and also the types of offences that they get, and also their increased likelihood to be on remand potentially also—that you are more likely to be considered for a prison sentence if you have been on remand.

The Hon. TREVOR KHAN: But if you have been on remand the length of your prison sentence is likely to be shorter, because they will take into account time already served.

Ms FITZGERALD: That is true. Holding everything else stable, though, you are still more likely to get a prison sentence if you are on remand than had you been released—

The CHAIR: So is there a sort of systemic bias there? A sort of assumption that if you are on remand—

Ms FITZGERALD: It does. We have a paper from a couple of years ago that did find that there is a causal link between being on remand and getting a more serious penalty, so a prison penalty, and people in the legal community have described that to me as it is kind of easy to sentence somebody—it is easy to send a person out the door that they came into. That is a kind of lay way of explaining it.

The CHAIR: The threshold for the judicial officer is not as great.

Ms FITZGERALD: Potentially.

The Hon. TREVOR KHAN: Well, if they are in green already, it has got that look, doesn't it?

Mr DAVID SHOEBRIDGE: One of the reasons I was interested in the further breakdown in the assault data is because the 2017 report also specifically talks about imprisonment for assault, and says that close to 100 per cent of the sentences for assault of 22 months or less, and many of them—actually the non-parole periods are less than 12 months. Some 92 per cent of the non-parole periods are less than 12 months for Aboriginal offenders. The report says:

This suggests that many of those convicted of these offences may be eligible for home detention or an intensive correction order (ICO) ...
—or both, and they are not getting them. Is that part of the explanation?

Ms FITZGERALD: For the short sentences or for the increasing—

Mr DAVID SHOEBRIDGE: Yes. Aboriginal people are more likely to be in jail for a short sentence when a non-Aboriginal person will not be in jail for a short sentence.

Ms FITZGERALD: Yes. I will wear it, in response to our research or not. The sentencing reforms did try to address that issue of short sentences, and we have found that they have reduced the number of Aboriginal people receiving a short prison sentence significantly since they have come into play. We, of course, have not seen a subsequent decline in the Aboriginal prison population unfortunately, or the total population, so that decline in short sentences is apparent for the general population as well. It still is the case that most of the sentences are shorter. I think we do have that chart somewhere here.

The CHAIR: The overwhelming majority were less than one year, is that right?

Ms FITZGERALD: Yes. So more than 50 per cent are up to and including six months, 61 per cent for Aboriginal people.

Mr DAVID SHOEBRIDGE: And you go to jail for less than six months, you cannot be put on any education program, you are not normally put on any offending program, you are just basically being warehoused for six months, often in a variety of different institutions, and then spat out again.

Ms FITZGERALD: I think probably this is that point you have raised about time served on remand, and if a person is on remand it is easy to give them a prison sentence to compensate for the time that has been spent in prison already. So that is an inherent factor in these shorter sentences—that person has already spent time in custody and is now found guilty.

Mr DAVID SHOEBRIDGE: The system does not like admitting it got it wrong, is that it?

The Hon. TREVOR KHAN: It may not be that they got it wrong, it may be that the offence warrants a term of imprisonment but the offence warrants a term of imprisonment which, when you take into account the amount of time served, may only warrant another three or four or five months. That is not a mistake in the system.

Mr DAVID SHOEBRIDGE: I was asking Ms Fitzgerald, though, if a magistrate or District Court judge has seen someone who has been on remand—they have served six months or so on remand—and if the magistrate then forms a view that actually they should not have been in jail, that is having to admit that there might have been an error made on the remand decision and may lead to a preponderance of saying, "Well, actually six months just about does it."

Ms FITZGERALD: I had not thought of it in terms of admitting that the wrong decision had been made, but I can imagine a situation where recognition of the time in custody can—it gives a purpose to the time already spent in custody to recognise that in the sentence, if you know what I mean, rather than load that individual up with another sentence when they have already spent time in custody. Does that make sense?

The CHAIR: Ms Fitzgerald, just so we are understanding the evidence—if we are reading here that the sentence is less than six months, that is not on top of remand, that is everything?

Ms FITZGERALD: It is not on top, it includes the remand time.

The CHAIR: So if someone comes before a magistrate and the magistrate says, "Look, warrants a term of imprisonment but you have already been on remand for six months and I was going to give you six or seven months, so essentially it is six months but you just walk straight out the door because you have already served the time."

The Hon. TREVOR KHAN: Or you walk out in a month's time.

The CHAIR: Yes. It does raise the issue, though, leaving aside the systems problem of short sentences—you have got people going inside because the nature of the offending warrants it, but they are not inside long

enough to gain a skill, be educated, have a diversionary program so they do not reoffend, and then they are back out essentially in the same situation as when they went back in.

The Hon. TREVOR KHAN: That is right, but the sentencing procedure Act now requires reasons to be given if you are going to impose a sentence of less than six months.

The CHAIR: Yes.

The Hon. TREVOR KHAN: So a magistrate, which it would generally be, is already obliged to turn their mind as to why they are giving a short sentence.

The CHAIR: Yes.

The Hon. TREVOR KHAN: So it is not as though the legislature has not attempted to address the short—

The CHAIR: It is happening willy-nilly.

Ms FITZGERALD: There are levers in there that can be used.

The Hon. TREVOR KHAN: Yes, that is right. They are supposed to look at other—if you are dealing with somebody who is on bail and comes, you are not supposed to give them less than six months, you are supposed to use one of the other levers that are available. But it is this remand problem that, I think, leads to so many of the problems that you have got.

Ms FITZGERALD: We do have a study from I think last year that does show an increase in that issue of people being sentenced to time served effectively, so sentenced to the duration of the time they have already spent on remand, and that has increased over the last five or so years. That was a study from I guess nearly two years ago now.

The CHAIR: What is the key driver of the increase in remand? Is it the resources in the relevant courts being able to—

Ms FITZGERALD: Of the increase in remand decisions? Sorry.

The CHAIR: No, the increase in the time spent on remand.

Ms FITZGERALD: Oh, I think that—I do not know if I can answer that.

The CHAIR: Okay.

Ms FITZGERALD: I do think that court matters take a particular amount of time, so there is some time period which you could not—there just would not be enough time for people to prepare their briefs and all of those kind of things.

The CHAIR: Sure.

Ms FITZGERALD: Probably the court listing process is probably beyond me.

The CHAIR: I am just mindful of one of the earlier BOCSAR papers I think, looking at the 2012-2019 period, talked about one of the biggest drivers in terms of prison populations was—

Ms FITZGERALD: Time on remand.

The CHAIR: But specifically linked to the resources in the District Court presumably.

Ms FITZGERALD: Yes.

The CHAIR: So you are on remand awaiting trial, you can only get a trial when there is a judge available and then there is a jury.

Mr DAVID SHOEBRIDGE: Remand becomes the de facto sentence.

The CHAIR: Correct.

Ms FITZGERALD: Yes. I think those problems that we did have—and possibly that is with this peak that we had in 2016, where the custodial durations were at their highest—was related to that District Court backlog at its worst. So the majority of people will not be adjudicated in the District Court, the majority will be adjudicated in the Local Court, where it is not such a factor. There has been small increases in the delay in the Local Court, but nothing like what we saw in the District Court, and that has started to pare back. I have found it more useful

to look at the total time in custody rather than segmented into specifically the remand time, but I know that Weatherburn paper did talk about that as being important.

The CHAIR: If you are sentenced by a judicial officer to a term of imprisonment, that is quite transparent and that is in accordance with public policy, but if the bulk of people's imprisonment is because they are on remand awaiting trial, it becomes a problem if the ultimate sentence is shorter than the remand period.

Ms FITZGERALD: Yes.

The CHAIR: Or, as Mr Shoebridge said, the remand period becomes the de facto sentence. The issue is, can we do something to address the remand period through better resourcing of courts, more bail being given or whatever the mechanism might be? Because I think there is a public policy problem with people being on remand for long periods of time awaiting court—whatever the charge and whatever the outcome.

Ms FITZGERALD: That is right. I do not know if Committee members are familiar with the table reforms, which were two tranches of reforms that moved a swathe of offences from the High Court to the Local Court. We released the evaluation of the first tranche a month or so ago. Interestingly, although that reform was not really intended to change prison sentencing—it was a court efficiency reform—we did find that it had an impact on prison. Probably because of that we suspect that the remand time—

The CHAIR: Increasing prison time?

Ms FITZGERALD: So the sentences fell and it looks like it is because people are spending less time in remand.

Mr DAVID SHOEBRIDGE: Is that because Local Court matters come on more rapidly than District Court matters?

Ms FITZGERALD: The Local Court resolves them faster so that is a factor. It was a marked difference.

Mr DAVID SHOEBRIDGE: If you could track the data it would be interesting to see whether or not there was a concurrence between the hearing and the sentence and the time on remand—if you are finding an increasing match between the date of the hearing and the date of the sentence just happening to magically match with the periods served on remand; if they are becoming closer and closer in time.

Ms FITZGERALD: This is probably along the lines of that time served study that we did last year, which found—we looked at people who were released from prison within a window of a week of them being sentenced and found an increase in the occurrence of people being sentenced to time served. I think that does make sense that with the increase in remand stemming from the Bail Act reforms that court officers are using the mechanisms available to them to—

Mr DAVID SHOEBRIDGE: You may not agree with my earlier characterisation but, as I see it, that is what the pattern shows. It is almost as if the criminal justice system is saying, "See, we got it right. Our remand decision was right. It just happens that the remand you have served magically matches the sentence I would have given you. You can leave in a week." No-one likes admitting error.

Ms FITZGERALD: I am not au fait to a sufficient level with the thinking of magistrates.

The CHAIR: Well, there is really no way of testing that proposition.

Mr DAVID SHOEBRIDGE: No-one likes to be in error.

Ms FITZGERALD: No, but I think it is—

The CHAIR: Most judicial officers I know would be pretty cross if there was a matter before them and the appropriate sentence was significantly less than the period of time someone had spent on remand. They would make comment about that. I do not think there would be a system bias.

The Hon. TREVOR KHAN: I certainly saw in my time, where it looked like somebody was going to be on remand for a lengthy period of time on a matter, they pulled other matters out of the list and got the matter on.

The Hon. ROD ROBERTS: Got them in, got them done.

The Hon. TREVOR KHAN: Frankly, my experience with magistrates—good and bad—was that they did not like to see perverse outcomes out of the system. They might not have been the most pleasant people in the world but they certainly were not monsters.

Mr DAVID SHOEBRIDGE: I am not suggesting that they are monsters.

The Hon. TREVOR KHAN: Well, you are, actually.

Mr DAVID SHOEBRIDGE: No, I am not.

The Hon. ROD ROBERTS: You kept saying errors but there is no suggestion any errors have been made. Where is the evidence that errors have been made?

Mr DAVID SHOEBRIDGE: No-one likes to be part of a system that is making systemic errors and keeping people in jail longer. Therefore, it is convenient that they parallel.

The Hon. NATALIE WARD: That is just a conspiracy theory that is not supported by any evidence.

Mr DAVID SHOEBRIDGE: We do not have to agree on it.

The CHAIR: Well, we do not have any statistics.

The Hon. PENNY SHARPE: Can we move on to *Police activity and bail decisions*?

Ms FITZGERALD: Okay. We have talked about the factors that have influenced the prison population and my suggestion is that it is inputs into prison rather than the time spent in prison. That was a takeaway from this one. *Police activity and bail decisions* is intended to tease out that increase in bail decisions. You can see on the top left we have the total volume of Aboriginal adults who have a first court appearance. You can see that has been increasing and, as I say, it has increased by 54 per cent over that time period. Actually, that little blue column on the side is the number of Aboriginal adults who had bail refused at their first court appearance and that has increased by 77 per cent—a much greater increase than the bail refusal.

The Hon. PENNY SHARPE: Sorry, can I ask a really dumb question?

Ms FITZGERALD: Yes, of course.

The Hon. PENNY SHARPE: When you say "Aboriginal adult first court appearances", is that their first time ever or is that just for that offence?

Ms FITZGERALD: No, just for that offence. And then that is translated into a proportion on the chart, which shows the increase in the proportion of Aboriginal people refused bail at their first court appearance. This considers the police and the court decisions—I have not separated those out, but a lot of people will be refused bail by police and then granted bail by the courts. I kind of left that alone, actually, because those people do not spend long in custody. But they are still a big group.

The Hon. PENNY SHARPE: Do you have the breakdown for that?

Ms FITZGERALD: We can do that. The police decisions are very different to the court bail decisions, so it is worth considering.

The Hon. PENNY SHARPE: Yes, that is why I am interested. We are giving you a long list of homework.

Ms FITZGERALD: That is okay.

Mr DAVID SHOEBRIDGE: We do not have enough data.

The CHAIR: Or enough slides.

Ms FITZGERALD: This increase in the bail refusal rate—and I have just reiterated what we found when we looked at the Bail Act in 2018. That evaluation showed that the Bail Act increased the likelihood of people being remanded for all people coming through the courts but had a particularly exacerbated impact for Aboriginal people. The general increase was 0.8 percentage points but it was 1.9 percentage points for Aboriginal people. That is a 13 per cent increase and that matches these figures—so a big change resulting from that. Also on that top left-hand chart you can see that the volume of Aboriginal people coming into court has also increased. The chart at the bottom left goes to Mr Khan's point about which of the bail considerations are triggering those remand decisions.

Some 41 per cent of those Aboriginal adults failed to meet that show cause requirement and 48 per cent failed their unacceptable risk requirement. I also have put here that the reasons listed under the unacceptable risk that people can have multiple reasons—in fact, most people do. The most common ones are the determination that those Aboriginal adults will endanger the safety of the community, followed by that they will commit a serious offence if released on bail. We can also see a little bit about which of the various show cause triggers are

influential. It seems that far and away the most common show cause trigger is the one about offending on bail or parole. The re-offence needs to be a serious indictable offence, but whether a person is on bail or parole seems to be the big element of the show cause amendment.

Mr DAVID SHOEBRIDGE: So both things are present? The offence was committed while on bail or parole and it was a serious indictable offence.

Ms FITZGERALD: It needs to be a serious indictable offence. I am not sure what the definition of that is.

The Hon. TREVOR KHAN: The test is that there is a list of show cause offences, like serious assaults, firearms offences, sexual assault—there is a whole list of them essentially in the schedule that brings it. That is the first thing and once you have that the applicant for bail—the offender—has to show cause for why they should be released. So the onus falls on them to show why.

Ms FITZGERALD: And, Mr Khan, in that list one of those criteria is, in addition to a firearms offence, et cetera, offending while on bail or parole.

The Hon. TREVOR KHAN: Yes

Mr DAVID SHOEBRIDGE: Again, is there a distinction? All this data is Aboriginal people in the system. Do we see a distinction between Aboriginal and non-Aboriginal people?

Ms FITZGERALD: We haven't looked at that, but I can do that.

Mr DAVID SHOEBRIDGE: Sorry.

Ms FITZGERALD: It's fine. It is good to be useful.

The Hon. TREVOR KHAN: We have been talking about all these statistics. Yesterday we had evidence—was it yesterday or am I starting to blur?

The CHAIR: We had a hearing yesterday.

The Hon. TREVOR KHAN: I think yesterday we had this great conundrum as to Aboriginality between—

The CHAIR: It was definitely yesterday.

The Hon. TREVOR KHAN: It was. It was between police and the Law Enforcement Conduct Commission [LECC] relating to—was it the Suspect Target Management Plan [STMP]?

The Hon. PENNY SHARPE: Yes, but I think it was just generally.

The Hon. TREVOR KHAN: On the LECC figures something like 72 per cent of the people were of Aboriginal descent, whereas on the police figures it was 47 per cent.

The CHAIR: Correct.

The Hon. TREVOR KHAN: I think those were the numbers. There was a real question as to Aboriginality. Where does your concept of Aboriginality come from?

Ms FITZGERALD: Well, there are two places where people can be identified as Aboriginal in the justice system. When they go to custody, Corrections or Youth Justice do a very good job at identifying Aboriginal people. If a person does not go to custody, it comes from the police. In that regard with our crime data, if the police flag the perpetrator of an incident as Aboriginal, we will attach it to that incident. But in our court data we are able to look at people with reference to their prior offending. So in our court reports, if a person is ever identified as Aboriginal in any of their court data prior to police exposure or in custody, we will identify that person as Aboriginal. We use an "ever identified".

The Hon. TREVOR KHAN: I think yours is closer to the LECC rather than the police data.

The Hon. PENNY SHARPE: Correct. We are not seeing under-reporting because of the police data issue. I think that is right.

The Hon. TREVOR KHAN: Yes. I am not being critical, but the police have reworked their data so this would seem to be more raw data.

Mr DAVID SHOEBRIDGE: Well, they are in the process of reworking their data.

The CHAIR: They say they are in the process.

Mr DAVID SHOEBRIDGE: My understanding was that the police data that was being used by LECC was that, if somebody was identified at any one point as being Aboriginal, then they were Aboriginal for all time, whereas the police have some kind of algorithm that reduces it by 20 per cent because they say that they get it wrong. That is my reading through. Why they only get it wrong in terms of positively identifying rather than negatively identifying Aboriginality was not explained. But that is apparently what the police are working through.

The CHAIR: At some point.

Mr DAVID SHOEBRIDGE: But your data is not just the police. Yours is the court and Corrections data.

Ms FITZGERALD: The courts do not primarily collect. They are not a primary source. But I guess we are able to ingest the police records into the court data and then consider it as a totality of that person's offending history. The courts do not independently collect that information, but it comes to the court with their police record. At BOCSAR, because we have all the data joined up, we can do a similar thing to the LECC.

Mr DAVID SHOEBRIDGE: Would it be possible in the data to follow through the police identification of Aboriginality against Corrective's identification of Aboriginality? Because obviously Corrections does a separate process. Would it be possible to follow through that? That might be really useful in working out whether the police are getting it right or wrong.

Ms FITZGERALD: Yes. The biggest problem that we have with police is the under-reporting. They explicitly do not record for a range of offences, like traffic offences. Even regardless of that, we do have a big unknown population in the police data. It is almost as large as the known Aboriginal population. It is an issue that does come up unfortunately too frequently.

Mr DAVID SHOEBRIDGE: I remember seeing the STMP data. There were tables of the same individual being stopped 15 or 20 different times by police. They were identified five times as Aboriginal, five times as Pacific Islander, three times as Middle Eastern and four times with just no identification at all. How do you deal with that kind of data?

The Hon. TREVOR KHAN: That is an interesting ethnic mix you have got there.

Mr DAVID SHOEBRIDGE: I am speaking from what I actually saw.

Ms FITZGERALD: If they were ever identified, we would consider them to be Aboriginal in the court data. We may override the court record for the custodial record. But I would have to double check that. We do trust the custody report more than the police record. Okay, so we have covered those initial bail decisions. This is the next slide. It is also called recorded criminal incidents—unfortunately. This is slide number 10. The top left-hand side is the finalised court appearances. This is included in order to show the volumetric increase in Aboriginal adults coming to court. That is a 28 per cent increase over that time period. This is a little bit different to the first court appearance data that I just showed because people do have their offences bundled. I have got a comparison there with the total adult court appearances, which have increased by 17 per cent, so it is a much bigger increase for our Aboriginal adult population. If the Committee is interested in looking at the nature of the offences that have increased, you can go to those Excel tables that I sent this morning. Maybe we can go through that if you would like to.

Mr DAVID SHOEBRIDGE: We did that to a degree earlier, didn't we?

Ms FITZGERALD: Yes, we did. It might be more relevant to come back to some of the charts that talk specifically about the people who receive a prison sentence rather than just the total volume of matters coming to court. We can see here that the conviction rate is reasonably stable. There is a slight 2 percentage point increase over time. This bottom chart is a lot of information about people's bail status at their court finalisation. We have more information here. Earlier I talked about the bail decision when a person comes into custody. But when the person is adjudicated in the court, we have more information about their bail status. We have split those various categories out. You can see that, even for Aboriginal adults, the most common bail status is that bail was dispensed with. That happens about 45 per cent of the time. We have got a large portion on bail. That is that yellow group. But we also have a proportion that are in custody. I suppose it is more complicated than just your remand population. The orange is our remand population. That has been increasing from 12.5 per cent to 14.6 per cent, but we also have these other custodial individuals who are in custody at the time of their sentence. These are people who are serving for a prior offence.

The CHAIR: So they might have already been sentenced to a term of imprisonment and, while in prison, they have been prosecuted for subsequent offences.

Ms FITZGERALD: Yes, Mr Chair, but also people who—

The Hon. TREVOR KHAN: Where parole has been pulled?

Ms FITZGERALD: —have committed a new offence and that results in a breach of a previous order. They are now in sentenced custody for breaching their community order as well as this new offence. They are being sentenced for the new offence but are having to serve the remainder of their pre-existing sentence in custody.

Mr DAVID SHOEBRIDGE: There has been a big increase—although from a relatively small starting point—of prison regulation offences. They have increased by 122 per cent.

Ms FITZGERALD: Is this for the charges?

Mr DAVID SHOEBRIDGE: This is table 4 on your big Excel sheet, which has prison regulation offences increasing by 122 per cent between 2013 and 2019.

Ms FITZGERALD: Yes.

Mr DAVID SHOEBRIDGE: It is one of the biggest proportional increases—going to jail for things that happen in jail.

The Hon. TREVOR KHAN: I do not know if that—is that what it is?

Ms FITZGERALD: That is proven court appearances. Table 5 on the second page is actually people who received a prison sentence.

The CHAIR: Table 4: Proven court appearances.

Ms FITZGERALD: Table 5 is people who actually received a sentence of custody in the court. Prison regulation offences are still there.

Mr DAVID SHOEBRIDGE: But they are a smaller amount.

Ms FITZGERALD: They did not necessarily convert to a custodial penalty. You can see on the right-hand side of that Excel spreadsheet the imprisonment rate for those offences. Actually, since we are there, in those charts we start to see that DV split. Table 5 from the Excel file actually marries up with the next slide in the pack. It shows that the imprisonment rate has not altered a lot but the volume of people being sentenced to prison has increased a lot over this time period: a 25 per cent increase over that six-year period. The largest increases are in intimidation, stalking and DV-related assault categories. Weapons offences also keep coming up. That is another enforcement-related offence.

The Hon. TREVOR KHAN: Quite extraordinary.

Mr DAVID SHOEBRIDGE: But within assault, the really big increase in imprisonment rate is not really on DV-related assault. That has been pretty stable: the rate of imprisonment has gone up from almost 25 per cent to just over 29 per cent. But imprisonment for non-DV-related assault has gone from 26 per cent to almost 34½ per cent, which is a massive increase.

Ms FITZGERALD: I get 32.8 per cent.

Mr DAVID SHOEBRIDGE: The imprisonment rate?

Ms FITZGERALD: For non-DV-related assault in 2019.

Mr DAVID SHOEBRIDGE: From 26.3 per cent in 2013 to 33 per cent.

The Hon. PENNY SHARPE: It went up and it has come down, though, if you look at it over those years.

Mr DAVID SHOEBRIDGE: That is a bigger increase than DV-related assault.

Ms FITZGERALD: I think it is slightly bigger. It would be about six percentage points.

The Hon. TREVOR KHAN: What is the difference between Table 5 and Table 6? I must be missing it.

Ms FITZGERALD: On the left-hand side we are looking at the volume of people sentenced to prison and on the right-hand side it is the proportion of people guilty of that offence who have received a prison sentence. They are sorted in terms of those making the larger contribution to the increase.

Mr DAVID SHOEBRIDGE: But instead of one in four Aboriginal people convicted of assault going to jail, which is what we had in 2013, it is one in three in 2019. There seems to be a change in sentencing pattern.

Ms FITZGERALD: Are you looking at the total column for Table 6?

Mr DAVID SHOEBRIDGE: I am. As I read it, 26.3 per cent—just over a quarter—of Aboriginal people convicted of assault went to jail in 2013. In 2019, just under a third went to jail for assault.

Ms FITZGERALD: Yes.

Mr DAVID SHOEBRIDGE: That is one of the biggest categories of offending, which would explain not all but a part of the increase in Aboriginal imprisonment.

Ms FITZGERALD: I think it is hard to disentangle. There are a few things under that. One is potentially changes in the offence composition and the offender composition. If people have longer criminal histories and things like that then they will receive more serious penalties. As I talked about, it is also hard to disentangle the previous remand decision potentially having an impact. We have seen in particular that people are much more likely to be on remand for assault now. It has been one of the offences that has contributed a lot to the remand population. That could also be impacting the likelihood of receiving a prison sentence there.

The Hon. NATALIE WARD: I apologise if you have covered this, but it seems to me that there is consistently a dip in 2014 in each of the charts.

Ms FITZGERALD: Yes, there is.

The Hon. NATALIE WARD: I am wondering what you attribute that to.

Ms FITZGERALD: A lot of that is to do with that temporary period of the bail reforms.

The Hon. NATALIE WARD: So you attribute it to that?

Ms FITZGERALD: A lot of those sentencing decisions are—that is right.

The Hon. NATALIE WARD: That is the bail reform, yes.

Ms FITZGERALD: We had a period from when the Bail Act 2013 came in, and there was a perception that it was too lenient, until the reforms in the amendment in 2015.

The Hon. NATALIE WARD: So you put it down to just that.

Ms FITZGERALD: A lot of that noticeable dip is that, yes.

The Hon. TREVOR KHAN: I am looking at Table 5. Are you able to tell us what "prohibited and regulated weapons and explosive offences" relates to?

Ms FITZGERALD: I did actually look at this, which is lucky. It is things like possessing an illegal firearm, not storing your firearm or buying a firearm illegally. They are things around the legitimacy of the firearm rather than the use of the firearm.

The CHAIR: So simply having it.

The Hon. TREVOR KHAN: It is just an extraordinary number.

Ms FITZGERALD: I think that this is another one of those offences that police can proactively enforce with offending populations.

The Hon. NATALIE WARD: Is it just firearms, or is it other things?

Ms FITZGERALD: It is mostly firearms, but it would include other illegal weapons.

The Hon. TREVOR KHAN: Does it include knives?

Ms FITZGERALD: If the knife is an illegal knife, it would.

Mr DAVID SHOEBRIDGE: Would it include carrying knives in public?

Ms FITZGERALD: I am not sure about that. When I drilled down, the ones that came up were illegal possession of firearms and illegally buying or selling firearms. But it is increasing and those people are obviously going to prison.

The Hon. TREVOR KHAN: Again, that is a policy thing.

Ms FITZGERALD: I do not think that they would be going to prison for carrying knives.

Mr DAVID SHOEBRIDGE: Is there a regional mix to it? Is it young Aboriginal men going out hunting and being caught by police with a firearm?

The Hon. TREVOR KHAN: I just cannot see how that results in prison time.

Mr DAVID SHOEBRIDGE: Weapons offences are treated very seriously.

The Hon. TREVOR KHAN: I absolutely accept that, but going out hunting is—yes.

Mr DAVID SHOEBRIDGE: Only 18 per cent are getting prison time. A lot of people are being caught but less than 20 per cent are getting prison time.

Ms FITZGERALD: It is increasing, though. I did take note of that myself. I suspect that it might be some individuals who are involved in some pretty high-level crime. That is my suspicion but I cannot split that out.

Mr DAVID SHOEBRIDGE: It might be associated with policing behaviour. We have seen some policing task forces focusing on firearms and we have seen the changes in legislation with the stop-and-search powers related to firearm prevention orders. Does this map those prohibition orders? It seems to me to be roughly the same time that firearm prohibition orders were coming in, in about 2015.

Ms FITZGERALD: I am not familiar, unfortunately. But we can drill down to the next level with this and do a regional split for Aboriginal adults. Leave that with me and we will see if we cannot flesh that out a little bit more.

Mr DAVID SHOEBRIDGE: From my reading of it, it seems to follow that time frame when firearm prohibition orders have come in.

Ms FITZGERALD: Yes. You can go down all the way to the law part level, so there is a lot of information. "Dangerous and negligent acts" is also dangerous driving offences generally. That is also a bit of a sleeper offence. I had not really perceived the contribution that it was making but it does also seem to be increasing a lot. Then we have the stalwarts of the prison population like your break and enters, theft offences, car theft, which are still contributing.

The Hon. TREVOR KHAN: Dangerous and negligent operation of a vehicle leading to jail would have to involve the two elements of alcohol/drug and serious injury to a passenger or a person in another vehicle. To my recollection, there is a guideline dealing with that. That is what that would lead to that, but it is a heck of an increase.

Ms FITZGERALD: Yes, it is a large increase. We have never done any particular work on that, so I do not have any specific knowledge, but it does strike me as a large increase. You can also see that in the prison volumes. These are prison sentences and those are prison volumes.

The Hon. PENNY SHARPE: Twice as many people.

Ms FITZGERALD: We have talked a bit about sentences for the particular offences. Generally, the proportion of Aboriginal people receiving a prison sentence is reasonably stable over the period that we are looking at, and the sentence durations are also reasonably stable, but as we have previously talked about they are quite short. Where we are up to in the PowerPoint pack shows that distribution that we talked about earlier: the distribution of the length of prison sentences. Most of those sentences are quite short, and they are under a year, which is still the case. The average prison sentence for Aboriginal people is eight months. At the last slide, which we drilled down into at table 5, there is a chart that plots the increases for particular offences—those offences that are contributing the most to the increase in prison sentences. You can see that these are for assault, and the intimidation, stalking and weapons offences are adding a lot to the prison sentences and the imprisonment rates.

The Hon. TREVOR KHAN: I noticed at the bottom of table 5 that the one that we have talked a lot about, if I am reading it correctly, breach of a custodial or community order, has fallen.

Ms FITZGERALD: Yes. Mr Khan, this is because of the sentence reforms moving a lot of those matters to SPA determinations. These are court decisions and now those are being dealt with there.

The Hon. TREVOR KHAN: Right. That would make sense, yes.

The CHAIR: Are there any further questions?

The Hon. TREVOR KHAN: No. I am overwhelmed.

The CHAIR: I think that is a fair assessment. Ms Fitzgerald, I thank you for the data, which is overwhelming, but also for helping us to understand what we are being presented with. I have certainly found it very illuminating given the other issues that we are grappling with. The Committee has resolved that answers to questions on notice be returned by Friday 22 January 2021. The secretariat will contact you about those matters to make sure you properly understand what we have asked you to provide.

Ms FITZGERALD: Yes.

Mr DAVID SHOEBRIDGE: Can I ask one question on notice?

The CHAIR: You can.

Mr DAVID SHOEBRIDGE: Because we have basically stepped over young people in the course of this.

Ms FITZGERALD: Yes, true.

Mr DAVID SHOEBRIDGE: But when you look at the data, something has been working in Juvenile Justice which is reducing the number of young people in jail and reducing the proportion of Aboriginal people in jail. Could provide on notice any statistical insights you can give to that?

Ms FITZGERALD: If you will indulge me, I will draw your attention to a packet that I hope the secretariat printed out for you.

The CHAIR: Is it in the slide pack?

Ms FITZGERALD: It is not in the slide pack. It is at page 2. There is an adult version—

Mr DAVID SHOEBRIDGE: Is it the Aboriginal justice snapshot?

The Hon. PENNY SHARPE: Yes, that is it.

Ms FITZGERALD: Yes. There is a blue version, which is a juvenile version. It is called a snapshot.

The CHAIR: There is also some stuff in the other companion piece that comes with it.

Ms FITZGERALD: If the Committee has the appetite, I will give a quick whirlwind tour of changes in the juvenile space. I note Mr Shoebridge's point about Youth Justice, but there was something happening prior to that. There is something fundamental with youth offending that Youth Justice cannot take all of the credit for. If you can see here, the volumes of young people coming into court are falling. If we look at this, there are the police actions in the top left-hand corner. You can see that police actions against young people are reasonably stable over that period. Also, the diversions are reasonably stable over the same period. But if we look at court finalisations, those are actually falling. This is probably because young people are having their offences grouped together, which is normal. We are seeing a marked reduction in court volumes. In the bottom left-hand corner we can see the bail decisions against young people. We have not seen anything like the situation with adults where bail determinations are getting more strict. The likelihood of a young person being remanded in custody is reasonably stable in terms of proportions, and then it is actually falling because we have fewer young people coming into the criminal justice system. This is split by offence.

Mr DAVID SHOEBRIDGE: Is it delay?

Ms FITZGERALD: Is it a delay in court?

Mr DAVID SHOEBRIDGE: Yes.

Ms FITZGERALD: No.

The CHAIR: No, I do not think so, because on the other piece of paper you have given us, when you look at the 35 per cent in relation to police court actions, you can see that actions against Aboriginal juvenile offenders is down 7 per cent in the five years, whereas the total juvenile offender proceedings by police has gone up by 2 per cent. If you go down to bail decisions, again, Aboriginal juvenile defendants who have been refused

bail has declined by 28 per cent in five years and the total juvenile defendants who have been refused bail has declined overall by 21 per cent. If you go to youth detention, Aboriginal youth custodial sentences is down 41 per cent in five years and the total youth custodial sentences are down 31 per cent. There seems to be a general trend overall with Youth Justice in a downward arc, but a more pronounced downward arc for First Nations.

Ms FITZGERALD: It actually seems like a genuine reduction in offending and a genuine reduction in participation in crime. We did produce a paper last year that looked at an age-specific rate, so an age-adjusted rate of participation in crime. You can see there are big declines in young people being proceeded against for all types of offences over the longer term—for high-volume theft offences and assault offences. It actually seems like a generational shift in participation in crime by young people. Young people these days are just not offending at the same levels.

The Hon. PENNY SHARPE: That is interesting, because young people's drinking and drug taking over time has markedly reduced. The school survey has a massive change in drinking and drug taking behaviour for young people.

Ms FITZGERALD: Yes, it is probably the same effect, really, but a difference in recreational activities and a difference in risk-taking.

The Hon. PENNY SHARPE: Screen time might be good.

Mr DAVID SHOEBRIDGE: Well, maybe. Studies have shown that the current young generation is the most empathetic young generation we have seen because they are connected to each other by social media. They are aware of each other in a way that people sitting around this table, apart from the secretariat, probably are not.

Ms FITZGERALD: The question from me, though, is why that has not translated into the adult population? Those people are obviously ageing.

Mr DAVID SHOEBRIDGE: But how do you square that against the police actions on the Aboriginal justice snapshot? There were 3,844 police actions in 2013-14 and 3,732 in 2019-20, but the sheer number of people coming to the attention of police has not changed.

Ms FITZGERALD: Mr Shoebridge, courts have always considered matters in groups by bundling items. I have to admit that it does look incongruent. So, it is slightly out of kilter with the court results, but I think it is the courts considering matters together. But if you do look at the legal actions for individual offences, you can see that there is generally just a volumetric change in legal actions for young people. There is also potential that some of those are offences that are less serious offences. I probably should have a look into it, but there are just generally fewer young people coming into the justice system. It is probably one of the few areas where we have seen the benefit for Aboriginal people as much as for other young people, which does not always happen. Sometimes we will see a benefit for the general population, but not for Aboriginal people.

The CHAIR: If we had some better insights into the juvenile justice phenomenon, we might have some lessons that we could derive from that.

Mr DAVID SHOEBRIDGE: It is a nice point to end this session. Young people are basically doing better than older people. That is a nice spot to leave it.

The CHAIR: Absolutely. I think we will now adjourn until 1.15 p.m.

(The witness withdrew.)

(Luncheon adjournment)

LILLIAN GORDON, Head of Aboriginal Affairs NSW, affirmed and examined

MATTHEW TRINDALL, Director, Aboriginal Strategy and Culture, Justice Health and Forensic Mental Health Network, affirmed and examined

WENDY HOEY, Executive Director, Clinical Operations, Justice Health and Forensic Mental Health Network, affirmed and examined

The CHAIR: I now welcome our next witnesses to this inquiry, representatives of Aboriginal Affairs and Justice Health. Would each organisation like to make a short opening statement?

Ms GORDON: I would, absolutely, if I may. I would firstly like to acknowledge that we are on the country of the Gadigal people of the Eora nation. I pay my deep respect to Elders both past and present, and pay my respects to all Aboriginal people at the hearings today or watching via the web stream. I would also like to acknowledge and pay my respect to the families of people who have died in custody, particularly those who are giving evidence in these hearings, and their bravery in continuing to advocate for better outcomes for their families and communities. I am pleased that the Committee is shining a light on deaths in custody and the unacceptable high rates of Aboriginal people in custody in New South Wales.

I look forward to the outcomes of the inquiry and how they may inform the work of the New South Wales Government and our partners, including developing responses in the Closing the Gap targets. The Royal Commission into Aboriginal Deaths in Custody recognises the importance of improving education and economic outcomes, addressing intergenerational trauma and supporting the self-determination of Aboriginal communities to prevent Aboriginal people entering the justice system. OCHRE, the New South Wales Government plan for Aboriginal affairs, includes initiatives that address these issues. OCHRE stands for Opportunity, Choice, Healing, Responsibility and Empowerment.

These initiatives are recognising intergenerational trauma through healing and powering Aboriginal communities to influence the way government works and improve service delivery through local decision-making; finding pathways through school to employment with opportunity hubs; supporting better educational outcomes through connected communities; and strengthening identity and culture through Aboriginal language and cultural nests. Collectively these initiatives are designed to focus on economic and social opportunities. There are specific focuses on supporting young Aboriginal people to receive a quality and culturally appropriate education and remain engaged in schooling, which is critical to preventing contact with the criminal justice system.

There is a strong relationship between Aboriginal people's experience of trauma and loss and the disproportionate rates of Aboriginal people in contact with the justice system. This trauma and loss has left many people frustrated and disenfranchised, which is often expressed in high levels of disadvantage, depression, substance abuse and antisocial behaviour. Overcoming intergenerational trauma and loss must be addressed to achieve real change, including reducing the incarceration of Aboriginal people. In recognition of this, OCHRE commits the New South Wales Government agencies to working with Aboriginal communities, policy practitioners and service providers to design and deliver trauma-informed, culturally competent services that support wellbeing and healing.

Local decision-making represents a fundamental change in the relationship between the New South Wales Government and Aboriginal communities. It ensures that Aboriginal communities have a genuine voice in determining what and how services are delivered in their communities. Through local decision-making Aboriginal Regional Alliances and the New South Wales Government enter into accords, committing to jointly addressing agreed priorities. All alliances identify justice issues, including relationships with police during a court negotiation. The New South Wales Coalition of Aboriginal Regional Alliances, NCARA, is made up of chairpersons or delegates from these alliances. NCARA and the New South Wales Government have an accord that commits to working in partnership to decrease the number of Aboriginal youth entering the juvenile justice system, including incarceration rates and recidivism.

The 10-year national agreement on Closing the Gap, developed jointly by all Australian governments and the coalition of peak Aboriginal and Torres Strait Islander organisations, takes a holistic approach to the systematic change needed to improve justice, health, education and employment outcomes. Its target includes reducing the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent by 2031 and reducing the rate of Aboriginal and Torres Strait Islander people in detention by 30 per cent by 2031. These targets require major changes. The national agreement is built around four priority reforms that will change the way governments work around Aboriginal and Torres Strait Islander people.

These were strongly supported in the nationwide consultations led by the Coalition of Peaks, including 28 workshops held across New South Wales. These priority reforms are: strengthening structures for the involvement of Aboriginal people in shared decision-making at national, State and local levels; building the formal Aboriginal community-controlled services sector to deliver Closing the Gap services and programs in agreed focus areas; ensuring mainstream government agencies and institutes take systematic and structural transformation to contribute to Closing the Gap and improve accountability and respond to the needs of Aboriginal people; and ensuring Aboriginal people have access to and the capability to use local, relevant data and information. It also includes 16 socio-economic targets.

All governments have committed to the tangible actions to change the way they work with Aboriginal and Torres Strait Islander people to address these priority reforms. The New South Wales Government will be working in partnership with the New South Wales coalition of Aboriginal peak organisations and other Aboriginal representative bodies and organisations to develop a strong jurisdictional plan that will see significant outcomes for Aboriginal people in New South Wales. I look forward to seeing the recommendations of the Committee to inform our implementation of Closing the Gap, especially to support a reduction in the unacceptable high levels of incarceration and detention of Aboriginal people and young people in our work through OCHRE. Thank you.

The CHAIR: Thank you. Ms Hoey, do you want to give a brief opening statement?

Ms HOEY: Yes, I have got a very brief opening statement. Thank you. Firstly, I would like to acknowledge the traditional owners of the land on which we meet today, the Gadigal people of the Eora nation. I would like to pay my respects to the Elders past, present and emerging and also acknowledge those Aboriginal people here today, either in the room or attending virtually. Justice Health and Forensic Mental Health Network—I will refer to that as "the network" as we go through the day—is part of a broader NSW Health system. We deliver care to adults and young people in contact with the New South Wales forensic mental health system, as well as the criminal justice system.

We provide services across community, inpatient and custodial settings, and annually we provide care to over 30,000 patients. The overrepresentation of Aboriginal people in custody is unacceptable and the network supports all efforts to address this. I am here today to provide information and clarification to the inquiry on behalf of the network in an effort to make the future better. The network has a role within the broader system to reduce incarceration through its delivery and participation in programs. We acknowledge this is a small but important role. Our service is aiming to increase diversion from custody, improve health outcomes and health literacy, and also support those in community reintegration on release from custody.

However, the network acknowledges the need for a whole of community and Government response to address the many social determinants that have and are impacting on Aboriginal people's health, such as discrimination, housing, education, employment and the intergenerational trauma affecting so many Aboriginal people today. The terms of reference of this inquiry leads me to the challenging and real issue of Aboriginal deaths in custody. My thoughts and sympathies are with each and every family member who has lost a loved one and each community who has lost a valued member. Every death in custody is a tragedy. The network continually reflects and learns from the past, applying high standards of review and inspection to our policies, our practices and our health services, especially where outcomes are not as we would have liked. The network actively supports the work of the Inspector of Custodial Services, the New South Wales Ombudsman, the Independent Commission Against Corruption, the Health Complaints Quality Commission and the New South Wales Coroner. We would also support any recommendations that come from this inquiry about a more independent review should that be proposed.

The Hon. PENNY SHARPE: Thank you very much for coming along today. I want to start with Justice Health. I was looking at the network patient health survey. The one I have is from 2015. Has there been an update to that or is there one in the works?

Ms HOEY: No, that is the most up-to-date that we have at this point.

The Hon. PENNY SHARPE: Do you know if there is plans to do another one?

Ms HOEY: I believe it is every five years. We were planning on 2021. COVID got in the way this year, but we will certainly be doing it again. It has some really good information.

The Hon. PENNY SHARPE: Yes, that is what I wanted to explore. I wanted to make sure I was using the updated version. I am assuming that we do not expect there has been a great deal of change in terms of the profile or the issues. There might have been some improvement or others. I wanted to ask you specifically about mental illness, really to get a sense from you. We have had a lot of evidence that suggests that there are a lot of

people in custody who have significant mental health problems, often undiagnosed. I am wondering if you could take us through the process that you undertake when someone is brought in to custody, either remand or after being sentenced?

Ms HOEY: Certainly. That is true. There are a lot of people in custody with mental health issues and mental illness. The fact that it is not diagnosed, there has been some research to say that our screening process is—although it could be better—that we are picking up a lot of it. I can certainly provide you with evidence about that. The process when somebody comes into any prison across the State is that they are seen initially by a reception nurse or a primary care nurse. That nurse does an assessment and there are four key things we are looking for in that assessment: one of them is chronic disease; one of them is drug and alcohol; one of them is population health, so any sexual health or infections that we have to look at; and the fourth and very important one is mental health. We do those four key areas.

The Hon. TREVOR KHAN: When is that done relative to reception?

Ms HOEY: Within 24 hours we give them—now, we hit pretty good target with that. Clearly, there are times that is not possible depending on the presentation of somebody coming into custody, but it is more the exception that we do not get it done within 24 hours, and we do measure that.

The Hon. PENNY SHARPE: What percentage do you get to in 24 hours?

Ms HOEY: I do not have the exact one, but I can certainly take on notice.

The Hon. PENNY SHARPE: If you could take it on notice that would be great.

Ms HOEY: There were so many figures preparing for this that I might take figures on notice. I do not want to mislead you.

The Hon. PENNY SHARPE: That is fine. We have had a lot of data, but we really appreciate what you can provide to us.

The Hon. TREVOR KHAN: In providing that data, are you able to break it down by way of facility or is it only an overall one?

The CHAIR: By prison

Ms HOEY: You are interested to see Broken Hill compared to Tamworth?

The Hon. TREVOR KHAN: I am interested in if you are hitting your targets in Tamworth whether it might be a bit different in Silverwater.

Ms HOEY: Sure. I will give you what I can and as much detail as I can. So, we are back to that the person has arrived within 24 hours?

The Hon. PENNY SHARPE: Yes, assuming they get it within 24 hours, what happens?

Ms HOEY: Yes. There is an assessment done by a primary care nurse and that is in the context of the reception process, so there is a lot of people seeing them at that point in time.

The Hon. PENNY SHARPE: There is a lot going on.

Ms HOEY: Yes, there is a lot going on. That primary care nurse has done some training, is quite experienced and sits down with the patient and goes through their history on those four key things. We have quite clear processes for that and policies for that. We use Kessler 10, which is a self-reported mental health assessment, as well as their own professional assessment. Self-assessment is seen to be just as efficacious as the clinician looking, so we use that. Should somebody require immediate mental health, we can get that certainly in the bigger centres.

The Hon. PENNY SHARPE: Acute psychosis?

Ms HOEY: Acute psychosis, yes. If somebody comes in in an acute psychosis, we would be phoning their psychiatrist and get some intervention there if we can. If somebody is particularly unwell and they are not in the metropolitan remand centres, we would ask for them to be moved into the metropolitan remand centres where they can be managed more appropriately. It is quite difficult out in the more rural areas.

The Hon. PENNY SHARPE: I assume you recall the number of transfers for that purpose. Would you be able to provide the Committee with that over a couple of years?

Ms HOEY: I would probably have to do that in collaboration with Corrective Services. They would keep transport data probably more than us.

The Hon. PENNY SHARPE: If you are able to tell us just in terms of the number of people who you have referred but matching those. Obviously, what I am interested in is how many people from regional areas are in acute psychosis and have to end up a long way from home in Metropolitan?

Ms HOEY: Yes, so after they have looked at them and they think they need mental health care, we have a categorisation process for our secondary services. If the primary health identify they need mental health as a category one within three days that they should be seen, a category two within 14 days, and a category three within three months. Generally, if someone came in with acute psychosis it would be a category one. We would expect them to get seen coming in by the psychiatrist so that we can get some medication on board.

The Hon. PENNY SHARPE: Category one is within 24 hours?

Ms HOEY: No, three days. They are seen within 24 hours by a primary care nurse. That primary care nurse does a screen. If there is something wrong it is within three days for a category one.

The Hon. TREVOR KHAN: What sort of condition falls within a category two?

Ms HOEY: In mental health? If somebody is perhaps stable, they are on medication, they would get reviewed coming into the service by a psychiatrist before they go to classification or in reception. Symptoms that are not impacting on them or there is not a risk of harm to self or others.

The Hon. TREVOR KHAN: When they come into a facility they are not completely psychotic and are categorised as a category two, do they have access to the medication or are they unmedicated awaiting assessment?

The Hon. PENNY SHARPE: For up to 14 days?

Ms HOEY: No, it is complicated coming in.

The Hon. TREVOR KHAN: I am sure.

Ms HOEY: I have just left a presentation about it actually. Our team has been looking at it. When somebody comes in and they are on medication you have to weigh up the risks with the history that they are giving you. So somebody comes in and they say they are on olanzapine, for example, a regular antipsychotic, and they are a good historian, we would then phone the—we have on-call doctors all the time for our primary care nurses. They can get onto them all the time to discuss. They may well prescribe over the phone if the assessment is okay, if things are going okay, and then we would get that. We will also send out a release of information [ROI] to whichever health services they had been seen at before. We would obtain consent from the patient. We would ask for a release of information from wherever it was, whether it was prescribed from a GP, it might be a mental health service or hospital admission and emergency department, then we would send it off. That can take some time. If it is more urgent, and certainly in mental health cases, our psychiatrists would tend to find out where someone has been receiving treatment in the community and give them a call directly to find out what the treatment is.

The Hon. TREVOR KHAN: So in some circumstances—

Ms HOEY: There can be a delay. Yes, absolutely.

The Hon. TREVOR KHAN: I understand the difficulty, but in some cases they will be prescribed medication and in other cases they will not?

Ms HOEY: Depending on the history of the situation and the risk, yes.

The Hon. PENNY SHARPE: Are there other barriers depending on where they are and access to medication that they may need? Are there other possible delays in the system rather than accessing the advice and getting the prescription in actually getting the drugs to them?

Ms HOEY: No, the mental health drugs specifically that we would use are pretty well stocked across all of our centres. As you can imagine, we have quite a—we have a central pharmacy storage at Malabar on the Long Bay campus. We have imprest in all of our centres. Where our centres are out further away, we would borrow from the local hospital if we needed to access a medication in a hurry and we did not have it in stock, but our mental health medications are certainly generally in stock.

The Hon. TREVOR KHAN: So somebody who has been dealt with in the District Court at Tamworth who ends up in Tamworth Correctional Centre I assume would be assessed under the protocols that you have described?

Ms HOEY: Exactly, yes.

The Hon. TREVOR KHAN: And stay there for two or three weeks. Corrections do not want to hold people their long-term in many cases. Cessnock is probably the most likely to place to be moved onto next. Do they go through the same process? Do they come with their pills? If they do not come with their pills, what happens at that point in time?

Ms HOEY: So the process that should be followed—and I say should, because this is in policy and there are a few barriers in the way which I may talk about—but when somebody is going for transfer, the health services are informed of that—so our clinic is informed—and if they are not on self-medication, so they are not holding their medications themselves, we would ensure that they have medications packed up to take with them.

The Hon. TREVOR KHAN: They may be moved on very short notice. They will not be told before they go.

Ms HOEY: Yes. We have worked really hard with Corrective Services NSW to put in that they come past the clinic to get what they need, and where they are not, we would then provide a handover to whichever clinic they go to. So Tamworth to Cessnock—our staff would talk to each other. But it has taken us some time to get that process that they do come through the health centre and their medications do so with them. Is it foolproof? No. Could it be better? Yes.

The Hon. PENNY SHARPE: If people are assessed at category one—I will deal with this and then I will deal with people who are undiagnosed, who do not have meds—no history. That is my secondary question. My next one is people are assessed on the way in, obviously people presenting with significant issues—maybe one to three days. In terms of what cell they are allocated to and the level of supervision that they may or may not be given, can you take us through what happens with that process?

Ms HOEY: Sure. The process for that is at the assessment, the Justice Health clinician—whether it be the primary care nurse or the mental health nurse—would fill in what is called an HPNF, so a health priority notification form. That form is the tool we use to speak to Corrective Services around health priorities for a patient. We try and fill that form in in as lay terms as we can so that Corrective Services have got outlined what they might look for in somebody deteriorating. That would also be done in discussion with Corrective Services about what cell placement might be most appropriate for their presentation, and whether the risk is to self and others. And if the risk is to others, clearly a one outplacement in maybe an assessment cell—which is a cell that has reduced ligature points, is a lot more safe and has a camera—or not.

And then a camera cell, where they are watched with Corrective Services, or, in fact, a two out cell, where they may well have chronic disease or an illness that to knock up might be a bit hard for them, so to call Corrective Services so they get put in with somebody else so that they have a partner in the cell with them, so that is the kind of way that we would work it out. It is a multidisciplinary team. We will notify Corrective Services and we will discuss with them. If they cannot accommodate our requests then it may well get escalated through to a senior person within the organisation.

The Hon. PENNY SHARPE: That was the next bit I was going to ask you about. We had some evidence that there was a limit on the number of cells that have cameras, and theoretically everyone should be accommodated but the numbers simply do not allow that. What happens when someone has been identified but there is not a cell for them? Do they get moved on? What is the process?

Ms HOEY: I suppose the final decision about cell placement is with Corrective Services NSW. We give a recommendation, so we do not decide where people are kept. If we believe that that recommendation cannot be met and it is a risk to our patient then that would be escalated through to one of our directors—weekends, it would be me—and we would have a chat with the commissioner if we felt it was that to see if we can get that person into a more appropriate environment.

The Hon. TREVOR KHAN: How often does that happen?

Ms HOEY: I have been with the organisation now for 14 months. Before COVID hit, probably I think I had dealt with it twice, and I got them accommodated. Since we have had the breath of COVID, which has reduced our numbers in custody, which has allowed us a lot more freedom of movement, a lot more freedom to put people where we need to put them, because of the reduction of people currently in our prisons.

The Hon. TREVOR KHAN: When you say two, does that mean that there was two incidences?

Ms HOEY: Yes.

The Hon. TREVOR KHAN: Not two incidences that you have dealt with, but two incidences?

Ms HOEY: That I know of. There may well have been some that were dealt with by directors, but two that have got to me. That is generally because I hold the phone overnight and at weekends.

The Hon. PENNY SHARPE: What happens when someone comes in and they are obviously not diagnosed, and they might not self-identify as having serious mental health issues but it becomes pretty clear from your nurse that there is an issue—what is the process in terms of diagnosis from there? Assuming that you do all the risk assessment and that follows the same process whether they have got a diagnosis or not.

Ms HOEY: So you are talking at reception?

The Hon. PENNY SHARPE: Yes.

Ms HOEY: Well, when they come into reception, we do not know generally, unless they have been in before, and that is a really good—we have got our Justice Health electronic Health System [JHeHS] and we have got our medical records, and we clearly have a look that before we do anything else. But if it is somebody's first time into custody and is presenting as having bizarre behaviour or is expressing fear, is expressing despondency or any of the triggers, we would then escalate to our mental health team—mental health nurse assessment.

The Hon. PENNY SHARPE: And how long would that take?

Ms HOEY: Again, if it was a priority one, within three days, but in an emergency they get seen pretty quickly. What I will caveat with, and it is fresh paint I know, but with COVID we had to change the way we did things very quickly, and our utilisation of telehealth has improved amazingly well. Now we are in a much better position in being able to get a telehealth conference with our psychiatrist to somebody quite quickly.

The Hon. PENNY SHARPE: And do you believe that that will be able to continue now that we are moving through? That seems to me to be a plus.

Ms HOEY: Yes, it is. There are positives and negatives to telehealth. Certainly, as the executive and the chief executive on the board, we believe that there is still a very big need for face to face. We do not want telehealth to—for nobody to see people.

The Hon. PENNY SHARPE: I would not suggest that for a minute, but I am assuming that, for a lot of people, it is better than a phone call via a nurse.

Ms HOEY: We are definitely maximising the change that has occurred with COVID, and we have really built on that. I do not know the figures but our telehealth occasions of service have gone through the roof. We have also been able to access a lot of places a lot quicker. So, for example, if you have somebody in Kirkconnell who needed to see a GP, previously they would not have got seen until the GP got there. Now we can sit them in front of their camera and we do telehealth clinics, if you like, and they can just go—it is more agile. It takes a lot more coordination, and we are still working through it. We really need to and we want to—well, we are—we have put in for a research grant to look at the efficacy of telehealth in both access and experience for our patients.

The Hon. PENNY SHARPE: In terms of management of someone who has significant mental health issues—I am assuming that I know the answer to this, which is that Corrections have the final say in relation to their management?

Ms HOEY: In their cell placement?

The Hon. PENNY SHARPE: Yes.

Ms HOEY: Yes, the cell placement—

The Hon. PENNY SHARPE: And their ongoing management. So if someone develops psychosis—so they come in, they seem fine, they are pretty good—

Ms HOEY: No. So there is opportunity for us to divert. There is a number of parts of the forensic provisions Act that allows us to divert people both into general mental health services out of the custodial setting or, under a 55, into our Long Bay Hospital, which has a mental health area within it to be able to provide care. So we have our mental health screening unit within the Metropolitan Remand and Reception Centre [MRRC] complex, and access to that is really a joint decision between the psychiatrists, the nurses there and Corrective Services, but we have a lot of say on who goes into those units and who doesn't. But once they are in

there in the cell placement it is Corrective Services, and we have to work within that environment. But we are working more collaboratively and collectively around that and around individual care planning for that.

The Hon. TREVOR KHAN: I think some of the evidence we have received here—and indeed, by recollection, on other inquiries—so I will talk in terms of women in prison.

Ms HOEY: Yes.

The Hon. TREVOR KHAN: The evidence is that a very significant percentage of the women who are in custody are suffering from a range of complex issues relating to long-term domestic violence, in many cases sexual assaults, and a whole range of traumas arising from, in a sense, those domestic relationships. My recollection is, from another inquiry, that the provision of assistance to women to deal with those problems is pretty patchy at best. I wonder if you would like to make a contribution.

Ms HOEY: Look, I think we all have to acknowledge the trauma that people coming into custody have, both in male prisons and youth, and specifically with women. There is a complicated arrangement, I would say, where the Justice Health and Forensic Mental Health Network is responsible for delivery of the healthcare services to those patients and Corrective Services have oversight of the delivery of the psychological services to the inmates—they call them inmates, we call them patients so there is different terminology. They would do those interventions so I would not like to comment on their provision of care.

The Hon. TREVOR KHAN: Well, we missed that opportunity with them. It seems that a lot of the evidence indicates that particularly women are in custody because of violence-related issues—as well as drug or substance addiction issues—and that they could go out the other end without those being addressed at all. The concern is that is setting people up for a revisit at any stage along the way, is it not?

Ms HOEY: Yes, it certainly is very concerning, particularly in the remand area where psychological interventions are probably not as prevalent as we would like them to be.

Mr DAVID SHOEBRIDGE: Just in terms of the scale, particularly the capacity to deal with mental health issues, is the mental health screening unit a 43-bed unit?

Ms HOEY: I have not got the numbers in front of me but the mental health screening unit is larger than that. Are you talking about the Mental Health Unit at Long Bay or the mental health screening unit at the MRRC?

Mr DAVID SHOEBRIDGE: I am talking about MRRC.

Ms HOEY: You will have to excuse me because Corrective Services have gone through—I think they might have talked about their policy directive cap, which is their bed movements, and they have moved a lot of beds around. There are 42 at the Medical Sub-Acute Unit at MRRC.

Mr DAVID SHOEBRIDGE: How many beds are there for screening services at Long Bay?

Ms HOEY: At Long Bay there are 80 designated mental health beds. They are not all mental health beds, so there are 40 mental health beds up there.

Mr DAVID SHOEBRIDGE: But they are not for the purposes of screening, they are for the purposes of treatment, are they not?

Ms HOEY: Yes, they are for treatment.

Mr DAVID SHOEBRIDGE: So there are 12,500 adults prisoners and there are 43 mental health screening beds?

Ms HOEY: Yes.

Mr DAVID SHOEBRIDGE: Those numbers do not seem to square to me.

Ms HOEY: No, they do not. We are currently working with Corrective Services to identify more step-down beds for our mental health patients, but there are a lot of people and there are more people with mental health disorders in prison than we have specific areas to keep them.

Mr DAVID SHOEBRIDGE: Indeed. Mr Khan was asking you about women inmates. The evidence we have had before us and the evidence you can see in report after report is that the overwhelming majority of women in prison have mental health issues and a serious history of trauma. What kind of level of resourcing do you think would be needed to deal with that trauma?

Ms HOEY: Clearly it is something we think about every day. The first thing we have to do is invest in and improve our diversion through the courts. Currently, we provide diversion to 22 of the adult courts out of some 54. So clearly we are not covering all of the State in court diversion. Where we are involved in court diversion we get good results. That is diversion into local mental health services, so it is taking people out of the system before they enter the system. I really think there is a lot of attention and work that could be done in that area.

Mr DAVID SHOEBRIDGE: On notice can you tell us where that is and is not operating in the State?

Ms HOEY: Yes, for the courts?

Mr DAVID SHOEBRIDGE: Yes. Is that simply a question of resources?

Ms HOEY: Yes.

Mr DAVID SHOEBRIDGE: So there are people in—I assume it is largely regional New South Wales where these services are not being provided? Or is it also western Sydney or somewhere else?

Ms HOEY: It is mostly in the metropolitan—the big areas. We provide some in regional areas but I will take it on notice and give you a list of the courts we provide the services to.

Mr DAVID SHOEBRIDGE: Do you have an indication of what budget would be required to provide that uniformly across the State?

Ms HOEY: I will take that on notice and provide that.

Mr DAVID SHOEBRIDGE: In terms of the mental health assessment service, I have been there and visited that facility.

Ms HOEY: In the MRRC?

Mr DAVID SHOEBRIDGE: Yes. The informal feedback was that because there is a blockage further down the system—there are no beds available at Long Bay—it in fact becomes a de facto holding unit, not even an assessment unit; that, until the beds are made available at Long Bay, people are sitting in the assessment unit because they cannot be sent back into the general prison population. Additionally, some people are being sent back into the general prison population even though they have very serious, untreated mental health issues because someone else has a worse condition. Is that an unfair characterisation of what is happening?

Ms HOEY: I do not think that is unfair at all. I think there is flow issue with mental health patients through the system. That has been acknowledged. It starts a diversion through the system and out into the forensic areas or the more secure—medium and high secure—areas in the custodial setting. The hope is that with the infrastructure program put in by the mental health branch for increased medium-secure and low-secure beds they will be able to get some people out through and that will free it up. I think it is multi-model; there is not one answer to it. We have to do more diversion and stop people coming into the system. I think we have more effective treatment and we are looking at putting subacute areas where people can get some treatment for mental illness and also get some programs for mental illness. We work closely with Corrective Services on that, and then bringing people through out of the custodial setting into secure settings—or local health districts [LHDs], where appropriate—to get mental health treatment in hospitals.

Mr DAVID SHOEBRIDGE: One of the other issues that has been raised with me about logjams in the system is that Long Bay Hospital all tends to be maximum security. Is there a maximum security facility at Long Bay Hospital?

Ms HOEY: That is correct.

Mr DAVID SHOEBRIDGE: Is that because it needs to have a security setting that deals with all-comers so the default is maximum security?

Ms HOEY: That is a Corrective Services NSW issue but I presume that is the reason. I do not profess to know.

Mr DAVID SHOEBRIDGE: But there is at least one wing of it that is full of elderly and frail inmates who are mobility impaired.

Ms HOEY: Yes, there is.

Mr DAVID SHOEBRIDGE: The major health risk is probably a slip, a fall and a broken hip. Would that be an unfair characterisation?

Ms HOEY: The people who are in the Aged Care Rehabilitation Unit [ACRU] are people who require extra support and care, where they would not be able to function out in the normal classification.

Mr DAVID SHOEBRIDGE: So that could be advanced dementia, frailty—

Ms HOEY: Yes, and falls, chronic disease—

Mr DAVID SHOEBRIDGE: And they are being held in a maximum security facility with all of the costs and limitations of a maximum security facility. From a health perspective is there a benefit with maximum security and the costs associated with it for those individuals?

Ms HOEY: I appreciate your questioning but I cannot comment on the security levels of the prisons; that is something you need to put to Corrective Services NSW. My perspective—from health perspective—is that people who need care need care. We provide a level of care that allows them to function. Would it be my choice for them to be in maximum security? Probably not.

Mr DAVID SHOEBRIDGE: It seems to me that the only way those people would be able to escape was if they piled their Zimmer frames against the wall and climbed out on top of them. It seems a ridiculous use of public resources.

Ms HOEY: With all due respect, I think that is a question for Corrective Services NSW because they do the security settings.

Mr DAVID SHOEBRIDGE: My last question in terms of that issue is: We are seeing an increasingly elderly prison population and you would be seeing the cost implications of that for health. Is that right?

Ms HOEY: Yes. We just finished writing our strategy for aged care because we expect that over the next five years there will be increased and longer sentencing, with the added impact of the historical sex crimes on the age of the population. So, yes, we are looking at how we can manage that. We have been lobbying very hard with Corrective Services NSW and working with them to help identify that aged care areas are more appropriate. Unfortunately that is not available right now so we have got to do the best job that we can within the environment that we are given.

Mr DAVID SHOEBRIDGE: But there has just been \$3.6 billion capital expansion program. Are you saying that there has not been a facility built to deal with the increasingly aged and frail part of the prison population?

Ms HOEY: Again, I do not know the plans for Corrective Services for the next five years and their builds. That is a question that really needs to go—I do not have any input into the bed program for Corrective Services NSW.

Mr DAVID SHOEBRIDGE: From a health perspective, would there be a benefit in having a fit-for-purpose facility built purely for an aged-care cohort?

The Hon. TREVOR KHAN: I think you are asking this person to make a comment that relates to policy of government, Mr Shoebridge.

The CHAIR: The witness can answer the question, but I tend to agree.

Mr DAVID SHOEBRIDGE: It is from a health perspective.

The Hon. TREVOR KHAN: I think it falls within the rules of procedural fairness for—

The CHAIR: Perhaps we could ask the witness. Do you feel you are able to answer this question?

Ms HOEY: Yes. From my perspective, of course the patients would benefit from a purpose-built, adequate area for aged-care. Whether that is in policy, that is up to Corrective Services NSW to go ahead with their bed management program. It is not that we have not asked them.

The Hon. PENNY SHARPE: Just to be clear, with all of the new builds that are happening in relation to prison beds, Justice Health does not have any input into the health considerations in relation to those builds.

Ms HOEY: We have limited input. We have input into our clinic areas, which is—

The Hon. PENNY SHARPE: But not into the overall design.

Ms HOEY: No. We have input into our clinic areas and what goes within there and our windows and such things. We can have a bit of a say on that but not on the actual builds.

The Hon. TREVOR KHAN: I am just looking at what seem to be some statistics in terms of women in prison. Obviously our focus is First Nations, but nevertheless you might have to take this on notice to see whether your figures match these. What I have got here is—and I will pick out some of them—24 per cent of women are convicted of illicit drug offences. Would that information as to the offence category be available to your people—if I can describe it that way—at the time of reception?

Ms HOEY: Of their offences?

The Hon. TREVOR KHAN: Yes.

Ms HOEY: Yes. It would be available, certainly if there are drugs involved. But we do quite a comprehensive drug screening on reception and we have a really active drug and alcohol team who would get involved quite early. I think I would again say that we provide the medical and health services and Corrective Services provides the psychological services for drug and alcohol.

The Hon. TREVOR KHAN: Yes. I am not going to go down that argument. You have convinced me on that one that I am asking the wrong person on psychological services. What I am interested in this: One of the statistics here is that 54 per cent of women had used illicit drugs regularly in the 12 months prior to imprisonment. Assuming that figure is correct—and that apparently comes from a somewhat aged paper, the 2009 NSW Inmate Health Survey: Key Findings Report.

Ms HOEY: Again, I would not disagree with that number. In fact, it might even be higher.

The Hon. PENNY SHARPE: Yes, I think it is.

The Hon. TREVOR KHAN: I am saying it is a bit aged.

The Hon. PENNY SHARPE: The 2015—

Ms HOEY: Yes. I think it higher than that.

The Hon. TREVOR KHAN: When you talk about screening in terms of those circumstances—and not all of illicit drug use involves injection—are inmates on reception the subject of screening for hepatitis C and the like?

Ms HOEY: Yes. We have a really robust hepatitis screening program and hepatitis C specifically. We have got some really good outcomes with that. We are really on top with that process. I can give you the figures for our screening and the number of people. But certainly we do hepatitis C and hepatitis B vaccinations. We measure that. That gets reported up to our board level.

The Hon. TREVOR KHAN: Because one of the figures that exists in what I was just reading from says that 41 per cent of women are using drugs in jail or were using drugs in jail at that stage. It is an issue not only relating to health within the jail system but when these women come out.

Ms HOEY: Absolutely. I think the COVID-19 process has shown us that. Because when the visits stop, the drugs stop coming in and the amount of interventions we have had to do with our patients to keep them safe during that time—but, yes, the drug use of all in custody is a real concern. I think, if we are speaking about over-representation, that is where the processes such as the drug court, compulsory drug treatment centres and things can really hold their own.

Mr DAVID SHOEBRIDGE: Drugs are still coming into the jails though, notwithstanding that visits have stopped.

Ms HOEY: Yes. Corrective Services NSW keep that information, but our anecdotal information from our patients is that they are still taking drugs.

Mr DAVID SHOEBRIDGE: Yes. I wonder how they are getting them.

The Hon. PENNY SHARPE: The Government has got their Towards Zero Suicides strategy. Are prisons included in that strategy and is Justice Health part of that?

Ms HOEY: Yes. We received funding to do specific work in that area. We have a very active project happening just now and a research project with Professor Kimberlie Dean as well. We are looking particularly at reception and the screening process and then onto that Health Problem Notification Form [HPNF] process. Funnily enough, it has been identified that the suicide risk for people is in those first few weeks into custody around sentencing and going to court, and then prerelease. Yes, we have got a good program working, which involves

looking at the data, where we can get involved, and the training of our staff but also Corrective staff to look at the signs, symptoms and interventions that we can do.

The Hon. PENNY SHARPE: I have got one more question which, again, goes back to your report, which is very useful. I want to ask you about disability. You do a little bit around disability. My interest is in many First Nations people essentially having a range of disabilities—again, often undiagnosed—and the ability through the prerelease process to work with the NDIS to get people's plans. Can you talk me through what is happening with that?

Ms HOEY: I will just put a caveat in first. Predominately, we would be working with psychosocial disability, so the mental health disability. Corrective Services are the lead for other disabilities. Where it comes in the middle, we decide who is the lead agency.

The Hon. PENNY SHARPE: So you only deal with psychosocial—

Ms HOEY: Disabilities. Yes.

The Hon. PENNY SHARPE: What happens with physical or intellectual disability?

Ms HOEY: Corrective Services take the lead on the care for those people.

The Hon. PENNY SHARPE: So the social workers doing prerelease would be dealing with that, even though there is obviously a lot of medical—

Ms HOEY: We would be involved. Just because we are not taking the lead—we would certainly be involved. I can tell you about the process for NDIS and the access to that.

The Hon. PENNY SHARPE: Yes.

Ms HOEY: There is NDIS support that we can have from custody. We find it quite difficult to access the NDIS packages for our patients. I think that, just by the very nature of people being in custody, it is hard to do that.

The Hon. PENNY SHARPE: Sure, being able to access them is hard. But what about the planning?

Ms HOEY: If it is mental health, we would coordinate the planning. Just recently we started a transition program where we work with people six weeks prerelease and six weeks after. In that, we would be working with NDIS and we have put an application in to have some NDIS positions actually within the jails to work with us, because it can be quite a complicated process. Health and disabilities working together is difficult because we speak different languages sometimes. I know that is not an excuse, but it is a reason. To get our patients over the line with disability packages, particularly when they do not necessarily know or have stable accommodation or housing—

The Hon. PENNY SHARPE: Or access to get all of the functional assessments that are required to actually even be eligible for a package.

Ms HOEY: Correct.

The Hon. PENNY SHARPE: Is Justice Health able to provide support with some of that? Someone comes in previously undiagnosed who clearly has a range of disability that would make them eligible for NDIS. Is there enough space, time or resource to allow people to work through that process so that they can then leave with a package?

Ms HOEY: I will speak about the mental health component. Because that is what we would be leading on. If it is about a disability package—

The Hon. PENNY SHARPE: Any of the other stuff is all Corrections, is it?

Ms HOEY: Correction Services. We do that through their services and programs.

The Hon. PENNY SHARPE: Okay. That is news to me. I just note that your own report says that 42 per cent of women in the system have a disability—this is First Nations women—and 23 per cent of men do.

Ms HOEY: Correct.

The CHAIR: My question relates to those within the prisoner population that have been diagnosed with having various forms of mental ill health: anxiety, schizophrenia, depression and obviously there is a range of others. A number of those prisoners may have been undiagnosed in the past, but I think it is a fair reading of the evidence that we have received that a lot of those mental ill health issues or substance abuse problems have been

significant contributors to the behaviours that have led to them being in the prison system. This is not a criticism of you or your colleagues but is it the practical effect of the current regime that what you do at best helps manage those conditions, rather than trying to proactively achieve a level of good health such that when people leave prison those problems do not cause them to return? Is that a fair reading of the resourcing that you currently have?

Ms HOEY: Yes, I think it is challenging for us. Our vision is to return healthier people to the community. In the mental health area, the number of people with mental health issues is overwhelming. You are correct that we do management. The psychological interventions that Corrective Services provide pre-release are helpful but they are about recidivism and criminogenic nature, not necessarily about health in whole. We do not have the capacity to do the psychological interventions that somebody would perhaps receive in the community.

The Hon. TREVOR KHAN: When you use the word "overwhelming", do you mean that in a deliberate sense?

Ms HOEY: There are a lot of people in prison with mental health issues that require intervention.

The CHAIR: Is that 30 per cent, 40 per cent, half or more?

Ms HOEY: I would say probably more than half. I would rather take it on notice to give you the actual figures.

The CHAIR: I am happy for you to do that.

Ms HOEY: It is certainly prevalent. I am not just relating the severe and enduring mental illness that Forensic Mental Health looks after, which is our bread and butter. That is the really severe cases on forensic orders or community treatment orders. I am referring to people with mental health challenges and wellness issues.

The Hon. PENNY SHARPE: It is 42 per cent of men and 51 per cent of women.

Ms HOEY: Thank you.

The CHAIR: A situation where those prisoners coming into prison are properly diagnosed and then given an active regime of treatment that would help them really address those conditions to the extent that treatment can help them do so—to try to avoid reoffending on those bases—would require a significant enhancement of the resources that you currently have. Is that correct?

Ms HOEY: I will take that on notice and I will be able to tell you. What we are talking about is equivalency to what people receive in the community.

The CHAIR: Using that as the benchmark, then, what level of increased resourcing would Justice Health need to be able to do that?

Ms HOEY: I will take that on notice.

Mr DAVID SHOEBRIDGE: Is it fair to say more than you currently have?

Ms HOEY: I would say it is more than we currently have.

The CHAIR: I would say it is significantly more than is currently available.

Mr DAVID SHOEBRIDGE: The common statement about prisons is that they have now become holding cells for people with chronic mental illness because those services are not otherwise available in the community.

Ms HOEY: I think that it goes back to diversion. Stopping people coming into custody wherever we can is the first response, but diversion is hard because you have to have somewhere for somebody to go. You have to have stable accommodation, stable health services, stable mental health services and stable communities that can look after those people. As I said in my opening statement, it is not easy. A whole-of-government shift needs to happen to make sure that we stop people coming into custody.

The CHAIR: Ms Gordon, you spoke about the Closing the Gap targets in your opening statement. We have received a number of submissions that have gone to those different benchmarks with the entreaty that the Committee recommend a significantly more ambitious rate and radius in terms of those targets. Given the level of intergovernmental cooperation that is required to achieve those, is exceeding those currently agreed targets a realistic proposition or will we simply be struggling to meet the targets that have currently been agreed to?

Ms GORDON: The targets that we currently have are definitely ambitious.

The CHAIR: The existing targets are ambitious.

Ms GORDON: The existing targets are ambitious. That is not to say that those targets cannot be improved on from a New South Wales perspective. In terms of the way that Closing the Gap will work, we are currently working in partnership with the NSW Coalition of Aboriginal Peak Organisations to build the jurisdictional plan for New South Wales. Within that jurisdictional plan for New South Wales will be some of the data, measures and elements that may be needed to either meet or exceed those targets. That jurisdictional plan needs to be developed by July 2021. It is a lot of work to do, but it is about being able to get all of those agencies to come together in different ways. If we stood those targets alone, they are incredibly ambitious. But there are many elements that lead to incarceration. Improving our education and health outcomes are among the socio-economic targets in Closing the Gap.

The CHAIR: Given the nature of those targets, they are of necessity medium- to long-term in terms of improving the situation in which people find themselves. They simply cannot be accelerated to a great degree. Would that be something that you agree with, or do you think that there is some way in which we could accelerate some of those?

Ms GORDON: I would need to take it on notice in terms of particular elements of Closing the Gap that we could ultimately accelerate, but doing that will take a whole-of-government change and a whole-of-government element. I will refer to some of my notes. There is currently an existing effort to reverse Aboriginal incarceration rates. There are programs to encourage compliance with apprehended domestic violence orders, for example. There are measures that speed up court processes, access to diversionary schemes and programs to address fine and penalty debts and driver licensing programs. They are a couple of elements that may be able to change the incarceration rates that we have currently.

The Hon. TREVOR KHAN: Before you go on, sorry, we have now heard a lot of evidence relating to some of the causes of the increase in incarceration rates. At least in more recent times that would seem to be—I perceive greater enforcement by the police of ADVOs. That is leading to particularly more men ending up in custody for breach of their ADVOs and also more domestic assaults being charged and resulting in prison. To an extent that is Government decisions resulting in an increase in incarceration rates, but that is an editorial comment that I make. I do not necessarily say that the way of fixing the incarceration rates should be at the expense of women getting beaten up at home. But where you are talking about programs that encourage greater compliance with ADVOs, what is the nature of those programs and how widespread are they?

Ms GORDON: I will have to take that on notice. I do not have that in my notes. I will confer with my—

The Hon. TREVOR KHAN: Could you? Because that seems to me to be a practical issue.

Ms GORDON: We are happy to take that on notice and come back to you with that.

The Hon. TREVOR KHAN: And whether there are any other programs that address the issue of domestic violence. I am thinking in the context of intensive correction orders and community correction orders. What is actually available that magistrates can direct people to do that may be an alternative to full-time imprisonment? We will not get our incarceration rates unless magistrates have avenues that they can push people through. I am interested in that style of material, which might be constructive.

Ms GORDON: Absolutely, we can provide that.

Mr DAVID SHOEBRIDGE: Or even before magistrates so that communities have referral services. If you know that a family is in trouble, if your brother's or sister's families are in trouble, what services can you refer people to so that the police and jail are not the only solution and so that you actually address the offending behaviour?

Ms GORDON: That lends itself to one of the four priority reform areas in Closing the Gap, which is building the Aboriginal community controlled sector to be able to do just that. A range of services that the Aboriginal community controlled sector can provide is certainly one of the elements that is part of Closing the Gap.

Mr DAVID SHOEBRIDGE: Are there funding targets for that?

Ms GORDON: At the moment what we have is what came out of the recent budget, which is \$7.4 million towards building the Aboriginal community controlled sector more broadly. We contribute to that in terms of the national targets or the national elements of Closing the Gap. That \$7.4 million will be looked at in terms of what might be the areas where those particular Aboriginal Community Controlled Organisation areas can be built. There are four particular areas that we are looking at in those initial sectors: early childhood, housing, health and disability.

We note that in New South Wales the Coalition of Aboriginal Peak Organisation [CAPO], which has seven Aboriginal community-controlled organisations inside of that, is well-placed in New South Wales. The Coalition of Aboriginal Peak Organisation has the NSW Aboriginal Land Council; the Aboriginal Health and Medical Research Centre, the Aboriginal Community Controlled Health Organisations or ACCHOs, as we would call them; we have the First Peoples Disability Network; services such as Link-Up; the Aboriginal Legal Service NSW/ACT; as well as the NSW Child, Family and Community Peak Aboriginal Corporation, or AbSec. In New South Wales we have a reasonably well-developed Aboriginal community-controlled sector, but there is absolutely a need to develop that more.

Mr DAVID SHOEBRIDGE: The \$7.4 million will not even touch the sides.

Ms GORDON: Not initially. That contributes to the national realm, from a Commonwealth perspective, so it is a joint fund. All of the States and jurisdictions have put into that joint fund. The Commonwealth has given \$46.5 million, but we would need to confirm that that is the case. Each State and Territory has put in their own contributions. Ultimately it may well be either based on our Indigenous population or our population overall.

The Hon. PENNY SHARPE: Ms Gordon, I have a question about the monitoring of the various programs. Closing the Gap falls to you? Are you the lead monitoring all of that?

Ms GORDON: Yes, Aboriginal Affairs is coordinating.

The Hon. PENNY SHARPE: The Ombudsman came before us and said it could have more of a role around oversight of some of these issues, but it is quite limited to OCHRE, is that right?

Ms GORDON: Yes.

The Hon. PENNY SHARPE: Does that capture Closing the Gap as well?

Ms GORDON: OCHRE will ultimately capture some of Closing the Gap. They are really well aligned in terms of the OCHRE initiatives and Closing the Gap. OCHRE is more broad, but as I mentioned before there are a number of initiatives inside OCHRE. One of those realms is your local decision-making. I will have to get the others ones off the top of my head. In terms of our OCHRE initiatives, there are five opportunity hubs. Opportunity hubs are obviously about increasing the educational outcomes of young people.

The Hon. PENNY SHARPE: What is an opportunity hub?

Ms GORDON: An opportunity hub is a place where young people and other people more broadly can go to be able to increase their educational outcomes. They may be inside of those realms. There may be tutors or whatever is available for those young people in those spaces.

The Hon. PENNY SHARPE: Is it run through Education?

Ms GORDON: I will have to take that on notice.

The Hon. PENNY SHARPE: Yes. I would like to know where they are located, who is involved with them and what they do. It is very unclear to me.

Ms GORDON: Yes. Sorry, it is Training Services NSW.

The Hon. PENNY SHARPE: TAFE?

Ms GORDON: TAFE is part of Training Services NSW, yes. There are opportunity hubs in Campbelltown, Dubbo, Tamworth, Liverpool and upper Hunter. There is an office located at Singleton and that covers the upper Hunter area. Liverpool started delivering services in January 2020. These opportunity hubs provide additional support for students to be able to get through school, and then more so what happens post-school, being able to go into traineeships, apprenticeships and further education at TAFE NSW, for example.

The Hon. PENNY SHARPE: School to work transition, yes.

Ms GORDON: Yes.

The Hon. TREVOR KHAN: Are these being rolled out now?

Ms GORDON: Yes. They currently exist. We currently have five, as I just mentioned.

The Hon. TREVOR KHAN: Right. It is not going to help somebody in Narrabri or Moree, is it?

Ms GORDON: Not at this stage with those hubs, but there is the potential for more in the future. But with Closing the Gap in particular there may be other opportunities, noting that a couple of the targets in Closing

the Gap are very much related to educational outcomes and increasing the opportunities for having much more positive educational outcomes out of those particular initiatives. We have the Aboriginal Education Consultative Group, which I apologise for missing out of the CAPO group. The Aboriginal Education Consultative Group is very much alongside all of the educational outcomes with the Department of Education, and the Premier's Priorities also contains one of those areas.

Mr DAVID SHOEBRIDGE: The Department of Communities and Justice [DCJ] says that achieving better outcomes for Aboriginal people, family and communities is its number one corporate objective. Were you aware that that was their number one corporate objective?

Ms GORDON: I would have to take that on notice. No, not specifically.

Mr DAVID SHOEBRIDGE: They say that they have an Aboriginal Reference Group in place and it has been since 1985. Are you part of that?

Ms GORDON: Let me just check and confer. My understanding is that there are multiple reference groups given the size of DCJ.

Mr DAVID SHOEBRIDGE: They say that they have created an Aboriginal and Torres Strait Islander Cultural Capability Framework, which they are seeking to implement. Were you consulted on that and are you part of that?

Ms GORDON: Again, I would have to take that on notice, noting that I am relatively new to the role this year and I have obviously had a fairly big chunk of the year taken up with COVID.

Mr DAVID SHOEBRIDGE: Apparently this has been in place since 2017 in one form or another. Initially it was adopted by Family and Community Services, but it is now part of DCJ more broadly.

The Hon. PENNY SHARPE: I will just add to that. If you are taking that on notice, could you explain to us those frameworks? At the beginning you outline that each of the departments has a memorandum that they work on with you through the OCHRE process to address the key priorities. Can you let us know whether the things that Mr Shoebridge has been talking about are part of that agreement, or whether they sit outside of that agreement?

Ms GORDON: Sure, I am happy to take that on notice.

Mr DAVID SHOEBRIDGE: For me, in the context of evidence we had from the Ombudsman, OCHRE has been declared to be a program under a provision of the Ombudsman Act, which allows the Aboriginal Deputy Ombudsman to oversight a government program. OCHRE has oversight by the Ombudsman, therefore there is a semi-external body holding different agencies to account. Their evidence was that there is this Aboriginal engagement process framework, which has now been adopted by DCJ. I am not sure which one it is; it may be the Aboriginal and Torres Strait Islander Cultural Capability Framework. I cannot recall the exact terminology now, but there is a framework or a program that has been adopted by DCJ across the whole of that organisation for Aboriginal empowerment and Aboriginal engagement. They said that that has not been designated under the Ombudsman Act and therefore they do not have oversight and they cannot assist in the implementation and following of that. Were you aware of that?

Ms GORDON: I would have to say that I am not currently, but it is certainly something we can take on notice. There may have well been involvement with that prior to my coming into the role.

Mr DAVID SHOEBRIDGE: This is not in any way a criticism of you, Ms Gordon, it really is not, but in some ways Aboriginal Affairs has a huge mandate but almost no organisational power to deliver it. If Aboriginal Affairs is not part of these bigger wheels in government, like DCJ implementing its number one priority—

The Hon. PENNY SHARPE: That sounds like a question for Minister Harwin, not for Ms Gordon.

The CHAIR: I think that is probably right. Is there a question, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: What are the structures that you have? Have you engaged with DCJ, for example? So much of this lies with DCJ.

Ms GORDON: Yes, there is quite a big element that certainly does lie with DCJ. Just to clarify, to go back a step in terms of the OCHRE initiatives, I mentioned opportunity hubs, but there is the Aboriginal Language and Culture Nest—I just want to be clear about these—the healing forums, the Aboriginal Economic Prosperity Framework, the Solution Brokerage and the Connected Communities, of which there are currently 15. I just wanted to clarify the OCHRE initiatives that sit as a part of those ultimate initiatives.

Absolutely there is a large component, from an Aboriginal and Torres Strait Islander perspective, that sits with DCJ. Part of the way that our agency works—we do work right across all of the other agencies. In terms of the structure that we have got set up, we do have a policy element in our agency so that anything that flows through—we do have opportunity to connect with each of those agencies across the space. I think there can be improvement as to how that is done. I can absolutely say that in terms of Close the Gap and the necessary need to have the whole of government on board, Aboriginal Affairs will have a critical role in being able to do that across agencies.

Mr DAVID SHOEBRIDGE: But if you have got Close the Gap sitting in your inbox and then you have got—a huge amount of that work must be implemented through DCJ and they have got an entirely separate Aboriginal engagement framework that you are not a part of. How is Close the Gap ever going to work?

Ms GORDON: In terms of DCJ my feeling would be that we have had involvement, but it would be something that I need to take on notice to clarify that that is the case. I would not imagine that there is something that we would not know in terms of DCJ, but just let me clarify that would be the case. We would need to take that on notice and check where that is, ultimately, and I take your point around that. But in terms of being able to have the remit around Close the Gap, it is a way of working. Aboriginal Affairs moving into the Department of Premier and Cabinet will absolutely mean—as far as a central agency in calling into account agencies across the realm. It will take a whole of government approach to reach—and even exceed, where we need to—those targets that are in place.

Mr DAVID SHOEBRIDGE: I might see if, on notice, we can give you an extract of the Ombudsman's evidence about this, to get Aboriginal Affairs' perspective on whether or not the relevant declaration under the Ombudsman Act would be worthwhile.

The CHAIR: That would be fair. Ms Sharpe?

The Hon. PENNY SHARPE: I have got one more. I think this was to Mr Trindall, actually. Obviously the focus of this inquiry is deaths in custody and the oversight mechanisms that occur with that. Are you able to take us through what role your area undertakes in terms of recommendations from coroners inquests or the kind of feedback loops? Maybe it is to Ms Hoey, as well. I am just interested in the feedback loops around once findings are made and how you are able to drive that into the practice and the work of Justice Health.

Mr TRINDALL: In terms of our unit in particular we make sure that we are part of the investigation internally. If we are doing a root cause analysis [RCA], for example, then once the information has been tabled to us that there has been an Aboriginal death in custody and it is going to the coroner, we will be part of the investigation. But, as you can imagine, we do have an Aboriginal workforce that—through association or family members, it is very sensitive for a lot of our Aboriginal workforce. If we have only got 40-odd workers across the network then there are some challenges with association. If it is a family member then there is a conflict. It is one of those challenging issues that we need to manage moving forward. But if it is feasible then we definitely do have Aboriginal representation as part of the RCA process internally.

The Hon. PENNY SHARPE: And so, root cause analysis occurs under—is it just critical incidents and deaths in custody? What is the gamut? What triggers it? I know it is different in different parts of Health.

Ms HOEY: Justice Health and Forensic Mental Health Network—we work under the auspices of NSW Health in our investigative processes. If there is a death in custody and it is an unexpected death in custody, we would definitely go straight to a root cause analysis.

The Hon. PENNY SHARPE: Yes, every one. Are there other circumstances where there is root cause analysis or is it just death?

Ms HOEY: No. The chief executive can call for an RCA for any serious incident that we believe requires that amount of investigation. Yes, it is mandatory for unexpected death in custody, but it can be utilised for any investigative process that the chief executive or myself—I would ask the chief executive to put that level of scrutiny on a critical incident.

The Hon. PENNY SHARPE: Yes. One of the reasons I am asking is just that a lot of the evidence we have had has been the lack of trust, particularly from families who have had someone die in custody, around the process, and their very strong desire to have more First Nations people involved in the investigation of those. I am really interested in your point, Mr Trindall, about—it is great that you have got around 40 staff, but perhaps that is not always enough to guarantee that there would be Aboriginal people involved in everyone, because of the sensitivity. Is that what you are saying to us?

Mr TRINDALL: Yes, definitely. Also, people need to understand that a lot of our workforce is front line services. Being part of an investigation process does require a new skill set to do investigations, et cetera. I have been a part of a number of them through the network and it is very challenging.

The Hon. PENNY SHARPE: Yes.

Mr TRINDALL: In particular being an Aboriginal person working in the network, you are confronted with the daily things that occur in our network between Aboriginal deaths in custody, et cetera. It is one of the things that we are trying to navigate ourselves as a network, to try and improve and upskill our existing workforce, but also knowing how we can support our existing workforce as well. Investigating an Aboriginal death in custody does create a lot of challenges. There are a lot of issues that come with being an Aboriginal person working in a network with both your community obligations and also your professional obligations. It is a very tricky area, but we are actually on a good journey around trying to train up our existing workforce and, in particular, supporting them as well.

The Hon. PENNY SHARPE: In terms of what this Committee could recommend that would actually assist your workforce, what are the things that you need? You have sort of touched on those. Obviously training people up around investigations and participating in things like root cause analysis—supporting people who have been through those, given that they are very challenging. Is it also an issue of just actually needing to recruit more Aboriginal staff?

Mr TRINDALL: Definitely. The root cause analysis process is not for everyone. If your day-to-day operation is around working in front line services, for example, then it does require a new skill set to take away from your core function and your core business. Knowing that a lot of our existing Aboriginal workforce is already stretched in certain parts of the organisation because they might be covering a larger gamut within different centres in a rural area, the expectation of trying to bring an Aboriginal worker out of the centre—who is looking after 20 or 30 Aboriginal people in the different centres—does create more complexity. It is more around identifying where our wins are in this opportunity with the RCA process, but also making sure we have got the right people doing it, because it does require that level of engagement. Also, the skill set that is required with the investigation and knowing that the majority of the Aboriginal workforce do have known associates in the network does create another layer of complexity. It is something that we need to navigate, but also we are working towards it.

The Hon. PENNY SHARPE: Yes. Ms Hoey, would you be able to provide to the Committee—I know that you will not know the answer to this today—an idea of the numbers of root cause analysis that are participated in every year and, where a First Nations person has died, whether there is an involvement through Justice Health of your First Nations staff?

Ms HOEY: Certainly, yes.

The Hon. PENNY SHARPE: I was up to know what the gap is between what you would like to have and how many you are able to do, given the difficulties that you have outlined. Thank you.

The Hon. TREVOR KHAN: Can I ask something that sort of flows along the same line? I think it is to Ms Hoey. I am going to deal with a particular instance; that is, the Tane Chatfield death. We took evidence yesterday from Corrective Services about what they did. I am just going to ask a couple of questions in regards to that. You might have answered it partly in terms of the root cause analysis. Firstly, was Justice Health separately represented in the inquest from Corrective Services or was there essentially a joint legal team that was appearing before the coroner?

Ms HOEY: Justice Health is independently represented at coroners.

The Hon. TREVOR KHAN: Yes. I would have thought certainly counsel would have been encouraging that outcome in the light of the Tane Chatfield matter.

Ms HOEY: While we are speaking about Tane Chatfield, can I just express my sympathies to the Chatfield family and the community?

The Hon. TREVOR KHAN: Of course. I will put aside the dynamics of appearing in a coroner's inquest where you have got multiple counsel appearing for various government agencies and the dynamic that creates for the family. That is not your fault, but that is just the nature of these things. We heard very extensively in terms of the investigation that went on within—although they would say without or outside of—Corrective Services, in terms of what occurred in that case. Have your investigative mechanisms got some independence from the operational parts of Justice Health? Or is it not so independent?

Ms HOEY: I did listen to that line of questioning so I have thought about it. When a death in custody occurs, we immediately do a huddle with the team to see if there is anything we need to do now to stop it recurring again. That is our immediate action. I am informed immediately and I inform the chief executive, so it is up to the high standards at the very beginning. What happens is that there is a process through clinical operations which is what I run, which is the grunt of the service and providing the care. We would be doing the huddles—is there anything we need to do now. Meanwhile, our clinical governance department is kicking into motion of doing a reportable incident brief up to the ministry. That gets reported within, I think, three days. I do not want to be taken on quote for that.

That gets reported up then we would commence a root cause analysis process. On that root cause analysis there would always be people independent of the area that it occurred. We cannot always get people independent of the network because we are quite specialised and not everybody would know our environment. We do often go out, for example, if there was a death which was, say, related to respiratory, we would go out and get somebody with respiratory expertise to come in because we do not necessarily have the expertise and then that investigation would be done. The recommendations coming from that are signed off by our chief executive and then a reported up to the—I think it is called the patient safety board up to the Ministry of Health. They would monitor and govern what happens from there. It is not necessarily independent of Health, but it is independent of the network which is a statutory body within Health. Is that what you want?

The Hon. TREVOR KHAN: You have pretty well hit the nail on the head. If you heard the evidence yesterday and the line of questioning, and I obviously heard what you said in your opening statement, you would agree with me that if there was to be some independent oversight of Corrective Services in terms of a death in custody, that independent oversight would also have to extend to Justice Health. That would necessarily be the case?

Ms HOEY: Yes, that is probably a question for policy. I have absolutely no issue if the outcome from the inquiry is that there is more independent oversight.

The Hon. TREVOR KHAN: I am not asking you to jump into our boat, but from a logical point of view, if you are going to have independent oversight of corrective services you cannot cut Justice Health out of it.

Ms HOEY: No, definitely not. In a death in custody so often there are joint recommendations and we have to work together to put the resolutions into place, so I do not think you could probably split that. But that is for you guys to—somebody bigger than me to decide.

The Hon. TREVOR KHAN: Somebody bigger than us actually.

The CHAIR: Justice Health is a part of Corrections or a part of Health?

Ms HOEY: Health.

The CHAIR: That is what I thought.

Ms HOEY: We are a statutory body of NSW Health.

The CHAIR: That is right. It is a health district of its own.

Ms HOEY: A speciality network within NSW Health.

Mr DAVID SHOEBRIDGE: So it would need an express statutory extension.

The Hon. TREVOR KHAN: Exactly. That is all I was getting at. Otherwise we miss part of the exercise and you would have a turf war as to where it fell.

Mr DAVID SHOEBRIDGE: Yes.

The Hon. TREVOR KHAN: The same can be said in terms of juvenile justice. They fall in a separate category as well.

Mr DAVID SHOEBRIDGE: Is there a current external body that oversees Justice Health in terms of if there is a suggestion of a failure of duty of care or inadequate medical practice?

Ms HOEY: The Health Care Complaints Commission [HCCC].

Mr DAVID SHOEBRIDGE: And has the HCCC undertaken an investigation into any aspect of Justice Health's work in the past three years?

Ms HOEY: We have quite a lot of communication with HCCC. Patients write to them and to investigate we reply to that and respond to that. They are also our body that we would do any notifications through to Australian Health Practitioner Regulation Agency [APRHA] for any practitioners that we have concerns with.

Mr DAVID SHOEBRIDGE: Because I have seen significant reporting about the lack of medical care being a causal element in Aboriginal deaths in custody. There is a variety of statistics I could cite to you that have been reported in the past two years. Are you aware of any data yourself?

Ms HOEY: I would take that on notice to be able to give you that data. I do have all the data of all the recommendations that we have had from coronial investigations, but I certainly could not spout them today. I will take that on notice if you tell me exactly what you want, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: To the extent to which lack of medical care or inadequate medical care was in whole or in part causative of a death in custody, do you have any data on that?

Ms HOEY: I will take that on notice.

The CHAIR: I note the time. I thank the witnesses for their time, their attention, their insights and their evidence. The Committee has resolved that answers to questions taken on notice will be returned by Friday 22 January 2021. The secretariat will be in contact with you about those matters you have agreed to take on notice.

(The witnesses withdrew.)

(Short adjournment)

FIONA RAFTER, Inspector of Custodial Services, affirmed and examined

The CHAIR: I now welcome our next witness, Ms Rafter. Do you have a brief opening statement you wish to make to the inquiry?

Ms RAFTER: Yes, I do. Thank you for the opportunity to appear before you today. Firstly, I would like to acknowledge the traditional owners, the Gadigal people of the Eora nation. To assist the inquiry with its work, I would like to provide some background about my role and functions as the Inspector of Custodial Services as well as the activities of my office. The inspector is an independent statutory office created in October 2013 pursuant to the Inspector of Custodial Services Act 2012. The position of the inspector is appointed by the Governor of New South Wales. It is independent of Corrective Services NSW, Youth Justice NSW, and Justice Health and Forensic Mental Health Network. It reports directly to Parliament. The independence of the role of the inspector is reinforced by section 19 of the Act which makes it an offence to obstruct, hinder, resist or threaten an inspector or their staff in the exercise of functions under the Act. The inspector is one of a number of independent statutory agencies that play an important role in providing oversight of the custodial system in New South Wales.

Each agency has a separate and specific function to provide the necessary oversight to the closed environment of custodial facilities. Resources are valuable and it is important that we do not duplicate our functions. The New South Wales State Coroner is responsible for investigating and inquiring into deaths in custody. That addresses recommendations seven to 40 of the Royal Commission into Aboriginal Deaths in Custody. The New South Wales Ombudsman has a broad remit across government but has a small custodial team that focuses on receiving and resolving inmate complaints. That responds to recommendation 176 of the Royal Commission into Aboriginal Deaths in Custody. The Independent Commission Against Corruption also has a broad remit that includes alleged misconduct and corruption by Corrective Services staff, and the Law Enforcement Conduct Commission performs a specific role relating to police conduct and the review of police critical incidents.

My role does not duplicate their roles, and the Inspector of Custodial Services Act guides my relationship with other independent statutory agencies, except the Coroner. I am able to refer individual complaints to the Ombudsman and I am obliged to refer alleged misconduct or corruption to the ICAC or to the Law Enforcement Conduct Commission. The creation of an independent inspector responds to recommendation 328 of the Royal Commission into Aboriginal Deaths in Custody, and is distinct from the other oversight agencies that are primarily reactive in nature, given the focus of inspection is prevention and system improvement. Recommendation 333 of the royal commission is about the ratification of the Optional Protocol to the Convention against Torture [OPCAT], which aims to prevent the mistreatment of people in places of closed detention through a regime of regular, independent inspections.

I note that in the second reading speech of the Inspector of Custodial Services Bill in May 2012, it was foreshadowed that the inspector could be deemed to be part of the National Preventive Mechanism to assist the State in meeting its OPCAT obligations. The Commonwealth Ombudsman completed a baseline assessment of Australia's OPCAT readiness last year. They found that the inspector has the necessary statutory powers and independence and meets the requirements of a National Preventive Mechanism [NPM]. The inspector is therefore OPCAT compliant and, in my view, any structural reform of the Office of the Inspector of Custodial Services could impact the requirements of an NPM. The Western Australian Inspector of Custodial Services, on which the New South Wales inspector is modelled, has already been announced as one of the NPMs for Western Australia. A focus of my office in 2020 has been preparing for the implementation of OPCAT. We have reviewed our inspection methodology and implemented a new visits methodology to increase regular visitation.

We have reviewed our inspection standards and entered into a collaboration with the University of Sydney to develop a survey tool for use during inspections. We continue to strive towards increasing the diversity of our staff and expert consultants. To date we have had three Aboriginal staff. We currently have one Aboriginal employee and are recruiting for an Aboriginal inspection and liaison officer. That is a similar position to that which exists within the Western Australia Office of Inspector of Custodial Services. Section 17 of the Act provides that the parliamentary Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission has oversight to monitor and review the exercise of the inspector's functions. The activities of the inspector relate to the inspection of custodial facilities and services as required by the Act. Those functions are not triggered by the receipt of a particular complaint, as is the primary case for the Ombudsman, nor in respect of a particular death in custody, as is the case for the Coroner.

Rather, the purpose of the inspector is to proactively provide independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice. The inspector also monitors broader thematic and systemic issues arising from the inspection of adult and juvenile facilities and services. The principal function of the inspector, as set out in section 6 is:

- (a) to inspect each custodial centre ... at least once every 5 years,
- (b) to inspect each juvenile justice centre ... at least once every 3 years,
- ...
- (d) to report to Parliament on each such inspection ...

Section 6 also empowers the examination, inspection or review of any custodial service at any time and report to Parliament on each of those. I can also report to Parliament any particular issue relating to the functions if it is in the interests of any person or in the public interest to do so. The inspector is also required to report to Parliament on any particular issue or matter upon request by the Minister. For example, the reports *Use of Force, Separation, Segregation and Confinement in NSW Juvenile Justice Centres* and *The Management of Radicalised Inmates in NSW* were prepared as a result of ministerial requests. The inspector may include advice or recommendations in the reports and may exercise functions on my own initiative, at the request of the Minister or in response to a reference by the joint committee or any public authority or public official.

The Act also requires that progress on implementation of recommendations is publicly reported through my annual report. As of December 2020, according to the fortnightly population report provided by Corrective Services, there were 36 correctional centres, six residential facilities, twelve 24-hour court services and six juvenile justice centres. That is 60 custodial facilities. The inspector also has jurisdiction for 42 courts cell locations, a fleet of 182 inmate transport vehicles and a detainee transport fleet of 23 vehicles. That is a substantial body of work and the schedule for inspections is determined in section 6 of the Act. In addition to inspections, we conduct liaison and monitoring visits to custodial centres to inform our inspection activities and monitor the implementation of our recommendations. Since my appointment, the resources of the office have grown from four to 14.2 full-time equivalent staff, in addition to myself. Expert consultants are also engaged for the purposes of assisting with the conduct of inspections, the preparation of various reports and to enhance my capacity to examine specialised operational areas requiring particular expertise. For example, I engage health practitioners, Aboriginal Elders, operational and security experts, inspectors from other jurisdictions and academics to assist me with my inspections and reports.

The inspector is also charged with the oversight of the official visitors program, conducted under the Crimes (Administration of Sentences) Act 1999 and the Children (Detention Centres) Act 1987, including advising, training and assisting official visitors to perform their functions. We have 94 official visitor positions: 82 for adult corrections and 12 for Juvenile Justice. Amongst the other functions, the official visitors provide me with a six monthly report on conditions. When I commenced as inspector there were no Aboriginal official visitors appointed to Juvenile Justice facilities and there were three Aboriginal official visitors for the entire adult correctional system. This was a significant concern for me. There are now five Aboriginal Juvenile Justice official visitors and we currently have 11 Aboriginal official visitors appointed to 20 centres and have recommended the appointment of a further three Aboriginal official visitors to five custodial facilities. Two Aboriginal statewide official visitors attend centres that do not have an Aboriginal official visitor appointed. Section 6 (1) (d) of the Act requires me:

- (d) to report to Parliament on each such inspection, examination or review,

This complies with the requirements of the OPCAT and differentiates the role of the inspector from, for example, the Ombudsman's investigations. Since my appointment in March 2016, my staff and I have undertaken approximately 200 liaison monitoring visits to custodial centres and 66 custodial centre inspections across New South Wales. That translates on average to approximately three visits and between one and two centre inspections each month. We have tabled 13 significant reports in Parliament that relate to 60 custodial facilities and include 395 recommendations directed towards Corrective Services, Youth Justice, Justice Health or the relevant private provider where a custodial centre is operating under that model. Over the 2019-20 financial year, despite COVID-19, my staff and I undertook 11 inspections and 54 liaison visits, and met our mandate to inspect Youth Justice centres every three years.

In that period four reports were tabled in Parliament relating to the inspection of 23 custodial facilities: *Women on Remand*; *Five Minimum Security Correctional Centres in Non-Metropolitan NSW*; *Programs, Employment and Education*; and *Residential Facilities and the Compulsory Drug Treatment Correctional Centre*. We have also implemented an inspection methodology for individual custodial facilities having regard to our

inspection standards and have moved away from only themed based or multi-centre inspections. More recently in the 2020-21 financial year to date, we tabled five reports, continued a regime of COVID-19 monitoring, conducted 41 liaison visits and conducted one significant inspection. The reports recently tabled include the inspections of *Mary Wade Correctional Centre, Kariong and Kirkconnell Correctional Centres and the Integration Support Centre, Macquarie and Hunter Correctional Centres*—commonly known as the rapid-build prisons—*Cooma Correctional Centre and Oberon Correctional Centre*. The investigation of individual complaints, suspected criminal conduct, misconduct, corruption and deaths in custody are not within the remit of the inspector; instead, they are within the remit of other agencies, such as the Ombudsman, the ICAC and the Coroner.

Division 3 of the Inspector of Custodial Services Act sets out the relationship between the Inspector with other agencies, including the Ombudsman and ICAC. It provides for the Inspector to enter into arrangements with them on certain matters. Such arrangements have become embodied in memoranda of understanding between the Inspector, the Ombudsman and ICAC respectively. For example, the MOU in place between the Inspector and the Ombudsman defines the distinct and unique roles of each agency and sets out arrangements for which the Inspector and the Ombudsman are empowered and required to exercise their functions, including, for example, in relation to information exchange.

Unlike the Ombudsman, the Inspector is not specifically a body with an investigative function nor does it have a complaints handling role. Rather, it is an inspectorate and provides external scrutiny of the operational practices of custodial facilities and services provided on a proactive rather than reactive basis. The Inspector also monitors broader thematic and systemic issues arising out of that external scrutiny and maintains ongoing communication in consultation with the Ombudsman, amongst other stakeholders, regarding complaint trends and areas of interest for inspection. It is not the remit of the Inspector to investigate individual deaths in custody; however, to the extent that such deaths raise systemic or thematic issues of concern, it can fall within my jurisdiction. I can make them a focus of my inspections or I could conduct a thematic review and report to Parliament in relation to them.

Any unnatural death of an Aboriginal person is a tragedy. I am mindful that, under the Coroners Act, the Coroner is charged with the responsibility of investigating individual deaths in custody. I am respectful of the Coroner's primacy in investigating such deaths and do not interfere with their inquiries. The Inspector's role is distinct from that of the Coroner's. It is to proactively look to systemic issues. I maintain my own records about the cause of death—for example, a natural or unnatural death—and my records in relation to deaths in custody also include information about whether a person is Aboriginal. Although it is not a formal requirement, I receive notifications of any death in custody from Corrective Services. I also monitor the Coroner's findings and recommendations surrounding deaths in correctional facilities. If it was determined that I should have an investigative function for critical incidents, including deaths in custody or escapes, such as the ACT Inspector of Custodial Services has, it would require a legislative amendment to the functions of my role and additional resources would also be required.

Having said that, I am not convinced that this is the right course of action nor is necessarily setting up a new investigative body. I favour providing the Coroner and the Aboriginal Legal Service with additional resources that increase the timeliness of coronial inquests, enhance trust in the process, are culturally competent and are informed by the views of the many Aboriginal people who have been prepared to either make submissions or come before this Committee and share their views on this important issue. The Committee may also wish to consider recommending the Inspector be given a specific function to monitor the implementation of coronial recommendations and report that publicly in our annual report. This would be consistent with our existing prevention, monitoring and reporting functions.

In preparation for all inspections of a facility, I request key information. This information allows me to target particular issues that may arise in a facility and enables me to select the most appropriate team to assist me in my inspection. For example, and relevantly to this inquiry I request information about the percentage of Aboriginal people at a particular facility. Since 2017, where the data indicates that it would be warranted, I have engaged the assistance of an Aboriginal Elder as a consultant. I have noticed that the presence of an Aboriginal Elder on my team has had a significantly positive impact on engagement with Aboriginal prisoners and staff within the facility. As a result of this experience, I have advertised for an Aboriginal inspection and liaison officer and I anticipate this role will be filled by early 2021. My staff and I are currently finalising a health services report which will address some issues in relation to the health of Aboriginal people in custody. It is a complex thematic report and it has involved the inspection of six facilities and required visits to other facilities.

There have been substantial data requests and I am using a consultant who is a qualified health practitioner and an Aboriginal Elder with health qualifications. The *Women on Remand* report discusses health

services for women in custody. As you are aware, there is a high prevalence of mental disorder and poor self-reported psychological wellbeing amongst incarcerated women. I have observed that Aboriginal women have an elevated risk of mental health issues and consider that Aboriginal-specific options for mental health care are required that are culturally safe and responsive to individual needs. The issues facing Aboriginal people in custody are pivotal concerns to me in my inspections and form the focus of many of my reports and their recommendations. For example, my reports titled, *Women on Remand, Mary Wade Correctional Centre, Residential Facilities and the compulsory drug treatment correctional centre*, as well as others have made a number of recommendations relating to the over-representation of Aboriginal women in custody. Thank you.

The CHAIR: Thank you. Can we take that opening statement as your submission to the inquiry?

Ms RAFTER: Yes, in part. I did make an earlier submission as well.

The Hon. PENNY SHARPE: I do not have a copy of the written submission.

The Hon. TREVOR KHAN: Nor do I.

Ms RAFTER: I did bring some copies with me.

The CHAIR: That would be great.

The Hon. TREVOR KHAN: Can you find out when you lodged that submission?

Ms RAFTER: It was before the due date.

The CHAIR: It was submission 99. We will just add that as well.

The Hon. PENNY SHARPE: Can I just clarify in relation to OPCAT—have you been designated as the NPM?

Ms RAFTER: No.

The Hon. PENNY SHARPE: Who decides who is designated as the NPM?

Ms RAFTER: That would be a government decision.

The Hon. PENNY SHARPE: Who in government specifically? Is it Corrections? Who decides? Is it a Cabinet decision?

Ms RAFTER: I suppose it probably is most likely a Cabinet decision.

The Hon. PENNY SHARPE: Who would make the recommendation?

Ms RAFTER: I believe it is the Attorney General. I believe the Commonwealth and the State attorneys-generals are in negotiations around the implementation of OPCAT and declaration of the NPMs.

The Hon. PENNY SHARPE: I am familiar with the process, so each State has an NPM. Is there the ability to have more than one?

Ms RAFTER: As I understand it, yes, there is.

The Hon. PENNY SHARPE: If you are designated as the NPM, then you are essentially responsible for all of the reporting that goes towards OPCAT. Is that what it essentially means?

Ms RAFTER: The way that it is likely to work within Australia is—the Commonwealth Ombudsman has already been declared as the NPM and the coordinating NPM. Then the States and Territories will also have to nominate their NPMs. They will work with the Commonwealth Ombudsman.

The Hon. PENNY SHARPE: Do we have a situation in New South Wales—I mean, if the Commonwealth Ombudsman is doing it, I would assume that it would first look to State ombudsmen to be the most likely. Is it the case that, where there are offices such as yours—so Queensland, Western Australia—it could either be split or you could decide either way?

Ms RAFTER: Western Australia has already announced their Inspector of Custodial Services as an NPM.

The Hon. PENNY SHARPE: Yes, but is it them plus their Ombudsman?

Ms RAFTER: I am not sure. It may be so, but I would have to take that on notice and let you know.

The Hon. PENNY SHARPE: If you could take that on notice, that would be great.

Ms RAFTER: The ACT has an independent Inspector of Custodial Services, as does Tasmania. The Inspector in the UK is one of the NPMs there.

The Hon. PENNY SHARPE: In relation to New South Wales, do you have a view on the Ombudsman or you or both of you becoming the NPM? Do you have view about who is best to become the NPM?

Ms RAFTER: Well, for prisons and custodial facilities, the Inspector is the body that has been set up to fulfil the prevention requirements.

The Hon. PENNY SHARPE: How many staff do you have?

Ms RAFTER: I have 14.2 at the moment.¹

The Hon. PENNY SHARPE: I know that some of the members of this Committee are probably far more familiar with your work than I am. You listed a lot of the numbers of inspections that you have done in relation to facilities. I accept that metropolitan remand is very different to the watch house in Brewarrina, but what does an inspection involve?

Ms RAFTER: You are right that it depends on the particular facility.

The Hon. PENNY SHARPE: But is there a standard list of things that you look at?

Ms RAFTER: Yes, we have standards that we have developed and recently reviewed.

The Hon. PENNY SHARPE: So they are your developed standards, not national standards.

Ms RAFTER: They have been developed having regard to the international standards and the Australian standards for correctional practice. We have recently completed an inspection of the Parklea Correctional Centre, for example, a very big correctional centre and a complex environment. As part of that inspection, we spent approximately 10 days on site on separate occasions and we had a number of other visits in between those two times.

The Hon. PENNY SHARPE: When you spend 10 days, what do you do?

Ms RAFTER: Before we commence the inspection, we request a lot of data and information so that we have a really good understanding of what is happening at the centre. We have fairly standardised data requests that we would send in that case to the private provider and to Corrective Services. We analyse all of that data and then we work out on the basis of the data who we need to speak to, in accordance with our standards. We talk to a range of staff and a range of inmates at the particular centre. Sometimes we have focus groups and other times we have individual meetings and consultation. We meet with individual staff as well as management and the union.

The Hon. PENNY SHARPE: I assume that official visitors have input through that process too.

Ms RAFTER: Yes, official visitors always have input. We speak to them beforehand because we are in regular communication with them. We generally speak to the Ombudsman, as well, and find out whether they have some information on complaint trends that might be useful for us. We speak to all of the non-custodial services and the health services as well.

The Hon. PENNY SHARPE: You raised in your opening statement that the recommendation for the Inspector for Custodial Services came out of the Royal Commission into Aboriginal Deaths in Custody.

Ms RAFTER: There are two recommendations in the royal commission. One relates to the implementation of the OPCAT and one relates to the implementation of the standards and the resources for that. That is the connection. There is also a complaints recommendation and the investigation of deaths in custody.

The Hon. PENNY SHARPE: I note all of the reports that you have done in relation to your work. Through your investigations and the work that you do, have you aligned your work to recommendations from the royal commission? I realise that this is a very old report and that things have moved on, but I have asked many of the witnesses about what sort of monitoring and oversight there has been around the recommendations of the royal commission. Almost every Aboriginal person who has sat in front of the Committee has said to us that they are tired of inquiries. They point to two in particular: the royal commission and the recent Australian Law Reform

¹ In [correspondence](#) to the committee received 27 January 2021, Ms Fiona Rafter, Inspector of Custodial Services provided clarification to her evidence.

Commission [ALRC] report around over-representation of First Nations people in deaths in custody. How do you align your work to both the royal commission and the more contemporary work that has come out of the ALRC?

Ms RAFTER: Some of our reports have regard to those. There are references to the recommendations for example in our inspection into use of force and separation, segregation and confinement in youth justice. Our inspection of 24-hour court cells had regard to the recommendations.

The Hon. PENNY SHARPE: But there is not a structured process where you are addressing that.

Ms RAFTER: No.

The Hon. PENNY SHARPE: You do not go through those recommendations and then align your work, but you would argue that the work you do covers most of those.

Ms RAFTER: Our standards have had regard to the international and Australian standards. We are also informed by other international standards.

The Hon. PENNY SHARPE: What about the royal commission?

Ms RAFTER: We also have regard to the royal commission and coronial inquests in the development of our standards. That is not to say that the standards are a checklist against all of those recommendations, but they are informed by them.

Mr DAVID SHOEBRIDGE: Thanks for your opening statement. You say that it is your view that you should be nominated as the national preventative mechanism [NPM] for New South Wales.

Ms RAFTER: We certainly meet the requirements. Yes, I think that we are well placed to take on that role.

Mr DAVID SHOEBRIDGE: Do you say that you meet the part IV requirements under the optional protocol?

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: Do you employ your own staff?

Ms RAFTER: Yes, I employ them.

The CHAIR: Are they employees of the office of the Inspector of Custodial Services or are they employees of another agency?

Ms RAFTER: They are employed by me in the office. Through a series of machinery-of-government changes, they are employees of the Department of Communities and Justice. But they are under my control and they operate under my delegations under the Act. That has come about because they were originally staff of the Attorney General's department, but a series of machinery-of-government changes has made them technically employed as staff of this large cluster.

Mr DAVID SHOEBRIDGE: It is not a machinery-of-government provision. It is a statutory provision under section 5 of your Act, which says that you cannot employ anybody and your staff have to be separately employed in the public service by an agency. It is not a machinery-of-government thing but part of the statutory make-up of your Act.

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: In fact, section 5 provides that—I assume that you have a delegation from the head of the DCJ to undertake certain employment powers. Is it currently a delegation?

Ms RAFTER: Yes, I have a human resources delegation.

Mr DAVID SHOEBRIDGE: That is quite distinct from the Independent Commission Against Corruption Act 1988, for example, where staff are directly employed by the ICAC and at the discretion of the chief inspector of the ICAC. It is quite distinct to the ICAC's model.

Ms RAFTER: I am not familiar with the exact provisions of the ICAC model.

The Hon. TREVOR KHAN: And the Ombudsman.

Ms RAFTER: As part of the statutory review that is currently underway of the Inspector of Custodial Services Act 2012, I have asked for the independence of the staff in the inspector's office to be made clear. I have asked the review to look at this particular provision.

The Hon. TREVOR KHAN: I have to say that it is not a question of it being made clear. It is clear: they are not your employees.

The CHAIR: Would it not have ramifications for your meeting the requirements of the NPM if the staff working for you do not have the statutory independence that is required?

Ms RAFTER: I have the statutory independence. I have looked at the OPCAT and so has the Commonwealth Ombudsman. What is required is functional independence and we both believe that the office has that, but I believe that there could be greater clarity around that.

Mr DAVID SHOEBRIDGE: Article 18 of the optional protocol says:

The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

It is not a qualified independence; it is the independence of their personnel. Ms Rafter, I would suggest that you do not have that statutory independence of the personnel. In fact, with regard to your personnel, the test is not functional independence, but actual independence.

Ms RAFTER: I have made a submission to the statutory review of the Act that that should be clarified and made clear, because they have the public service entitlements, but they should have that independence clarified in the Act.

Mr DAVID SHOEBRIDGE: I will suggest to you another concern with article 18 (3), which says:

The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

Could I suggest you would have difficulty satisfying that with 14 staff?

Ms RAFTER: The ACT inspector has three staff. Granted, it is a much smaller jurisdiction. The West Australian inspector has—

The Hon. TREVOR KHAN: One prison.

Ms RAFTER: And one juvenile justice detention facility and court facility, correct. The West Australian inspector has approximately 20 staff.

Mr DAVID SHOEBRIDGE: Ms Rafter, I am asking you if it is your evidence before this Committee that you have the necessary resources for the functioning of the national preventative mechanisms in regard to New South Wales prisons. Is that your evidence?

Ms RAFTER: I do not believe that I have all of the resources that are required at the moment, but I have advised the Government on what additional resources are required.

Mr DAVID SHOEBRIDGE: Indeed. Ms Rafter, one of the other key elements at part 4 is for you to have complete liberty to have private interviews with persons deprived of their liberty without witnesses, either personally or with a translator et cetera. You do not have that express statutory capacity, do you?

Ms RAFTER: I have the ability to be given access to persons in custody, detained or residing in any custodial centre for the purpose of communicating with them.

Mr DAVID SHOEBRIDGE: Under (7) (f) of your Act.

Ms RAFTER: That is right.

Mr DAVID SHOEBRIDGE: I put to you that that is well short of the requirements under article 20 of the OPCAT.

Ms RAFTER: In practice we have confidential interviews.

Mr DAVID SHOEBRIDGE: I am asking about the legal structure and your powers. I am putting to you that the power under (7) (f) of your Act falls well short of what is required under article 20 of OPCAT. Do you agree or disagree?

Ms RAFTER: I am not sure that I entirely agree with you given the fact that I am entitled to be given access and that in practice we have confidential meetings. But if that requires further enhancements, that is something which I am happy—

Mr DAVID SHOEBRIDGE: Ms Rafter, I am suggesting to you that (7) (f) is miles short of article 20. It is not just tinkering; it is miles short of article 20 of the OPCAT.

Ms RAFTER: I do not believe that it is miles short of what the OPCAT requirements are.

Mr DAVID SHOEBRIDGE: Well, (7) (f) says:

... entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.

That is your current power: entitled to be given access.

The Hon. TREVOR KHAN: So what that means is that somebody could be marched out of their cell down to an office—I have certainly had interviews like this—the officer stands in the corner of the room and you say to the fellow or woman, "Did this happen to you?" The Corrective Services officer is standing in the corner of the room. That would meet the requirements of that section on the current powers.

Mr DAVID SHOEBRIDGE: That is very different to article 20.

The Hon. TREVOR KHAN: That is very different to article 20.

Ms RAFTER: But there is also the provision about not obstructing or hindering us in our functions. When you put that with the right to see the prisoners, then I would request the officer to leave the room. If they were not compliant, that would potentially hinder my ability to conduct my own inspection.

Mr DAVID SHOEBRIDGE: Ms Rafter, article 20 has a number of provisions in it. The opportunity to have private interviews with persons deprived of their liberty without witnesses, do you accept that that is not an express power?

Ms RAFTER: I accept that that could definitely be enhanced.

Mr DAVID SHOEBRIDGE: The ability to have that either personally or with a translator if deemed necessary. There is nothing to that effect under the current Act.

Ms RAFTER: No, but I would see that as my obligation to ensure that I had a translator if I felt that that was required.

Mr DAVID SHOEBRIDGE: Also, the opportunity to have, "Any other person who the national preventative mechanism believes may supply relevant information." That does not exist under the current Act.

Ms RAFTER: I have the ability to compel staff to attend, so that would cover most of those.

Mr DAVID SHOEBRIDGE: To attend at the same time as you are interviewing an inmate?

Ms RAFTER: No, just to compel to attend and to speak with me.

Mr DAVID SHOEBRIDGE: That is quite different to article 20, which would require you to have anybody else you choose in that interview with the inmate.

Ms RAFTER: That is achieved through a number of ways. I use external consultants, which the Act provides that I can use. I might have them with me in one of those interviews.

Mr DAVID SHOEBRIDGE: But there is no statutory right to have them there with the interviewees, Ms Rafter.

Ms RAFTER: It is in fulfilment of my general powers and the ability to have staff that I may engage as consultants to perform services for me.

Mr DAVID SHOEBRIDGE: Do you accept that the optional protocol would require whichever national preventative mechanism was chosen to do more than what you currently do?

Ms RAFTER: Sorry, can I ask you to repeat that?

Mr DAVID SHOEBRIDGE: Do you accept that whichever body becomes the national preventative mechanism for New South Wales prisons, to fulfil the obligations under the optional protocol they would have to do more than what your office currently does?

Ms RAFTER: That is why it is highly likely that there would be multiple NPMs for New South Wales, because, yes, places of detention extend beyond prisons, custodial facilities and juvenile justice centres. For example, the only police court cells that I have jurisdiction over at the moment are those managed by Corrective Services. Closed mental health institutions would require a separate NPM.

Mr DAVID SHOEBRIDGE: Well, let us limit ourselves to prisons at the moment. Do you accept that the NPM for New South Wales prisons would have to do a substantial amount of work in addition to the work that you currently do as the inspector to fulfil the obligations under the optional protocol?

Ms RAFTER: Yes, there are additional activities that would need to occur if we were to be made an NPM, which would include additional reporting mechanisms. Two of the things that I have been working on recently as part of readiness for OPCAT is the development of a survey tool, which I have been working on in collaboration with the University of Sydney. That is an important element of OPCAT. On regular visitation, certainly when we were first set up and when there were four staff the ability to have regular visitation to custodial facilities was impossible. I now have a regular visitation schedule. Of course, additional staff is always going to assist in ensuring that happens.

Mr DAVID SHOEBRIDGE: Could I suggest to you that a pre-published visitation schedule would only be a small part of what would be required to meet the NPM? Indeed the ability to attend unannounced—to be fully resourced to attend unannounced and to respond to individual concerns if they are raised to you in the moment—would just be one of the non-negotiable, essential elements of an NPM over and above a published inspection schedule?

Ms RAFTER: Yes, and we have the power to do unannounced now—and we do, at times.

Mr DAVID SHOEBRIDGE: When? How often this you have you done unannounced visits?

Ms RAFTER: This year there has been COVID, so that has created—everybody needs to be recorded and everything.

Mr DAVID SHOEBRIDGE: I get that, Ms Rafter. Perhaps if you could give us a sense over time? The fairest thing would be a sense over time.

Ms RAFTER: This year I think it has been about three or four unannounced visits that we have done.

Mr DAVID SHOEBRIDGE: Would that be consistent over time?

Ms RAFTER: We have probably been increasing it over time.

Mr DAVID SHOEBRIDGE: Last year?

Ms RAFTER: Last year it was probably—it might have been three unannounced.

The CHAIR: Perhaps we could get a list from you for each year that you have held the office of Inspector of Custodial Services?

Ms RAFTER: Originally we were not doing unannounced, but we have incorporated that now.

Mr DAVID SHOEBRIDGE: Ms Rafter, I accept you have got very limited resources and you did not write the statute. None of this is a personal criticism of you. You did not write the statute and I accept the limited resources you have. It must be a monumental task with the limited resources you have before you. I just want that to be very clear for the record.

Ms RAFTER: Thank you.

The Hon. PENNY SHARPE: So, the statutory review of your office is happening.

Ms RAFTER: Yes.

The Hon. PENNY SHARPE: When is that due to be finalised? Do you know?

Ms RAFTER: I think it might be technically overdue at the moment, because it is triggered by a section in the Act. It is a review after five years of operation. So, it is a review of the statute, not the structure.

The Hon. PENNY SHARPE: Right—so, the actual piece of legislation. And what is the time line for the New South Wales decision-making in relation to the NPM for OPCAT?

Ms RAFTER: As I understand it, the NPMs need to be in place by January 2022. That is the interpretation, as I understand it, that the Commonwealth has placed on that.

The Hon. PENNY SHARPE: The reason I ask—obviously, given the questions about whether your piece of legislation meets the requirements, I wanted to know whether it is going to fit the time line. If the Government was heading that way—whether they would actually require a change to the law and whether you

would have time to do all of that, in terms of that decision-making? That is the question that I am asking. It sounds like it is possible but tight.

Ms RAFTER: Yes.

The CHAIR: Very tight.

Ms RAFTER: Given how long it takes for legislation, it could be. But, at the very least, there is a statutory review on foot.

The CHAIR: So, it is being undertaken at the moment?

Ms RAFTER: Oh, yes.

The CHAIR: By whom?

Ms RAFTER: It is being undertaken by the Department of Communities and Justice for the Minister.

The Hon. TREVOR KHAN: So, the Minister means the corrective services Minister?

Ms RAFTER: For the statutory review it is the corrective services Minister, yes, and I have made a submission to that review asking for some practical changes to the legislation. I am more than happy to share that with the Committee, as well—and drawing to the attention of the statutory review the NPM requirements.

The Hon. TREVOR KHAN: When did you make that submission?

Ms RAFTER: I made that submission earlier this year.

The Hon. TREVOR KHAN: Well, we are in November. Can you get a bit closer than earlier?

Ms RAFTER: Oh, sorry. I think it was February. Sorry—January, I believe.

The Hon. TREVOR KHAN: Perhaps you can take it on notice and work out precisely when. Have you been given any indication as to when the review is to be completed?

Ms RAFTER: Sorry—14 January is the date of my submission.

The Hon. TREVOR KHAN: Great. Have you been given any indication as to when it will be completed?

Ms RAFTER: No, I am not aware of that.

The Hon. TREVOR KHAN: Have you received any communication since making your submission on 14 January?

Ms RAFTER: Yes, I have. I have undertaken a number of consultations with the people tasked with undertaking the review.

Mr DAVID SHOEBRIDGE: Are they in the department or the Minister's office or a bit of each?

Ms RAFTER: No, they were in the department.

The Hon. PENNY SHARPE: Corrections or Attorney General?

Ms RAFTER: Department of Communities and Justice.

The Hon. PENNY SHARPE: I am just trying to work out who has got the lead on it. You said that the Attorney General is going to make the decision about the NPM.

Ms RAFTER: Yes.

The Hon. PENNY SHARPE: But it sounds to me like the review of your piece of legislation is actually happening with Corrections. This is the bit that I am trying to work out with the time line. Where do these things meet and who has got oversight of that? Other than—broadly, Coutts-Trotter has got everything.

The CHAIR: In DCJ is there a separate Corrections policy area or is it all merged?

Ms RAFTER: As I understand it, there are at least three policy areas.

The Hon. PENNY SHARPE: Yes. It is confusing.

Mr DAVID SHOEBRIDGE: But the corrective services Minister is the one that is ultimately going to sign off on the statutory review?

Ms RAFTER: That is the statutory review. That is right, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Inspector, could I suggest to you that that again brings into question your independence? If the Minister in charge of the bodies you are oversighting is going to have the final say on the statutory review of your Act, that again calls into question the independence because these are the people you are meant to be holding to account. Do you see the problem?

Ms RAFTER: I do. I see the problem that you are identifying there. The inspector was originally—the Minister responsible was the Attorney General, so the former inspector certainly made some observations around that.

Mr DAVID SHOEBRIDGE: Have you made observations in the course of the review that the fact that the review is being undertaken by the corrective services Minister is itself contrary to your independence?

Ms RAFTER: I have not made those submissions as part of the review, but I have raised the issue of the definition of "Minister" under the Act.

The Hon. TREVOR KHAN: What does that mean?

Ms RAFTER: What does that mean? That means that there are several Ministers that have responsibility for different areas that I am responsible for inspecting.

The Hon. TREVOR KHAN: Indeed.

Ms RAFTER: The statute as it exists at the moment refers to Minister which is not defined. And so, the responsible Minister as per the administrative arrangements is the corrections Minister.

The CHAIR: That is problematic.

The Hon. TREVOR KHAN: So, your submission went to that issue, not with regards to who should be the Minister that you are answerable to, in a sense, or under?

Ms RAFTER: That is right, because it is a review of the statute.

Mr DAVID SHOEBRIDGE: Ms Rafter, if you wanted additional funding now, which Minister would you send your request to?

Ms RAFTER: For additional funding now, it would be the corrections Minister.

Mr DAVID SHOEBRIDGE: Again, Ms Rafter, you would agree with me, would you not, that that is contrary to the necessary independence, especially for OPCAT?

Ms RAFTER: I believe that is a similar arrangement to the other inspectors, but if I could take it on notice I could give you a fulsome answer as to whether that is really any different from how it operates in other jurisdictions.

Mr DAVID SHOEBRIDGE: Could I suggest that if there is that kind of issue in WA or the ACT it does not remove the issue for New South Wales? In addition to whether or not that is consistent with other jurisdictions, could you address whether or not you believe it meets the necessary independence required by OPCAT?

Ms RAFTER: Yes, I will undertake to do that.

The Hon. TREVOR KHAN: I am interested in a couple of things. We have now got your submission—plainly, a lot of which you addressed in your opening remarks. But you went on further to deal with the issue of independent oversight. If I understand your opening observations, you essentially disagreed with the proposition of independent oversight and instead said, "More needs to be done in resourcing the coroner's jurisdiction to overcome some of their problems," and something else. Is that what you are proposing?

Ms RAFTER: What I said was that, having listened and read not all but many submissions to the review, it seems that there is a concern around timeliness, though I think it does seem that it is getting better.

The Hon. TREVOR KHAN: I have to say, on any of the evidence that I have sat through, I do not get an impression that it is getting better, even as a Government member. I will run defence on a whole variety of things, but getting better in terms of inquests into these matters, I am struggling to see that timeliness is improving.

Ms RAFTER: I am not suggesting that it is not still an issue. It is only that in some of the previous coronials I have looked at, the timelines that it took were even more significant than they are now. I would still say that it is an issue and it is a very important issue for the families.

The CHAIR: But in a policy sense you say that the answer is to improve the Coroner's Court, create a new investigative body or enhance another existing body, is that your evidence?

Ms RAFTER: Yes, the Coroner I believe has the jurisdiction, as recommended by the royal commission, is the appropriate jurisdiction, has the power to hear sworn evidence, should be resourced to have the proper investigative powers. They should be culturally competent. That seems to be an issue that has emerged, that they are not sufficiently culturally competent. The Aboriginal Legal Service plays a really important role. I think that they probably require additional funding as well.

The Hon. TREVOR KHAN: I will not speak for the others, but supposing that I am overwhelmingly in agreement with all that you have said. If we did that and we had an Aboriginal death in custody, not in Corrective Services but in a police cell, you would still have the Coroner there but you have another body overseeing what has occurred, do you not?

Ms RAFTER: Yes, the LECC would come in and would review that critical incident.

The Hon. TREVOR KHAN: Indeed.

Ms RAFTER: But they also have to make sure that they do not do anything to compromise the Coroner's investigation.

The Hon. TREVOR KHAN: I absolutely understand that. Tell me why the family of a deceased in the context of a death in police custody has the assurance of oversight by the LECC, but the family of the deceased in the context of a death in Corrective Services custody does not have that oversight? Tell me why that is a reasonable proposition?

Ms RAFTER: It is not that they should not have that reassurance. I think the Coroner could give them that reassurance if they were given those extra resources.

The Hon. TREVOR KHAN: With respect, if the Coroner were given those extra resources they would be available in the two instances that I have set out. Why is it logical that you would have oversight of such an incident by the LECC in the case of a police death in custody but not in the case of a death occurring in Corrective Services? Tell me what the logic is that one deserves it and the other one does not?

Ms RAFTER: I am not across the history of LECC, but I am assuming that it is about conduct. At the moment, ICAC has the responsibility to oversee any issues around conduct.

The Hon. TREVOR KHAN: With respect, that is a misunderstanding of the law. ICAC does not have oversight of conduct per se. It has a limited jurisdiction.

Mr DAVID SHOEBRIDGE: Only corrupt conduct.

Ms RAFTER: Yes.

The Hon. PENNY SHARPE: You mentioned in your opening statement about referrals that you are able to make to the ICAC and you mentioned LECC as well.

Ms RAFTER: I did.

The Hon. PENNY SHARPE: Can you provide the Committee—again, you can do so on notice. You do not need to know the numbers off the top of your head—the number of referrals you have made to those bodies over the time you have been there?

Ms RAFTER: Yes. Look, it is probably better that I do take it on notice just because of the nature of them.

The Hon. PENNY SHARPE: Yes, of course.

Ms RAFTER: Yes, I have referred to LECC to ICAC and to the Ombudsman.

The Hon. PENNY SHARPE: Could you provide the number of times that you have done that from when you started in 2016? That would be great. We are trying to get to the point of this Corrections oversight. We think that there is a gap. Whether you have referred conduct matters to the ICAC, would you be able to indicate that to us?

Ms RAFTER: Yes.

The Hon. TREVOR KHAN: Let me use another example: If you are transferring a prisoner—I think it would still be the case—from Gunnedah to Tamworth cells which are under Corrective Services, it would be by the cops?

Ms RAFTER: Yes.

The Hon. TREVOR KHAN: If it was a prisoner being transferred, refused bail, from, say, Muswellbrook, it is quite likely they will be picked up by the Corrective Services van and brought to Tamworth, right?

Ms RAFTER: That is right.

The Hon. TREVOR KHAN: You have two vehicles travelling approximately the same distance, one from the west, other from essentially the south. If there was an incident of death in both of those vehicles, one death would be immediately reported to LECC, the other would not.

Mr DAVID SHOEBRIDGE: And in fact, it would not be reported anywhere in particular.

The Hon. TREVOR KHAN: Probably not reported anywhere without outside assistance. I am trying in the light of your opening statement to get to why you think that that makes any sort of sense. In light of the evidence, which you say you have at least partially seen or read, where there is mistrust of the investigations undertaken internally as it is perceived by Corrective Services, the mechanism of the Coroner does not provide that oversight, does it?

Ms RAFTER: I am suggesting that they could be resourced to have that ability. If the Committee thinks that it requires additional oversight such as another independent review, LECC is most certainly an option. They do not have any jurisdiction around corrections at the moment, but they are an option. The Australian Capital Territory [ACT] inspector has a function of reviewing critical incidents. As I said in my opening statement, it is something that another inspector does do. As you have rightly pointed out, that inspector has jurisdiction for one correctional centre, a juvenile detention centre and court cells, but they also do have critical incident review as a specific function under the Act. It is another option for the Committee if the Committee does not believe that putting additional resources into the Coroner would cure the deficit that you believe there is. Of course, that is an option and LECC is an option.

The Hon. TREVOR KHAN: Let me put this: The Coroner receives a report of a death reasonably shortly following a death in these instances, is that right?

Ms RAFTER: Yes.

The Hon. TREVOR KHAN: As we dealt with in terms of some earlier evidence, one of the issues is that in due course the Coroner will call for a report from the police, in essence, as to what has occurred. So that the Coroner is not taking any direct involvement during that investigative phase?

Ms RAFTER: Yes, they have got those investigative resources that are assisting the Coroner, which puts together that brief of evidence.

Mr DAVID SHOEBRIDGE: What investigative resources does the Coroner have?

The Hon. TREVOR KHAN: No, I do not think that is her answer. I think Ms Rafter is saying that it is the police resources that are being used, not the Coroner's.

Ms RAFTER: Yes, it is the police.

The CHAIR: The Coroner uses the police resources. In paragraph 34 of your submission you set out a list of reports that you and your predecessor, Dr Paget, provided in discharge of your statutory duties. At paragraph 32 you say you have made 312 recommendations collectively. Do you keep a running list of where those recommendations are up to, whether the Government has embraced them in whole or in part? If so, if you are in a position to answer now that is great but if not on notice could you provide us with a checklist of where those matters up to?

Ms RAFTER: Sure, I can to give you that information now. I publicly report on it in my annual report. There has been a total of 196 recommendations that have been implemented—Corrections have implemented 142 recommendations, Justice Health has implemented 22 and Youth Justice has implemented 32. That was reported in my annual report.

The CHAIR: Is there somewhere we can access what those recommendations were, who implemented them and when they implemented them?

Ms RAFTER: Yes, the annual report has a traffic light system, which indicates and provides information about the level of acceptance of the recommendations—how many have been accepted. It then also reports on each recommendation and whether they have been achieved, partially achieved or not achieved.

The CHAIR: So we will get that in your annual report?

Ms RAFTER: That is available on our website.

The CHAIR: In your submission you also talk about your statute and you indicate that when you are making a report to Parliament you have to give the Minister an advance copy. But the statute makes it quite clear that you are not obliged to make any amendments in accordance with the Minister's feedback, are you?

Ms RAFTER: That is right.

The CHAIR: In 2018 there was a bit of a controversy in the media about you amending one of your reports in light of feedback from the Minister, but you were not forthcoming as to what those changes were. Are you able to tell us or provide us on notice some insight into what those changes were in relation to that report?

Ms RAFTER: Yes, I am more than happy to take it on notice. At that point of the process I am usually still doing some editorial work. I am working on one at the moment that is due to be tabled very soon.

The CHAIR: I guess the question is whether they were simply grammatical, editorial changes or whether they were substantial—

Ms RAFTER: Updating data—I know I went into one². I have had the Minister's feedback but it was not anything raised by the Minister. I realised that the Bureau of Crime Statistics and Research report had probably just been updated so I just wanted to make sure what I had in there was the most accurate and up to date; it was not changing anything in particular.

The CHAIR: You did not change any of the recommendations?

Ms RAFTER: Any substantive.

The CHAIR: You did not change any recommendations?

Ms RAFTER: No.

Mr DAVID SHOEBRIDGE: Just to close the loop on this, each of your reports have gone through that process with the Minister, is that right?

Ms RAFTER: That is right.

Mr DAVID SHOEBRIDGE: Have you changed your recommendations at any point following a response from the Minister?

Ms RAFTER: I will take that on notice in case I have changed a word—but not necessarily because of what is in the Minister's submission.

Mr DAVID SHOEBRIDGE: There have been a bunch of reports so I am more than happy for you to take that question on notice and I think it is only right that you do.

Ms RAFTER: Yes, there have been a lot.

The CHAIR: It is not a "gotcha" moment; we just want to know the answer.

Ms RAFTER: Yes, I appreciate that. To make sure it is completely accurate I will take it on notice.

The CHAIR: Ms Rafter, thank you for your evidence and insight. The Committee has resolved that answers to questions taken on notice—and I note there were a few—be returned to us by Friday 22 January 2021. The secretariat will be in touch with you about those so that you properly and fully understand the matters that we seek your further feedback on.

Ms RAFTER: Before I finish could I table a diagram that shows the interaction about where we are. I thought it might assist the Committee.

² In [correspondence](#) to the committee received 27 January 2021, Ms Fiona Rafter, Inspector of Custodial Services provided clarification to her evidence.

The CHAIR: Yes, please do.

The Hon. PENNY SHARPE: That is good, I was asking for one of those. That is very helpful.

Ms RAFTER: It is a Venn diagram that shows where there are overlaps.

The Hon. TREVOR KHAN: We might be asking for a soft copy of that in due course.

The CHAIR: Actually, can you provide the secretariat with a soft copy—an emailed copy—because it may be useful.

Ms RAFTER: Of course.

The CHAIR: I will take that as a tabled document and add it to the other documents we have. Thank you and your staff member for your attendance this afternoon.

(The witness withdrew.)

The Committee adjourned at 16.12.