REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO SPENT CONVICTIONS FOR JUVENILE OFFENDERS

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UNCORRECTED TRANSCRIPT

At Sydney on Thursday 1 April 2010

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The Committee met at 9.30 a.m.

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PRESENT

The Hon. C. M. Robertson (Chair)

The Hon. J. G. Ajaka
The Hon. D. J. Clarke
The Hon. G. J. Donnelly
Ms S. P. Hale
The Hon. L. J. Voltz

CHAIR: Welcome to the second public hearing of the inquiry of the Standing Committee on Law and Justice into spent convictions for juvenile offenders. This inquiry was established to consider whether the convictions for minor sexual offences should continue to be excluded from the spent convictions scheme. In developing recommendations on this issue the Committee needs to balance competing interests, first and foremost the need to protect the community from sexual offenders. This imperative needs to be weighed against supporting those persons who have committed minor sexual offences, sometimes when very young, to put their past behind them and to become law-abiding members of society.

Today we will hear from a broad range of witnesses from the Children's Court, the NSW Police Force, Juvenile Justice, the Law Society and Bar Association, the Youth Justice Coalition and Justice Health. We will also hear from individuals affected by the exclusion of minor sexual offences from the spent convictions scheme.

Before commencing I wish to make some comments about procedural matters. In accordance with the guidelines of the Legislative Council for the broadcast of proceedings only Committee members and witnesses may be filmed or recorded. In reporting the proceedings of this Committee you must take responsibility for what you publish or what interpretation is placed on anything that is said before the Committee. A copy of the guidelines is available from Committee staff. Any messages from audience members should be delivered through Committee staff. I remind everyone to turn off his or her mobile phone. I welcome our first witness from the New South Wales Children's Court.

HILARY HANNAM, Magistrate, Children's Court of New South Wales, Metropolitan Children's Court, sworn and examined:

Ms HANNAM: I appear on behalf of the Children's Court of New South Wales.

CHAIR: If you take any questions on notice during your evidence the Committee would appreciate a response within three weeks. If there is a problem with that, please contact the secretariat.

Ms HANNAM: That is fine.

CHAIR: We have had our first half day of hearings. Recognising the complexity of this issue was not difficult from reading the submissions, but that was certainly compounded by the hearing. We understand it is a very intricate and complex question in our society and the Committee is working from that premise. Would you like to make an opening statement?

Ms HANNAM: I would like to reiterate the main points that we make in our submission from the Children's Court. There are three main points. First, the exemptions from the spent conviction scheme appear to be related to a belief that only serious matters should be exempt. It is not the case in the Children's Court's experience that all sexual matters are serious matters. Secondly, one of the main aims of the scheme is, of course, to protect society from sex offenders. In the view of the Children's Court they are adequately protected through other legislation, particularly legislation relating to various forms of employment and circumstances in which declarations must be made.

Thirdly, the consequences of not being able to have convictions spent can be quite drastic for young offenders given that the conviction can then stay with them for the rest of their life. It can certainly outweigh the balance of protection because there is such a wide range of circumstances in which people are required to make declarations about their convictions. It is such a wide-ranging area and these are, on the whole, young people who are already disadvantaged in having ongoing impacts for the rest of their life, particularly in areas of employment and matters of that kind. It seems to be unjust.

CHAIR: This question totally removed from what you have just said, but it would appear from the evidence so far that young offenders from disadvantaged communities fall more often into the process of conviction or charge. Do you think that has anything to do with the way those families deal with these sorts of issues? This is a philosophical question. Do you think there is more potential for disadvantaged populations to be roped into the legal system with regard to sexual offences committed by young people?

Ms HANNAM: That is probably true of offences generally. A number of the reasons people get involved in the criminal justice system touch upon over-representation of disadvantaged people anyway. Sexual offences are probably just a subclass of that. One of the thrusts of our argument is that sex offences committed by young people are not much different from other offences committed by young people. We do not believe in that quite separate category of paedophilia for adult offenders, for example. The reasons that disadvantaged young people get involved in the criminal justice system generally equally apply to sexual offending. I think that is right.

CHAIR: Is that because the offences are more often committed by people in disadvantaged populations or because they are easier to catch?

Ms HANNAM: Or whether it is to do with reporting—not just the catching aspect but the whole issue of reporting. People have various reasons, particularly in relation to sexual offences, for reporting and not reporting. It may be just to do with that.

CHAIR: This Committee has conducted other inquiries dealing with disadvantage that have indicated those sorts of issues. You have outlined where you stand on this issue, but can you provide more detail on why you believe sex offences should be included in the spent convictions scheme? That is what you have said already, but can you provide more detail?

Ms HANNAM: For those three reasons. With regard to the fact that sex offences are not necessarily the sort of serious offences that the Parliament had in mind when the Criminal Records Act was first enacted, in our submission we refer to the second reading speech. It is clear that it is convictions for serious offences that should not be covered by the scheme. There seems to be in the community generally an assumption that sexual

offences must be serious offences. It is not until you start to look at the kinds of matters that are prosecuted in the Children's Court that that is clarified. I do not know that it is a valid assumption that sex offences are always serious offences when we look at the sorts of matters that come before us.

There will always be exceptions and there are some terribly serious matters. However, our submission does not propose a blanket inclusion in the spent conviction scheme. We have a default position that they should be capable of being spent as opposed to the current situation; that is, they are not even capable of being spent. However, that should happen only in certain circumstances unless there is application for them not to be spent. That would always mean that those genuinely serious cases would not be spent. However, we think there should be at least the capacity for those convictions that could not be described as serious to be spent. That goes to the seriousness and it very much relates to the other issues. Since the passing of the Act there has been, of course, other legislation, in particular the Children and Young Persons Commission Act, which has a wide-ranging scheme for protection of the community in any event and so to a certain extent it is superfluous.

Thirdly, there is the whole issue of the continuing disadvantage. One should also bear in mind that the age of criminal responsibility can be as young as 10, although in all likelihood we would be seeing young people over the age of 14. The idea that one could suffer consequences for the rest of one's life for something done at the age of 14, which in our view is not necessarily serious, is pretty dramatic.

CHAIR: Defining that seriousness is an issue.

The Hon. DAVID CLARKE: In your summary you state that there is division amongst magistrates in the Children's Court on this issue and you suggest a compromise situation. Is that correct?

Ms HANNAM: We felt that in fairness we should include in our submission, which we did, that it was not an entirely consensus opinion. However, there was only one dissenter. He was a very senior children's magistrate and we did not feel that it would be appropriate not to acknowledge the wisdom of his views, particularly because he had been a children's magistrate for a very time.

The Hon. DAVID CLARKE: You go further than just acknowledging his views; you actually suggest that as a result of that division, albeit involving only one member, there should be a compromise situation. Sometimes compromises can fall between two chairs. It is suggested that the way you are suggesting it be compromised is that the Crown makes an application for the conviction not to be spent and then the magistrate should be empowered to hear and determine the application. However, the problem with that is this. Will you not then have a situation where individual views of the particular magistrate come into play and take over; there will be no consistency in the application of the law, it will depend upon what attitude the individual magistrate decides to take, unless guidelines are laid down? What I am getting at is that sometimes compromises can fall between two chairs.

Ms HANNAM: Consistency would have to be achieved in the same way that consistency on any issue would be achieved, and that is of course by having guidance from superior courts if people appeal against decisions and a pattern of consistency would appear over the years. There is also the issue of education in terms of consistency. In the Local Court, for example, we are constantly educating ourselves and have the Judicial Commission present a large number of hours of education a year. One of the things we work on particularly is the issue of consistency in areas like sentencing and those sorts of things. Under the Children's Court Act we are also required to have specific conferences held for our own education within the Children's Court, and it is very much the sort of thing that we would be very conscious of.

The compromise was not in the sense that we feel we are happy with the compromise. The majority did actually want to say that it just should be part of the spent convictions scheme, in exactly the same way as any other offence. With regard to the issue of the personal approach taken by a magistrate, it could be safeguarded very much in the legislation anyway, depending upon the way it was framed. But, really, it would be like any other judicial decision: it would be capable of review in the usual way.

The Hon. DAVID CLARKE: Except that if your court is not happy about the compromise, why should we be happy about what you are suggesting should be done: that it be compromised? The second aspect I would ask you to comment on is this. The approach you are talking about—that this will be sorted out, as it were, through a process of judicial review and appeals—could take years before it gives any consistency in the application of the law, if no guidelines were laid down in the beginning. What would be your comment on those two propositions?

Ms HANNAM: As far as the issue of the court not being happy is concerned, we have to apply laws that we are not necessarily happy with all the time. That is part of our oath; that is what we have to do. We are asked for our input in a whole range of matters. We do not necessarily get what we want, but we must accept what laws are made. I would say to you that there would be a whole lot of laws that individually a lot of us would be unhappy about, but we have to apply them and that is what our oath is about. So as far as that is concerned, it would just be the same as any other law. With regard to a lot of laws that are passed, they ask for our input and we give our input. Often the law that is passed is a compromise: it is not exactly what we want. Often the law that is passed is nothing at all like what we want, but we still have to accept it.

The Hon. DAVID CLARKE: Your approach is, is it not, that it just be left up to the individual magistrate? That is the bottom line of what you are saying: that it be left up to the individual magistrate?

The Hon. LYNDA VOLTZ: May I interrupt. Could I seek clarification. You are asking the Crown to make the application?

Ms HANNAM: That is right. The magistrate would hear it.

The Hon. DAVID CLARKE: That is what I am saying: the final decision would be left up to the magistrate?

Ms HANNAM: But so is every final decision.

The Hon. DAVID CLARKE: Yes, but we are trying to get some clarity in the law as to what should be applied. You are saying that what should be applied should be left up to the magistrate, on an application from the Crown prosecutor?

Ms HANNAM: We have to exercise judicial discretion every single day about every single thing. For example, we have forensic procedure applications that come in daily about whether forensic tests can be carried out on people. On a given day, a number of magistrates will approach it in a different way. Every day we have to sentence people; every day we have to make bail decisions. You could say: Fancy a bail decision being left up to an individual magistrate. We each have to apply the law, and this would be a law that would be just like any other law. It would be very similar to the sort of judicial discretion that we exercise every day.

The Hon. DAVID CLARKE: I understand what you are saying: you have to use discretion. But you use that discretion each day within guidelines laid down for you. But in what you are proposing here—that you leave it up to the magistrate—there are no guidelines as to whether they will regard the conviction as spent or not?

Ms HANNAM: It depends on what the law says. Whenever a new law comes in, whenever something novel comes in, for a while we have to apply the law. No law comes with a set of guidelines. Where a law is new, you look at second reading speeches, for example. It would be no different a judicial decision than any other one we make all the time.

The Hon. DAVID CLARKE: Except that the new law to be introduced is in fact a guideline for the courts to adhere to.

The Hon. LYNDA VOLTZ: Could I seek clarification? You have said in your submission: "They should be capable of becoming spent in the usual manner, unless the Crown makes an application for the conviction not to be spent." With regard to the draft model bill that the Federal Government has put forward, the Government is suggesting that the conviction becomes spent if a court so orders. It says a court in sentencing can fix a qualifying period for the offence to become spent. In your submission, why is there the difference in the procedure? Obviously I am not an expert in this area, but my interpretation of the draft model bill is that the magistrate has the ability to determine, upfront, whether a conviction should not be spent, rather than the Crown making an application for it.

Ms HANNAM: As far as the model bill proposal is concerned, it would mean that every single matter would be subject to an application and then they would be hearing submissions back and forth. There could be a large number of applications, which is another case in itself. Whereas in the other one, the conviction would

become spent unless it was one where the Crown was particularly concerned. If they are particularly concerned, that would be a proper procedure.

As far as it happening afterwards, there is also the issue of the benefit of having seen how the young person did go and whether the person is rehabilitating themselves in the manner expected. With that bit of time afterwards, if the application could not be made down the track, it is often very hard to forecast at the very time of making the decision necessarily what is going to end up happening.

Once a young person is over the age of 16, they are to be convicted for their offence unless we decide otherwise. We already have to make that decision at the moment about whether to convict or not. Then there would be another decision about whether the conviction should be spent or not. We do not see any reason why it should be treated differently from other offences, but we do have this provision that would be a safeguard, that you could opt back in rather than out. We just think there would be a whole lot of unnecessary mini-hearings on that exact issue if the model bill were adopted.

The Hon. LYNDA VOLTZ: But does not the model bill implicitly imply that it is part of the sentencing procedure? If, for example, juvenile offences were not excluded and were capable of being spent, with the exception that a judge could decide that an offence was serious enough to warrant the conviction not being spent—

Ms HANNAM: It should not be dependent on the offence, because the description of an offence is often not a very good indicator. I have to say, if you were going to adopt the model bill proposal, I think the idea that it relates to the sentence rather than to the description of the offence—even though it is not the model that we would adopt—is a much more sensible one. Sometimes offences can get caught up and there is an offence type. For example, aggravated indecent assault means that it is a person under 16. Aggravated indecent assault could actually be not as serious as an indecent assault—an indecent assault involving someone who is just over 16, for example. But the fact that it falls within that definition of aggravated indecent assault makes it sound more serious. So, if you were going to adopt that model, it would be better to characterise its seriousness based on the actual sentence imposed, rather than on a description of the offence.

The Hon. JOHN AJAKA: Or the maximum penalty that the Act provides?

Ms HANNAM: Yes, but then again, even within the maximum penalty, bearing in mind that that is your worst case for example, there can be very minor examples—

The Hon. JOHN AJAKA: That is what I am saying: You say that the actual sentence imposed should be it?

Ms HANNAM: Yes.

The Hon. LYNDA VOLTZ: Do you think that there is like sentencing between juveniles and adults?

Ms HANNAM: No, there cannot be. The law requires that there is not. The Children's (Criminal Procedure) Act, in the principles set out in section 6, says that emphasis must be greater on rehabilitation. There are also Court of Criminal Appeal decisions. Children are not sentenced the same as adults: the law says we must not sentence them the same as adults.

The Hon. LYNDA VOLTZ: So there could be a tendency for an adult to have a much heavier sentence and it be considered a serious offence for a similar type of offence committed by a juvenile?

Ms HANNAM: But it is more serious.

The Hon. LYNDA VOLTZ: I understand that. The question then arises: Is sentencing indicative for juveniles?

Ms HANNAM: It is absolutely true whenever you are comparing. In the Children's Court we are dealing with young people who, if they were adults, would be before the District Court as well as the Local Court. It is not the equivalent of the Local Court. So we are often dealing with robberies, aggravated break and enters, sexual offences, et cetera. The sorts of penalties that are imposed are different from what they would be for adults because they are not as responsible for their actions. They are still responsible for their actions, but it

is not the same as it is for an adult. So in that sense, again it is no different to any other offence. But, yes, it does appear to be more serious—and it is more serious—when it is committed by an adult.

The Hon. JOHN AJAKA: May I go back to your concept that the Crown would make an application as to the conviction not being spent. In other words, the conviction will be automatically spent unless an application is made otherwise. When would the Crown make that application—at the time of the hearing, or at a time, say, within six months prior to a 10-year period when the sentence would automatically be spent? How would you look at that aspect?

Ms HANNAM: You could determine it by the legislation however you wanted to.

The Hon. JOHN AJAKA: In your opinion and experience what do you think would be best?

Ms HANNAM: It should have the capacity to make that application almost up to the crime-free period. They should be entitled to take as much advantage giving the young person the chance to prove themselves either way.

The Hon. JOHN AJAKA: The disadvantage of an application being made by the Crown at the time of sentencing, I will use that word, is that the magistrate does not know and can only guess how this young person will behave in the next one, two, three or four years. If the determination is based on the conviction being automatically spent at the expiration of three years but the young person has reoffended for similar type offences and come back in that three-year period, there is no point talking about having convictions spent. However, if the young person has turned over a new leaf and the Crown still feels that because of the seriousness of the offence it should make that application before the three years, is that what you advocate?

Ms HANNAM: Yes, they could do it that way. If a young person does not turn out to do what you expect them to do and they have been given some form of order that requires some form of monitoring, we find out about it anyway. For example, under the Criminal Records Act if a young person is placed on a good behaviour bond or a probation order, the offence is spent once that order is complete. But if they breach it, we know about it anyway because proceedings have to be brought. It calls it up anyway. It probably should have the capacity to be made for some period in the future, but it should not be necessarily a defined period.

The Hon. JOHN AJAKA: I ask you now to think about two completely separate areas. Let us assume that the exemption remains in relation to a sexual offence and that for any young person the conviction is not going to be spent—in other words, we are back to where we are today—would another possibility be, for example, for a person who, after a certain period of time, believes the matter should be reconsidered to make application to a panel to redetermine the matter and make a determination that the conviction be spent? The panel could comprise, for example, a judge, someone from the Office of the Director of Public Prosecutions [DPP], someone from the police and two lay persons. Could at least that opportunity be provided?

Ms HANNAM: It is a model, but I suppose we would prefer to keep it in the Children's Court.

The Hon. JOHN AJAKA: Within the court system?

Ms HANNAM: Yes, because then you would have to set up a bureaucracy, you have to have a panel, an Act for the panel and suitable persons.

The Hon. JOHN AJAKA: I understand that.

Ms HANNAM: We would start another whole Act. We say that it would not justify it because essentially what we are saying is that these young offenders, in the whole, actually are no different to other young offenders. We do not have those kinds of panels for anything else. I suppose we are saying we do not think that we ought to justify putting sex offences in such a separate category. That is what we actually essentially say. But where there are very serious ones, we have allowed that you still could have that capacity. Essentially, I suppose if it comes to the bottom line, we are saying really that despite what the community feels, young sex offenders are not that much different from young offenders generally.

The Hon. JOHN AJAKA: Your view, of course, is that the exemption shall not apply in relation to non-serious offences?

Ms HANNAM: Because the Act makes it clear that that is what the law says ordinarily.

The Hon. JOHN AJAKA: Yes, I understand that. I have not practised for a few years now, but one of the areas that concerns us is that you can have what could arguably have been in the old days an offensive behaviour type situation where a young person is charged with a sexual offence of indecent exposure.

Ms HANNAM: Exactly. That is not the old days. It still happens.

The Hon. JOHN AJAKA: In the old days you would have just been charged with offensive behaviour and that would have been the end of it. It would not have been considered a sexual matter. Should we be looking at rewording or re-categorising some of these offences where a young person, who is a little intoxicated, goes out and decides that because there is no nearby toilet the gutter is good enough, is seen by other people and finds himself charged with an offence of indecent exposure? Should we try to bring back the old style offensive behaviour so that it does not fall within the sexual category?

Ms HANNAM: I think it would be much less complex instead of redefining a whole lot of our offences to say that there is nothing different about sex offences and other offences. I think that would be very complex.

The Hon. GREG DONNELLY: To help me better understand the antecedents of sex offences being traditionally treated as different from other offences—a matter that was raised in discussion this morning in a submission—what is your understanding about the history of this different treatment?

Ms HANNAM: I do not make the laws. I am not copping out. I just have to apply the laws. I do not know.

The Hon. GREG DONNELLY: I am just trying to understand it.

Ms HANNAM: I think the legislators could tell you that.

The Hon. GREG DONNELLY: Perhaps I need to do my own research. It was not a trick question; it was just to help me understand that if there has been this tradition of treating these offences differently, if I can use that phrase, there must have been reasons for doing so. I cannot help but wonder that often these sorts of sexual offences are committed by one person against another. I am talking about this cohort of young people where there may be some familiar relationship between the people or they are well known to them. Is that the case?

Ms HANNAM: I would agree with that, and I think the research supports it.

The Hon. GREG DONNELLY: Yes. Other witnesses certainly reflected on that point. Perhaps part of the reason these offences have been treated differently is that from a societal point of view they can be easily committed by individuals. In other words, to commit a crime like breaking into a building, or other crimes, where in some sense there is probably a degree of contemplation over the act, young people can find themselves easily committing these offences, certainly when a cocktail of alcohol and drugs is involved. Would you agree with that?

Ms HANNAM: Yes I would. That was a bit of a cop-out for me to say I do not know why sex offences were treated differently. I do because sex offences committed by adults are very serious offences. The point I was coming to is exactly what you said at the end, and it applies across the board. The idea that children are just like little adults committing the same sort of offences just is not correct. In many aspects of our criminal law the same sort of assumptions that are correct for adults are not correct when applied to children. There is a very good reason why sex offences are in a different category for adults. For children they should not be treated as in a different category for that very reason: children can get caught up in situations.

A number of children that have appeared before the courts have intellectual disabilities—often sufficiently mildly affected and are still criminally responsible—but they really do not appreciate the seriousness of what they have done. There is the aspect of those matters that are in fact consensual but fall under the age of consent laws, plus the other examples we gave. In our experience, and we think the research follows, it is not the case that children committing sex offences are like paedophiles in the making. It should not follow

that because that type of offending, particularly within families et cetera, is very serious for adults that it is not the same degree of seriousness when committed by children.

The Hon. GREG DONNELLY: Leave the paedophile issue to the side for the moment. I am approaching this from perhaps a slightly different perspective than you. There is something fundamental about the educative nature of the law in affirming societal norms about what is "right behaviour and wrong behaviour". Certainly, I consider sexual offences appalling offences. I need to be convinced that if you move from adulthood down to childhood, you need to be careful to move away anything that might affect the attitudes of young people or their considerations of the utter seriousness of what they are doing—notwithstanding, obviously, that they are not adult and that alcohol and drugs might be involved.

Ms HANNAM: Just on that issue, obviously it is an extremely important part of going through the criminal justice process and, in particular, in relation to sentencing that there is this concept of reinforcing society's norms and what is right. There is no doubt about that. But all I say is that we just keep working back: sex offences do not necessarily fall into a separate category. As I say, the young people we deal with are committing offences like break and enter, robbery and all sorts of offences. It is important that they understand that that also is against society's norms. What I am saying is that because sex offences are sex offences, they are not necessarily more serious. It is not to say they are trivial. We have never submitted that. They are serious, but so is break and enter, robbery, or using weapons et cetera. We just say that where it is really serious, yes, let the appropriate consequences flow, but where it is not as serious, it seems to be unfair, unreasonable and superfluous because there are other mechanisms.

Ms SYLVIA HALE: The submission states on page 5, "The most common motivation behind sexual offending by juveniles appears to be poor conflict resolution. Nevertheless, the majority of cases do not involve coercion." Could you explain what "poor conflict resolution" means?

Ms HANNAM: That is actually quoting someone else's research. It is actually not uncommon for many young people who come before the criminal justice system to have poor conflict resolution skills. When they are in difficult personal circumstances where it is not just conflict resolution but resolution of all interaction—relationship resolution really—they can find themselves making very poor choices that end up resulting in a criminal act. It is interesting because the author talks about that in relation specifically to sex offenders, but I would say that it probably applies across the board. The young people who get involved in the criminal justice system often have very poor skills. They often are lacking in the normal interpersonal skills that children raised in functional families develop just as a result of good parenting. Those sorts of skills are the sorts of things that prevent people from committing a whole range of offences all the time because we just understand that there is a way in which we deal with situations. I imagine that is what the author is referring to.

Ms SYLVIA HALE: I know it is wrong to equate quantity and quality but it seems to me from what you have said that your submission has been at pains to put the position of one dissenting magistrate. Can I ask how many magistrates were consulted in the preparation of this submission?

Ms HANNAM: I know that we were all invited to put submissions in. I am just trying to think of how many we have got in New South Wales. We are always told when there is to be a submission but I do not know how many responded.

Ms SYLVIA HALE: How many magistrates are there?

Ms HANNAM: I am just trying to think? I think there are about 10 or 16—10, I think.

CHAIR: You can get back to us with that one. The secretariat will send you the question and you can get back to us.

Ms HANNAM: I think there are about a dozen of us and possibly some other magistrates in country areas who sit as children's magistrates may also have been invited to respond.

Ms SYLVIA HALE: I realise that in trying to represent all viewpoints what we have here may be something of a minority viewpoint from one person, but I just fail to understand the reasoning behind the suggestion that because a lot of sex offences may not ever be reported that that is somehow an argument against spending the convictions of those offenders where they are reported, because it does seem to me that failure to have those convictions spent implies almost a double punishment for them, so while some members of the

community escape totally scot-free, we have got the conviction and then the repercussions throughout an offender's life. I do not know if I am missing the point of what was being made there.

Ms HANNAM: I am not exactly sure what the point is that he is making, but I think it is probably this: that the majority seem to be putting a description, a characterisation of what is a typical child sex offender or what the majority is and it appears that possibly the DPP is putting something slightly different—I just infer that from some of the questions—and I think the magistrate is saying, "Well, bearing in mind that we probably do not have a very reliable snapshot of all or a large majority of child sex offenders, that maybe we cannot say what we say with the greatest confidence because maybe they are just the ones who happened to get caught because they were very inept in the way they went about their offence or it happens to be, for example, in the group—and it is a small group but that group that falls under the age of consent where you may have had a parent who wanted the child prosecuted or something. That could just purely be an accident because it happened to be a parent who is very robust about this being done. For all we know it may be far more widespread, for example, because underreporting of sexual offences generally is known to be the case. I think that is all that that particular magistrate was concerned about, the generalisations that we make based on who comes before the court. I think that is what he was saying.

CHAIR: Would you perceive that introducing the spent process for not bad sexual offences would be a lessening of the sentence?

Ms HANNAM: No, because the sentence is an entirely different exercise and it should be seen as a different exercise. The sentence has to follow the normal sentencing principles in the common law and in the Acts about what is sentencing about? I do not think it would lessen the sentence; I think it would fairly lessen the consequences for the rest of your life because I think there should be a notion—there are in other areas of the law—where you have received your punishment and you have done what was required to be done, that you can put an end to that in terms of the consequences for your life, but that is not happening for this group. I do not think it would be lessening the sentence; I think it would be assisting young people in their rehabilitation.

Ms SYLVIA HALE: And you would support the onus being on the Crown, as it were, to oppose the spending of a conviction rather than the onus being on the offender to apply for that conviction to be spent?

Ms HANNAM: Yes, because we feel that the exceptional cases are the ones that should never be spent but not the other way round, and of course you should always frame a law to reflect that. That is why we have come up with that model. We definitely recognise that there are some cases where it should not be spent and it is quite proper in terms of the protection of the community, even on top of the other schemes that we have, but we think that in the majority they should be capable of being spent.

The Hon. JOHN AJAKA: And the dividing point is the time of sentence that they receive?

Ms HANNAM: No, the dividing point is the type of sentence under the model bill. We have not adopted the model bill. The deciding point for us would be the strength of the case that the prosecution puts up and it will depend upon the circumstances of the matter, as all applications do.

The Hon. JOHN AJAKA: As to what is serious or not serious, is that based on the actual sentence they receive or are we going to have a list of offences that are deemed non-serious?

Ms HANNAM: No, we say that every one is capable of being spent and will be spent unless the Crown brings an application and the Crown's application will not depend upon a list or anything like that. The Crown could just bring an application.

Ms SYLVIA HALE: I have one last question.

CHAIR: The problem we have is that your information is incredibly important to us but we have only allocated you three-quarters of an hour. That time has now passed and the next witnesses are here. I recognise that you are an incredibly busy human being. There is a possibility the Committee will ask you to attend further during this inquiry and, if so, we would be grateful if you could attend.

Ms HANNAM: I am sure I could make arrangements.

CHAIR: The secretariat will also send you further questions and we ask that you send the information back to us. You have also taken one or two questions on notice. I thank you very much for coming and speaking with us today. Your information has been very important to the inquiry.

Ms HANNAM: Thank you for giving me the opportunity.

(The witness withdrew)

CHAIR: Thank you both for appearing here today. I recognise that you are both very busy people as well. Today is the second public hearing. I will not through all the formalities because they have already been done.

ANTHONY TRICHTER, Chief Superintendent of Police and Commander, Police Prosecutions, New South Wales Police Force, and

JOHN STEVEN KERLATEC, Detective Superintendent, Commander, Sex Crimes Squad, New South Wales Police Force, sworn and examined:

CHAIR: If you take any questions on notice during evidence, the secretariat will get back to you with those questions and if possible we would like the answers within three weeks. If that is too hard, recognising that you have approval processes to go through, you can negotiate with the secretariat. Would either or both of you like to start with an opening statement? Do you have anything to tell us upfront?

Mr KERLATEC: Nothing at this stage, thank you.

CHAIR: I had the pleasure of hearing you on the radio on the North Coast. You were very good.

Mr KERLATEC: I hope it was good news.

CHAIR: Some research findings suggest that juvenile sex offenders are not specialised sex offenders and if they do reoffend they are more likely to reoffend for non-sexual offences. What is your view of this research, given your experience with sex offenders? The question is directed to either of you.

Mr KERLATEC: I have read some of that information and some of the research material. The only observation I would make about the findings is that it did not go as far as to articulate what after-court programs may have been entered into by these people, whether those persons were managed by the child protection register, whether there were any other conditions placed on them that would have some control over their behaviour that worked in a positive light to prevent them from reoffending.

CHAIR: So you perceived that the variables were not picked up in the research?

Mr KERLATEC: That is correct.

CHAIR: Some submissions claimed that sexual offending by young people may be one part of an overall pattern of risk-taking behaviour and should not necessarily be seen as an indication of long-term sexual offending. Do you agree with those claims, given your experience with sex offenders?

Mr KERLATEC: It is a difficult question. However, I would note that sexual offending is perhaps the most abhorrent crime in the community. It touches more than people's lives physically. It traumatises them for the rest of their lives. Any offence in that regard I would suggest is an indication of the capacity and willingness of a person to engage in that type of crime and it is an all-time low. I think it would be difficult to argue that once you have demonstrated a capacity to go to that depth, whether you are willing to go back, I do not know. I do not know the correct answer to that, but that is my feeling on that position.

The Hon. JOHN AJAKA: In relation to spent convictions the committee is referring to a one-only offence with a penalty imposed by the court limited to six months being the maximum term. I am not talking about very serious matters that have been committed. I refer to those cases where a judge having heard all the evidence believes that a penalty of up to six months is appropriate. My difficulty is with an exemption for sexual offences—and your experience will be very valuable to the committee—if offenders are charged with a serious robbery or a serious sexual offence they will obviously be sentenced for more than six month. Why should the offender charged with a minor sexual offence be discriminated against compared with a person who has been charged with a minor robbery offence even though they both receive four months?

Mr KERLATEC: Just going back on what I said earlier about the perception of sexual offences within our community, it is a far more abhorrent crime than an armed robbery. Yes, armed robbery is very serious and I certainly do not want to indicate I am trivialising it.

The Hon. JOHN AJAKA: I understand that.

Mr KERLATEC: But victims who have been sexually assaulted, male or female, whether historically as a child or as an adult in some other form of the term date-rape or whatever capacity is far more serious in my mind than a non-sexual offence. In that regard I would suggest that the spent conviction regime recognises that and not included it.

The Hon. JOHN AJAKA: In relation to a minor sexual offence, for example, a juvenile boy kisses or grabs a girl without consent—he has clearly committed a sexual offence without her permission—compared with a young boy robbing a girl. Is the first more serious than the second? In both circumstances the offender may get a bond.

Mr KERLATEC: Yes, I can understand that. I can see that position.

CHAIR: The Hon. John Ajaka is not asking you to question the law that is what the committee is doing.

The Hon. JOHN AJAKA: You are probably the most experienced person who sees it on the street and your opinion is very valuable to us.

Mr KERLATEC: Do you mind if I take some time to answer that.

The Hon. JOHN AJAKA: No. Earlier the magistrate said there should be a different category for non-serious sexual offences compared to the serious sexual offences, where I understand you are coming from and I agree with you wholeheartedly. She said that the non-serious offence should be considered when one is looking at whether they should be spent.

Mr KERLATEC: If some changes were to take place, and at this point I would say I would not be supporting any, I could see scope for that to be part of the consideration in greater debate.

Mr TRICHTER: Perhaps I could add to that, if I may. There are certainly varying degrees of severity of the facts of the particular offence within each particular category of offence. The example that you have given of the unwanted kiss is a good example because it is probably at the lower, if not the lowest, end of indecent assault. At the same time indecent assault can be committed in much more serious circumstances than that.

The Hon. JOHN AJAKA: Heinous circumstances, I understand that.

Mr TRICHTER: I think it is right to say that on the face of the offence category it would be impossible I think, or at least inappropriate, for the spent conviction regime to apply on the basis of the category of offence as opposed to the seriousness of the offence itself within the category.

The Hon. JOHN AJAKA: One of the reasons the current legislation has the six-months cut-off is because the legislators at that time considered that anyone being penalised by a court of imprisonment up to six months or less, which would include bonds, fines, et cetera, in itself indicated the seriousness of the offence with all the circumstances having been taken into account. Clearly we are not talking about spent convictions for someone who has been given 15, 25 or 55 years.

Mr TRICHTER: I suspect that is right but I would have to add to that that there is a great deal of variation in the penalties imposed by courts, particularly on the basis of subjective factors. Then again, penalty alone should not be taken as the only yardstick, for want of a better term, of the seriousness of the offence. Subjective factors in particular which are required to be taken into consideration by the court—I am referring to section 21A of the Crimes (Sentencing Procedure) Act—can vary enormously depending on the individual, their life circumstances and a whole range of matters that the court took into consideration in imposing that penalty. The penalty is not purely a reflection of the seriousness of the facts of the offence but those subjective factors play a very critical role as well.

CHAIR: Would the subjective factors in some way reflect the risk to the community?

Mr TRICHTER: I think it is very hard to say that without looking at each individual case and the circumstances of each case. For example, recently I knew of a case where a Juvenile Justice report for pre-

sentencing purposes in the Children's Court was taken into consideration. Within the report it was disclosed that the child had witnessed his father killing himself and that was a very pertinent matter in the sentencing process, and to some degree explanatory of the child's conduct in committing the offence, and put that conduct into context.

Ms SYLVIA HALE: Surely those subjective factors are reflected in the sentence that is actually imposed and unless you can devise some other benchmark against which you decide how serious is an offence, in fact, the length of the sentence is probably the best indicator as to how severely the court viewed the offence?

Mr TRICHTER: I can only suggest that an examination of the actual evidence available is the best indicator.

Ms SYLVIA HALE: Do you say that rather than a conviction being automatically spent each case should be re-examined on its own merits?

Mr TRICHTER: I think it would have to be.

Ms SYLVIA HALE: Once a person has been convicted that should be the end of the matter, rather than a complete re-hearing of the circumstances being conducted and then the potential imposition, particularly if the regime changes, of this additional penalty of the conviction never being spent, with all the implications for a young person in terms of their employment opportunities and prospects in life. It seems to me that you are double-dipping, as it were.

Mr TRICHTER: I can see what you are saying, certainly. I was in the room when Her Hon. Ms Hannam answered a similar question and can only agree with her when she said that I think the two are separate and distinct processes. For my part I would say that the spent conviction regime, although it may be perceived for all intents and purposes as a penalty, I do not think it ought to be considered as part of the punitive process. I think it needs to be regarded as a separate process. I think it is more about risk.

The Hon. JOHN AJAKA: Her Honour who deals only with juveniles is of the view that the conviction should be automatically spent in each circumstance with a juvenile unless the Crown or police prosecutor makes an application for it not to be spent. If the police prosecutor felt that the offence were not serious enough—serious as opposed to non-serious—for example, a forced kiss circumstance—you as the boss of the prosecutors would not then approach the magistrate and say "I do not want this conviction spent" and make an application. I believe you would believe having weighed up all the circumstances and it being a one-off occurrence that will clearly occur again, no fine, bond or time in jail, you would not want it to hound him. What is your view of the fact that it would be automatically spent unless the police prosecutor or the Crown made an application because it was serious?

Mr TRICHTER: I would have to answer it this way, police prosecutors appear at court in essentially the same capacity as any other legal practitioners. We rely on our instructions. We would deal with that question if it were for us to make submissions to the court on the instructions we received from the officer in charge of the case.

The Hon. JOHN AJAKA: What is your opinion on her view that this is what the law should be? Do you disagree with her that this would be a good way forward?

Mr TRICHTER: I do not agree. I think there are some difficulties with that.

The Hon. JOHN AJAKA: I want to hear more from a practical point of view.

Mr TRICHTER: Apart from the philosophical point of view, which I will put aside.

CHAIR: No philosophy.

Mr TRICHTER: From a practical point of view I think that would be difficult. If I can draw analogies to a whole range of other applications and processes that occur in Local, District and Supreme courts there are a range of issues already that Crown and police prosecutors have to turn their mind to in the course of a case. At the end of a case—and a sexual case is often a very difficult case; it is a case where the prosecutor's energy and focus is upon the witnesses in such matters as victim care but primarily because of the nature of our work, the

evidence—to then be in a position where the prosecutor must turn his or her mind to ancillary applications such as the one that is being proposed now would create some difficulties.

The Hon. JOHN AJAKA: Even getting instructions, to use your terminology, then and there would almost be a nightmare, I would assume.

Mr TRICHTER: Absolutely. It would certainly be, if I can use this terms, and I would hate to be quoted on this—

The Hon. JOHN AJAKA: You will be quoted.

Mr TRICHTER: I realise that. I guess what I am saying, without meaning precisely this is, it would be the last thing on the prosecutor's mind. For example, it is a like a Crown prosecutor is required to make an application before a court in a drug matter at the end of a lengthy trial regarding the destruction of the drug. It is almost always forgotten about, yet it is so important, and I fear the same would happen in this case.

The Hon. LYNDA VOLTZ: Recently, Mr Tolliday from the New Street Adolescent Service said that the services are for young people between the ages of 10 and 17 who have sexually assaulted or abused another child or a young person and who are not being prosecuted whether that is because of an evidentiary issue or for some other reason. Earlier today the Children's Court representative said that in relation to its submission a magistrate had raised concerns that the court places little reliance on official conviction and re-conviction rates, arguing that sexual offending is highly unreported and under prosecuted. Given the evidence from both Mr Tolliday and a minority report from the Children's Court do your figures show a large conviction rate of juvenile sex offenders? What is your conviction rate on reports?

Mr TRICHTER: I will defer to Mr Kerlatec on that.

Mr KERLATEC: I do not have the exact figures in front of me, so it is probably best to take that question on notice. The Bureau of Crime Statistics and Research [BOCSAR] might be the more appropriate regime to provide that data. In regard to underreporting or over-reporting, I acknowledge that there is an issue, in particular, in the Aboriginal community. I am aware that young children are afraid to come forward. They are not afraid of dealing with the authorities; they are afraid of putting up their hands and nominating their accuser, who might be a member of their family, which is mostly the case. They then try to come to terms with what will happen. That person is either taken way or he or she is taken out of the community and placed in something totally foreign.

I am aware of situations where that scenario has stopped children from coming forward. It is extremely concerning and challenging for social workers and care givers in that area to support those people and to encourage them to come forward. I am also aware some that people fear talking to authorities and reporting a matter. It might be fear that has been instilled by the perpetrator who said, "If you go to the police this will happen. This is what we will do to your parents. This is what will take place." Most often that is the case. Normally their closing words will be, "If you go to the police I will come back and kill you. If you go to the police I will do something to your parents." That puts an overriding fear into the child who then says, "I cannot say anything." They have to deal with that for some time. They then go to other avenues for support. Because of that scenario offenders are not identified, or they may be identified but they choose to take an alternative course of action to try to rehabilitate themselves. I am aware of the program, which is very promising.

The Hon. LYNDA VOLTZ: A number of people in programs might not be prosecuted. The average age of children in the New Street program 13½ as opposed to Juvenile Justice where the average age is 16.

Mr KERLATEC: I am sorry; I cannot comment on those details. I do not know.

The Hon. LYNDA VOLTZ: My next question follows the question that the Hon. John Ajaka asked earlier about the range of sexual offences. Indecent exposure could apply to someone walking home late at night and urinating on a side path in front of people, or it could relate to the experience that my daughter and I had when were shopping. We walked outside the shop at midday and saw a bloke urinating outside the shop. When we are talking about the facts of the matter before a court obviously there is a range of sexual offences. For example, an unwelcome kiss is an unwelcome kiss, but a drunken rugby league player could also jump on an

unsuspecting 17-year-old who was walking through a certain area. There is a range of different sexual offences that have different implications. Would that be the case in all sexual offences?

Mr KERLATEC: Each case is individual. We need to look at all the facts before we talk about indecent assault, obscene exposure or offences under the Summary Offences Act. We have to drill down to establish exactly what took place. However, at any point you cannot dismiss the impact on the victim. I refer to your experience and to that of your daughter, and how long you carry that experience until you can come to terms with it and maybe deal with it. I do not have a direct answer to your question.

Mr TRICHTER: Perhaps I could add something to that. I thought about that issue before coming here today. It is my view definitively that there is no sexual offence when it is not possible for the facts to be significantly serious. I cannot identify a single sexual offence where that would be the case. I think it is important in relation to the example that has been given with regard to wilful and obscene exposure. Rarely, if ever, is an individual who urinates in public charged with wilful and obscene exposure. Those people are charged with offensive conduct. Wilful and obscene exposure generally always is a sexual offence when there is an intention on the part of perpetrator wilfully to draw attention to his genitalia.

For example, the streaker at the cricket ground who wilfully runs onto the field with no clothes on generally is never charged with wilful and obscene exposure. Even though he is drawing attention to his nudity, he is not drawing attention specifically to his genitalia in a sexual context. Almost always, if not exclusively always, wilful and obscene exposure is reserved for those—if I can use this term because I think we all understand it—the flasher type of scenario; the person who seeks to draw attention to the fact that he is exposing his person. In most cases there is a degree of sexual exhilaration from the fact of so exposing himself.

The Hon. LYNDA VOLTZ: According to Nicholas Cowdery's submission—I do not know whether you have read it—obscene conduct is exempt in the current scheme. Is that right?

Mr TRICHTER: I am not certain about that. I certainly do not dispute that if Mr Cowdery said it.

CHAIR: Obscene conduct is included in the Summary Offences Act.

The Hon. LYNDA VOLTZ: Nicholas Cowdery states:

> In our view the rationale for the exclusion from the scheme of most sexual offences is still valid. (We query, however, that if the rationale is really based on the seriousness of sexual offences, why then is the summary offence of obscene conduct an exempt offence in the current scheme?)

He is saying it the other way round.

The Hon. JOHN AJAKA: He is saying that it is exempt from exemption.

The Hon. LYNDA VOLTZ: Yes.

Mr TRICHTER: I am not sure what he means, though, by "obscene conduct".

The Hon. LYNDA VOLTZ: I circled it for that reason.

Mr TRICHTER: The correct title of the offence is wilful and obscene exposure. There is a very separate offence called offensive conduct, which is quite a different offence.

The Hon. JOHN AJAKA: Does offensive conduct come within the sexual offences?

Mr TRICHTER: No, it does not.

The Hon. JOHN AJAKA: So the exemption would not apply?

Mr TRICHTER: It is an offence under the Summary Offences Act.

The Hon. LYNDA VOLTZ: That is why it is exempt. People urinating on the street are not charged with wilful and obscene exposure. That is good; you cleared up that issue. The other issue relates to sexual offences, to the difficulty in obtaining the facts of the case and, in particular, the reluctance of witnesses to give

details. If you look back at the facts you have to look also at the facts that the victim presented in the court. Does that ever change the seriousness or nature of the offence?

Mr KERLATEC: The investigating police primarily obtain all evidence from victims—primary victims—before any arrest is made. That then leads to the obtaining of a statement. That evidence dictates what charges will be laid. I cannot think of a particular matter where police officers would charge someone on the evidence that they had at that time and they then decided that it should be downgraded. It may be something for discussion or decision in the District Court by the Crown or by the Office of the Director of Public Prosecutions. I do not know whether I have answered your question.

The Hon. LYNDA VOLTZ: How often would juvenile offenders in sexual offences be given a period of detention that is greater than two years? What is the common sentencing period?

Mr KERLATEC: I am sorry; I do not have those details. I do not know whether Mr Trichter does.

Mr TRICHTER: I do not have any statistics for you. I certainly do not know what those statistics would reveal. As I understand it, the maximum penalty in the Children's Court is a control order for two years in relation to any single offence. It is possible to impose a sentence of greater than two years imprisonment only if the child is dealt with at law. By that I mean that the child is dealt with in the District Court. There is a small number of very serious offences that, if committed by a person under the age of 18 years, must be dealt with in the District Court. Then there is a category of indictable offences—offences that can be dealt with in the District Court if the person is an adult.

Under the Children (Criminal Proceedings) Act the Children's Court magistrate must turn his or her mind to it and make a determination as to whether the Children's Court can appropriately deal with that matter. If in the opinion of the magistrate the court cannot—and by that I mean the magistrate is of the view that the sentencing scope in the Children's Court of two years will be insufficient—the magistrate has an obligation to refer the matter to be dealt with in the District Court.

The Hon. LYNDA VOLTZ: Those offences that are dealt with at law obviously are very serious offences?

Mr TRICHTER: Yes.

The Hon. LYNDA VOLTZ: For example, murders?

Mr TRICHTER: Yes, and serious sexual assaults.

The Hon. LYNDA VOLTZ: There is a range of offences that, by definition—because they are either indictable or dealt with at law—lend themselves to being serious offences?

Mr TRICHTER: Yes.

Ms SYLVIA HALE: We are yet to hear from the representative of the Youth Justice Coalition, but one of the submissions suggests that when people are convinced that the sexual intercourse was consensual and there is less than two years age difference separating the parties that should no longer be an offence for which young people can be prosecuted. Do you have any views on that?

Mr KERLATEC: I am aware that the Sexual Offences Working Party, which is chaired by Her Honour Justice Fullerton, is exploring that as an option in its deliberations. I know that it is up for debate at present. I would be interested to see the outcome of that final debate so that the scope for that can be fully explored.

CHAIR: Would you mind describing the Sexual Offences Working Party?

Mr KERLATEC: It is a working party established by the Attorney General of New South Wales. The Sexual Offences Working Party was established under chapter 10 of the Crimes Act and is chaired by Her Honour Justice Fullerton.

Ms SYLVIA HALE: From your experience do you think that any such amendment to the law would produce undesirable outcomes?

Mr TRICHTER: From my point of view I would have to defer to the Parliament's decision as to whether or not that should be an offence. It is not a question that I think is appropriate to answer from a police perspective.

Ms SYLVIA HALE: But you must deal with cases where young persons are prosecuted for engaging in consensual sex. Often they are prosecuted because, say, the parents of one party or the other is particularly outraged and wants to see justice done. From your experience is that a desirable process?

The Hon. JOHN AJAKA: It is not fair on the detective to ask him to give a personal opinion on something like that. You will get him in trouble.

Ms SYLVIA HALE: Based on their experience they must have—

The Hon. JOHN AJAKA: You will get him in trouble.

CHAIR: They are public servants.

Ms SYLVIA HALE: Okay, fair enough.

The Hon. JOHN AJAKA: I would advise him not to answer.

Ms SYLVIA HALE: Obviously every word is taken down and used in evidence against you. Do you find that the legislation, or the law that governs the prosecution of juveniles, has as its focus the rehabilitation of the child, more so than the punishment of the child? Do you see any reason for that focus to be changed?

Mr TRICHTER: Again, that is another difficult question. All I can say in answer to that question is that the principles relating to the sentencing of young persons are enunciated in the opening sections of the Children (Criminal Proceedings) Act. In accordance with the oath that we take as police officers to uphold the rule of law that forms part of it. We certainly act in accordance with those parameters. As I understand it those parameters, which are the enunciated principles for the sentencing of young offenders, are taken from a decree of the United Nations.

Ms SYLVIA HALE: In the case of non-sexual offences that incur a sentence of less than six months the convictions are automatically spent after a period of three years. There have been suggestions that that period might be extended to five years or even 10 years. From your experience, do you find the three-year period is a sufficient length of time to indicate whether the offenders have rehabilitated themselves?

Mr KERLATEC: For clarification, are we talking about non-sexual offences and juveniles?

Ms SYLVIA HALE: Yes.

Mr KERLATEC: The information I would have, in the absence of anything different, is that yes I think it does work.

Ms SYLVIA HALE: You think that three years is sufficient time for the juvenile to rehabilitate?

Mr KERLATEC: I think so, but I would certainly take comments from those in a better position. From my experience I would say yes.

Ms SYLVIA HALE: We seem to be receiving evidence from the children's magistrate that if you set aside the issue of the impact on the victim, young people who commit offences of a sexual nature are not likely to reoffend. They produce the research and statistics to support that proposition. In that case, should not the same regime apply? If you leave aside the impact on the victim and you assume that sexual offences are not inherently different from the other sorts of offences that a juvenile may commit and you can see young people whose convictions are spent after a period of three years are not reoffending, what is your rationale for not extending the same view about spent convictions in the case of juvenile sex offenders who have sentences of less than six months?

Mr KERLATEC: I would not accept spent convictions for juvenile sex offenders being included in the regime, in part for the reasons I outlined before—the examples of post-court rehabilitation programs, intervention by the different programs that are available, placing them on the child protection register and the monitoring program that takes place with that, and the preclusion from working with children, removing opportunity for those people to potentially offend. Whilst they may not offend we are not sure what parameters encircle the people to stop them from reoffending, apart from their own goodwill if that is ever demonstrated.

Ms SYLVIA HALE: Presumably we have other legislation in place that screens them out. There are Working with Children checks and protections in place and if a young person engages in all the rehabilitation programs and the counselling you suggest, should they not be able to reap the benefit of that by having their conviction spent, given that they are young people whose motivations are often very different from those of adults? Should they not be given the opportunity to resume their life with an unblemished record, particularly in view of all the adverse implications of having such a record throughout the course of the rest of their lives?

Mr KERLATEC: I still stand by what I said previously. It is such an abhorrent crime that it dictates that it should be separated and looked at differently from the other crimes.

Ms SYLVIA HALE: Even if the abhorrent crime consists of flashing or touching a child inappropriately but only relatively briefly?

The Hon. JOHN AJAKA: I do not see how you can say "touching a child" is—

Ms SYLVIA HALE: Well, just say flashing. I will limit the example to that.

Mr KERLATEC: I do not move away from that position.

Mr TRICHTER: I would agree with that. I have to add that in my experience in prosecution of wilful and obscene exposure offences a flashing offence is generally symptomatic of a form of sexual depravity as opposed to a minor inconsequential offence. We need to make sure we do not fall into the trap of trivialising an offence of wilful and obscene exposure. I think it is generally indicative of something far more serious.

Ms SYLVIA HALE: Is there evidence that people who engage in that behaviour go on to commit even worse sorts of sexual crimes?

Mr TRICHTER: I do not know of any such evidence but certainly in my experience I have seen many occasions or many examples of where a person who comes before the court for the offence of wilful and obscene exposure comes before the court again and again and again.

The Hon. DAVID CLARKE: Professor Dianne Kenny in her submission has raised a concern that if sex offences were to become capable of being spent police officers might start charging young people with more serious offences to ensure a custodial sentence or a longer sentence. Do you believe that that concern is justified?

Mr TRICHTER: No, I do not. In fact, I vehemently disagree with that suggestion. The reason I say that is because at the moment police will generally always charge with the most serious offence that is able to be proven on the facts and the evidence available. Then it becomes a matter for the prosecuting authority as to whether it is appropriate in due course, subject to the processes and the negotiations that occur while the matter is alive before the court, or a lesser charge is preferred because on closer examination of the evidence, for example, or after conferencing the witnesses, some lesser charge is appropriate. Police will generally charge with the appropriate offence that is available on the facts and generally with the most serious offence, not only in relation to sexual offences but effectively any offence. Having said that, my many years of prosecuting experience have demonstrated to me that that is the case in relation not only to sexual offences but any offences.

There is a principle at law that has been around for almost 30 years, the De Simoni principle, which comes from a 1981 decision in the High Court. The principle effectively is that the court can only sentence a person on the facts that are relevant to the charge that is before the court. The police are well aware of that. Perhaps they might not be aware of what it is called, the De Simoni principle, but they are aware that in order for the court to take into account all the facts that are able to be proved in the prosecution case they must charge

a person with an offence to which those facts can relate. For that reason, police will already charge with the most serious offence that the evidence is able to prove.

The Hon. DAVID CLARKE: So the truth of the matter is that this concern expressed by Professor Kenny has no anecdotal evidence to back it up?

Mr TRICHTER: Certainly not in my experience.

The Hon. DAVID CLARKE: How many years have you been in your field?

Mr TRICHTER: I have been a police officer for 26 years this May and I have been in police prosecutions in one form or another since May 1985.

The Hon. DAVID CLARKE: So there is no anecdotal evidence not only in regard to sexual offences but other offences either?

Mr TRICHTER: I am not aware of any.

The Hon. DAVID CLARKE: Sex offences are included in the spent convictions schemes in Western Australia and Queensland and there are a number of schemes operating overseas, such as in the United Kingdom, Canada and New Zealand. What lessons do you believe can be learnt from the operation of these schemes?

Mr TRICHTER: I am not familiar with the operation of the schemes in those countries so unfortunately I am not in a position to comment.

The Hon. GREG DONNELLY: Is this matter of sexual offences being seen and treated traditionally as a different type of offence from other offences relating to young people, and hence not having an exemption available, underpinned by some historic position or tradition that has operated? Are you able to comment on that in any way?

Mr KERLATEC: I cannot comment on any traditional standing other than the view of the community, the view of the courts and the view of the victims, and having dealt with this over many years and seen the recurrence of these offences at times by some serial offenders, repeat offenders, and also children growing up in families who are repeatedly sexually abused for years, which is coming to light more now. We see far more matters that we regard as historical coming to light. It is in the face of all of us. It is an extreme struggle for victims to have to deal with this for years and years. I notice some criticism of victims coming forward after 20 or 30 years. I think it demonstrates the burden and pain that they have carried for so long. I have yet to see a victim of an armed robbery, a mugging, a car theft or a break and enter come forward 30 years later and say, "I am now empowered to tell you about this." You do not have that same consequence. Hopefully that has answered your question.

The Hon. GREG DONNELLY: It has assisted. In some sense what you are saying—I do not want to verbal you—is that the treatment has been different because from a societal point of view there has been some understanding that the nature of these matters is different from that of other matters. It has agitated a different treatment because of its implications.

Mr KERLATEC: That is how I understood it, yes.

The Hon. GREG DONNELLY: I do not disagree with the comment you just made. If you flip that over and say that we will allow matters of this nature to be spent in the same way as other matters, do you think that might inform society's attitude to change towards these issues in any way? Do you see this as being a potential negative in that by changing the law, which has in a sense reflected a norm, it has the potential to alter society's thinking about the nature of these matters in a negative way?

Mr KERLATEC: It is a bit difficult for me to comment but I think the potential is there. Spent convictions are about risk management, as I understand it, and ensuring the community can feel safe and that certain safeguards are in place about these perpetrators.

The Hon. GREG DONNELLY: That is part of my concern about making a change to the situation. The nature of the law is that it does inform society and shape views and to move to something different does at least have a potential to change people's perceptions.

CHAIR: We have a ruling in this particular part of the hearing about seeking opinions from witnesses because of their position, so just be a bit careful with your questions. I am not having a go; I am just letting you know that we discussed this earlier when you were not here.

The Hon. GREG DONNELLY: That is fine.

Mr TRICHTER: Could I add one comment to Mr Kerlatec's response? In 1981 there was probably the most significant change to sexual assault legislation when the old offence of rape was abolished. It was around that time—I do not think it was in the same package of legislation, I think it came a little later—that the offence of carnal knowledge was abolished. Of course, that is not to say that the facts that would constitute those offences were no longer offences. However, the legislative regime for sex offences changed significantly and the terminology changed so that the term "rape" was abolished and the term "sexual assault" was introduced. That was a very significant turning point in the law in relation to sex offences. As I understand it, what Parliament intended was to reflect the violent nature of sex offences by introducing the term "assault" into sexual offences. I think that is consistent with what you are saying.

There are two significant intentions in the direction that sexual offences have taken since then. That is, first, to emphasise the fact that a sexual offence is an offence of violence and, secondly, that it is an offence primarily against women. That goes deeper than simply a personal violence offence against a person. I think that in that context the suggestion to water down the element of responsibility for actions into the future needs to be regarded. I am not sure if I have made myself clear.

CHAIR: That was very clear.

The Hon. JOHN AJAKA: For the record, we are again talking about offences, sexual or otherwise, where the only way they are being spent currently is if the sentence was six months or less. A lot of the more serious crimes, sexual other otherwise, and the more heinous crimes, which clearly no-one accepts, will never be spent in any event because they do not come within the six-month timeframe. The model legislation talks about possibly changing the six-month timeframe to 12 months. In your view would that be an appropriate change or should it be left at six months to prevent bringing in the more serious offences?

Mr TRICHTER: I would agree with that.

The Hon. JOHN AJAKA: Not to change it?

Mr TRICHTER: Yes.

The Hon. LYNDA VOLTZ: My question is almost the same but in a different context. Obviously the sentencing regime is different for children. You may not be able to answer this question. If a child comes before the court at such a young age how much consideration should be given to their family situation? There is the saying that the man a boy becomes depends on what he sees now and those around him. As you pointed out with regard to the boy whose father killed himself in front of him, it is about the family situation and their community. Should there be an ability to look at spent convictions for a certain age range based on socioeconomics and the community around the offender? Is three years really long enough for a child in that situation? Should it be five or 10 years when they have passed that youthful period?

Mr TRICHTER: I find that question really difficult to answer. Again, it depends on the individual circumstances of each case. I think all I can say is that all of the matters referred to are subjective factors that a court is entitled to take into consideration in sentencing a person in mitigation of the offence.

The Hon. LYNDA VOLTZ: As we know from the Children's Court, there are unlikely to be sentences over a certain period, if they are sentenced at all.

Mr TRICHTER: Yes.

CHAIR: Do you wish to add anything?

Mr TRICHTER: No.

Mr KERLATEC: No.

CHAIR: A couple of questions were taken on notice and obviously we did not get through all our formal questions. The secretariat will organise for those questions to be provided to you. Thank you very much for giving the Committee your time. This has been a very important part of the inquiry.

Mr TRICHTER: Thank you for the opportunity.

Mr KERLATEC: Thank you.

(The witnesses withdrew)

(Short adjournment)

MEGAN WILSON, Executive Director, Office of the Chief Executive, Juvenile Justice, Department of Human Services, and

NATALIE MAMONE, Chief Psychologist, Juvenile Justice, Department of Human Services, affirmed and examined:

SUELLEN LEMBKE, Director Programs, Juvenile Justice, Department of Human Services, sworn and examined:

CHAIR: Thank you very much for appearing today. Would you like to make an opening statement?

Ms WILSON: No.

CHAIR: I have been saying to all witnesses that the Committee recognises the complexity of this question. Members have also heard that the issue is being considered by other organisations, so we know that you have to answer questions from a number of people about this issue. How does the requirement to disclose convictions impact on the ability of past juvenile sex offenders to obtain employment and to achieve social inclusion and why is stable employment important in rehabilitating offenders and protecting against reoffending?

Ms MAMONE: The requirement to disclose convictions almost certainly impacts negatively on the ability of people who have committed sexual offences to obtain employment and thereby to achieve social inclusion. There is research to back up that statement and we have references if the Committee wants them.

CHAIR: We will take those references on notice unless you want to go through a couple.

Ms MAMONE: I will read a couple. The first is Lam and Harcourt of 2003 entitled "The Use of Criminal Record in Employment Decisions: The Rights of Ex-offenders, Employers and the Public" from the *Journal of Business Ethics*, volume 47, pages 237- 252. There is also Ward and Maruna of 2007 entitled *Rehabilitation*, published by London Routledge. Ward and Maruna commented that there is an increased risk to the community because of the offenders' lack of opportunities to pursue rewarding pro-social lifestyles. Stable employment assists in helping offenders to see themselves has part of society rather than being separate or isolated from it. People who identify with a particular group tend to comply with the rules of that group. Our aim with young offenders is that they comply with a pro-social society.

Employment provides people with the financial means to meet their needs in legitimate ways, thereby reducing the temptation of crime. Employment also increases the number of pro-social associates that a person has. That is a particularly strong protective factor with juvenile offenders. There is also a theoretical approach to the study of crime from developmental criminology. This approach focuses on the idea of key transition points in a person's development and the risk and protective factors at each stage that influences that person's trajectory. Much research has focused on developmental crime prevention and has targeted transition areas such as child transition from home to school, primary school to high school and from adolescence to adulthood.

One of the best-known studies was the Perry preschool project, which was a longitudinal early intervention project undertaken in the United States between 1962 and 1967. It played a significant role in reducing overall arrests and arrests for violent crimes as well as property and drug crimes and subsequent prison or jail sentences. This line of inquiry produced a raft of risk and protective factors for persistence or desistence from crime and the idea of employment being a protective factor has come from that research.

There is further research. The Gluecks did in-depth interviews with male delinquents aged 10 to 17 in the 1940s. They had a large group of non-delinquents matched on age, race, ethnicity and IQ. They published findings in 1950 and 1968. Their data was later reviewed by Sampson and Laub, who did follow-up interviews with some of the original delinquent cohort up to their 70s. The reference is "Crime in the making: Pathways and turning points through life", 1993, Cambridge Harvard University Press, and "Life-course desisters: Trajectories of crime among delinquent boys followed to age 70", 2003, *Criminology*, volume 41, pages 301 to 339. Again, they found that employment is an important part of desisting from crime, along with marriage and military service. The more that people invest in being part of the community the less likely they are to offend. I will quote from page 15:

> At the same time, we found to job stability and marital attachment in adulthood were significantly related to changes in adult crime. The stronger the adult ties to work and family the less crime and deviance among both delinquents and non-delinquent controls. Therefore, anything that helps offenders to reintegrate into the community and develop a stake in conformity, such as having a job, will positively contribute to desistence from crime.

That is a fairly robust research finding.

The Hon. LYNDA VOLTZ: On Monday we heard from Ms McClelland from the Commission for Children and Young People. She referred to a report that dealt with what defines children with these types of sexual offences, in terms of their socioeconomic background and educational levels. Do you have any data, for New South Wales in particular, that gives you a picture of the people committing these offences?

Ms LEMBKE: We have some data from a December 2006 review we did into our own cohort of offenders. I think you have heard that there is another cohort of young people who are not charged but nonetheless goes through a different process. I can talk to some of that, if you would like. Please stop me if it is not relevant to your question.

Effectively, there are between 50 and 73 clients at any one time in juvenile justice. The average age is 16, and that is also the median and the modal age for young people. The ages for referral range from 12 to 19. At referral to the program, about 5.5 per cent of clients have a previous sentencing occasion for sexual offences, while just over 19 per cent have at least one prior sentence but for non-sexual offences, and 15 per cent of clients were sentenced for a non-sexual offence at the same time as a sexual offence. I think we will be talking a little later about the view that sexual offending for some young people is part of a general offending profile.

In terms of family background, we had 44 per cent living in a single-parent family at the time of the offence, 29 per cent were living with both biological parents, 31 per cent of clients had previously been notified to what is now Community Services for child protection concerns, and 19 per cent of clients had a previous medical diagnosis at the time of referral. Among these clients the most common diagnosis was attention deficit hyperactivity disorder.

In terms of schooling, at the time of the offence the majority of clients, that is 56 per cent, were enrolled at school, while 10 per cent had been suspended. We had 4 per cent not attending school due to truancy, 6 per cent attending alternative educational placement, and 24 per cent were school leavers of their own volition. In 71 per cent of cases there was no official history of sexual acting out prior to the indexed offence. There are statistics in terms of social demography.

The Hon. LYNDA VOLTZ: Are you aware of a study by Sue Righthand and Carlann Welch?

Ms LEMBKE: I am not immediately familiar with that.

The Hon. LYNDA VOLTZ: Ms McClelland quoted from the study. One of the factors they identified was a reasonably high level of education in the group of sex offenders they studied.

Ms LEMBKE: Education in the sense of formal education, or an understanding of sex education?

The Hon. LYNDA VOLTZ: Education. That would be inconsistent with the group you deal with?

Ms LEMBKE: We say 56 per cent were enrolled at school.

The Hon. LYNDA VOLTZ: And the average age of the person you deal with is 16?

Ms LEMBKE: In terms of sex offenders at the time of referral, but we do have them from 12 to 19. Some of them would be a bit younger now, because of some changes in the legislation. Certainly in general terms for young offenders involved with juvenile justice, there is a very high percentage who have left school by year 8.

Ms WILSON: Juvenile Justice, in conjunction with Justice Health and the University of New South Wales, have conducted a couple of health surveys into the young people we have, one in 2003 in custody and one in 2006 in the community. We have just recently redone the custody survey in conjunction with our Justice Health in 2009, and the results of that will be available very soon we hope. Generally speaking, these surveys found—I cannot tell you the exact figures, but we are happy to send you that information—that generally levels

of educational attainment are very poor, with a high level of young people disengaged from formal education, and also a high level of suspension rates. Generally speaking, our young people are quite low in terms of educational attainment. There are other factors that are measured by the health survey, including levels of intellectual disability and mental health issues. As I said, we are happy to send you that information.

The Hon. LYNDA VOLTZ: What percentage of people would you deal with in the 15 to 16-year age group, in relation to sexual offences?

Ms WILSON: I cannot tell you off the top of my head, but I can certainly send you that information.

The Hon. LYNDA VOLTZ: Would it be more common for them to be in that group than in the younger group?

Ms MAMONE: Yes, definitely.

Ms LEMBKE: As I say, 16 is the average, and we usually have between 53 and 70 over a 12-month period.

Ms WILSON: Which is quite a small proportion of the numbers of kids we deal with.

The Hon. LYNDA VOLTZ: When you deal with them, they have been sentenced, is that correct?

Ms WILSON: That is right. We only deal with young people who have a court mandate. They have been sentenced to either a community-based order or a custodial order.

The Hon. LYNDA VOLTZ: Would you know how many of your group have custodial orders?

Ms WILSON: Yes, we do have that information. In 2008-09 there were 93 young people convicted of sex offences. Of those, 73 were on community supervision orders and 20 had custodial orders.

The Hon. LYNDA VOLTZ: Every one of those would have been dealt with by the juvenile courts; they would not have been dealt with by an adult court?

Ms WILSON: Not necessarily. It would have depended on the nature and severity of the offence.

The Hon. LYNDA VOLTZ: Some of the 93 might have been people who had been dealt with in another court?

Ms LEMBKE: Yes. There could have been non-custodial outcomes.

Ms WILSON: But there would have been a mix.

Ms MAMONE: I have another reference from Righthand and Welch, which I think is the study you have referred to. With regard to academic performance, the report states:

> Studies typically report that, as a group, juveniles who sexually offended experienced academic difficulties (Fehrenbach et al., 1986; Kahn and Chambers, 1991; Miner, Siekert, and Ackland, 1997; Pierce and Pierce, as cited in Bourke and Donohue, 1996). For example, Kahn and Chambers found that more than half of the juveniles in their study had evidenced at least one of three kinds of difficulty at school: disruptive behavior (53 percent), truancy (nearly 30 percent), or a learning disability (39 percent). Only 57 percent of the sample used by Fehrenbach et al. had achieved grade-appropriate placement or better. Pierce and Pierce found that 49 percent of the juvenile sex offenders in their sample had academic problems, 38 percent had been placed in special classes, and 14 percent were diagnosed as mentally retarded.
>
> As part of an investigation of learning difficulties as a potential factor in sex offender treatment, Langevin, Marentette, and Rosati (1996) examined the case files of 162 male adult sex offenders who had participated in a treatment program and who had relevant data available. Fifty percent of the sample had repeated a grade. Although most of the subjects (43 percent) had repeated just one grade, 14 percent had repeated two grades and 3.5 percent had failed three or more grades. Seven others had been placed in special education classes as children. In all, 53 percent of the subjects apparently experienced learning difficulties during childhood.
>
> Some juveniles who have sexually offended, however, do well in school. For example, O'Brien (as cited in Ferrara and McDonald, 1996) found that 32 percent of the offenders in his sample were described as above average in their academic performance.

Ms SYLVIA HALE: You were telling us about the statistics for juveniles who had committed sexual offences. Do they share those characteristics with the broader juvenile offending population? You talked about intellectual disability and possibly psychological disability. Are they a distinct group amongst juvenile offenders, or are they similar to other offenders?

Ms MAMONE: In the main, they are similar to the other offenders. They do not seem to have particular characteristics that identify them as a separate group. In fact, most of the juvenile sexual offenders are more like general juvenile offenders, rather than adult sexual offenders for instance. They are much more like other general offenders.

Ms SYLVIA HALE: You deal with people who are subjected to either custodial orders or community service orders. Do the bulk of the people you deal with receive sentences of less than six months?

Ms WILSON: I cannot tell you the exact proportion, but yes, that is the case.

Ms SYLVIA HALE: Therefore, under that system, if those children do not reoffend and they have committed a non-sexual offence, their conviction would be spent after three years?

Ms WILSON: That is right.

Ms SYLVIA HALE: Do you see any reason why a similar regime should not apply to children who commit sexual offences, in a sentence of less than six months, and do not reoffend?

Ms MAMONE: No, I do not see any reason why they should be treated differently from other general juvenile offenders.

Ms WILSON: I guess that is based on the evidence that we have available to us that there are not significantly different characteristics for that group than the general group of offenders.

Ms SYLVIA HALE: Do you do, or participate in, follow-up research that looks at the behaviour of juveniles who have committed these sexual offences? Do you look at their behaviour subsequent to their leaving your control, to see whether they do reoffend?

Ms WILSON: We do look at a general reoffending rate. I cannot tell you what it would be, to break down those two groups, except that the evidence—and Natalie can speak more to that—would suggest that it is not significantly different for them as compared with the general group.

Ms LEMBKE: There is research available into reoffending by juvenile sex offenders. That research has indicated that it does not tend to persist into adulthood, for the majority of young people. In fact, according to the most recently published study of adult sexual recidivism for juvenile sex offenders in New South Wales, only 9 per cent of participants who committed a sexual offence as a juvenile came to the attention of the police for a sexual offence as an adult. The reference for that is Nisbet, Wilson and Smallbone.

The Hon. JOHN AJAKA: Is that 9 per cent?

Ms LEMBKE: Yes, 9 per cent.

Ms SYLVIA HALE: So 91 per cent would not come to the attention of the police, for a similar offence?

Ms LEMBKE: For a sexual offence. But the number of young people who reoffend within a three-year period—of a non-sexual nature—is much higher, and you may have sex offenders who will commit non-sex offences within that period. They are likely to reoffend within a three-year period from a spent conviction.

Ms SYLVIA HALE: Putting it very crudely, you would not say that in 90 per cent of cases juveniles who commit sexual offences do so because they have some sort of innate depravity, shall we say; but, rather, it is other circumstances that give rise to their committing those offences? What do you think causes children to commit those sorts of offences? Why would they grow out of it, as it were?

Ms MAMONE: Offenders of any type eventually grow out of crime, except for a small number. Juvenile sexual offenders commit that particular crime for various reasons. But it does include some young people who, in their maturing during adolescence, during puberty, may not be aware of what norms are around sexual behaviour, or they just ignore them because they are adolescents—it is the nature of adolescents to break rules. So you do get a pool of young people who offend for those sorts of reasons, rather than predatory sexual behaviour, which I think is what your concern is. Most of them are not engaging in predatory sexual behaviours. They are engaging in offending, which is why they are more similar to general offenders rather than adult sex offenders.

Ms SYLVIA HALE: Do you think the fact that those children whose convictions cannot be spent because they committed a sexual offence will suffer this disability throughout their life tends to underwrite or substantiate the community norm that this sort of behaviour is inappropriate? Do you think other children draw a lesson from the fact that they will bear this stigma for their entire life?

Ms MAMONE: Are you talking about the offender that has the stigma?

Ms SYLVIA HALE: No. You say that some children are not aware of the norms or deliberately choose to flout them. Would you say in that circumstance, given that you do not want to encourage children to ignore these norms, that the existence of a lifelong penalty would serve to reinforce and underwrite that norm?

Ms MAMONE: No, not at all. I do not think adolescents exploring sexuality and sexual behaviours would even be mindful of the possibility that there is going to be a lifelong stigma attached to it. I do not think they would be conscious of that.

Ms WILSON: In particular with adolescents, I know you are aware of the work that has been done into adolescent brain development and the fact it is still maturing until sometime into their mid-twenties. In our experience and also from research that capacity to think about consequences and take on those kinds of issues at those ages is much less than that of adults.

The Hon. DAVID CLARKE: Ms Mamone, some submissions advise that juvenile brain development continues until a young person is in their mid-twenties. Do you agree that young people may need help with reasoning and to control their emotional responses? First of all, do you agree with the general approach?

Ms MAMONE: In general there is research that indicates that. Yes, I would agree. Developmental psychological research as well as the more recent neuroimaging research reaches similar conclusions about adolescent brain development and cognitive development. To inhibit impulsive behaviour, adolescents rely preliminary on the prefrontal cortex whereas an adult has a much more complex brain; it is a much more complex brain response in inhibiting impulsive behaviours. Reasoning and emotional regulation actually are identified as risk factors for reoffending and, therefore, they are targeted in treatment programs. Reasoning and emotional regulation also is part of cognitive functioning in the brain and that is related to the level of IQ or intelligence.

Our 2009 Young People in Custody Health Survey has confirmed earlier figures and stated that the average IQ of juvenile detainees is 81, which compares to 100 in a general population. In addition, 13.5 per cent of juvenile detainees scored in a range consistent with intellectual disability, and a further 32 per cent scored in a borderline range—an IQ of 79 and below. We are looking at a sample of adolescents that is significantly lower in cognitive functioning than the general population and, therefore, they would on average take longer to mature in being able to inhibit impulsive responses, for instance, or making other mature decisions such as goal setting, thinking through consequences and those sorts of functions.

The Hon. DAVID CLARKE: Does this impulsiveness and wanting to experiment apply particularly to sexual activity?

Ms MAMONE: No, I think it applies to adolescents in general.

The Hon. DAVID CLARKE: Including applying to sexual activity?

Ms MAMONE: Yes, it would apply to sexual activity as well.

The Hon. DAVID CLARKE: Do you agree with the results from these submissions or investigations?

Ms MAMONE: Which?

The Hon. DAVID CLARKE: First, do you agree with those submissions that suggest a young person will go through these periods of brain development that will result in experimentation, impulsiveness and so forth? Do you basically agree with that research?

Ms MAMONE: I think the research is saying that there is a maturation in the brain, in the cognitive functioning of a person. There is a development and maturation over time through adolescents in how well reasoned our behaviour is and how well regulated our emotions are, be that impulsiveness, anger regulation or whatever.

The Hon. DAVID CLARKE: Should that be taken into account when setting age of consent?

Ms MAMONE: It needs to be taken into account if you have an imbalance in intellectual functioning. For instance, with an adult and child clearly there is no consent possible from the child. That is not arguable. With intellectual disability, for instance, even if someone were of similar age and one person had an intellectual disability and the other did not, I am not sure that consent would be truly possible. If you had two adolescents of similar age and neither is intellectually disabled nor overly affected by drugs or alcohol, I think consent would then be possible—whether it is in law is a different matter.

The Hon. DAVID CLARKE: Younger people on the whole are going to be more impulsive and more prone to experimentation than those who are older?

Ms MAMONE: On the whole they would be.

The Hon. DAVID CLARKE: The Government submission notes that it is difficult to determine the severity of an offence based on the category of offence. Could you comment on why the sentence imposed is a more accurate way to measure the seriousness of an offence?

Ms MAMONE: Simply because the court at the time of sentencing or conviction already has established the details of the offending, and already has looked at the severity of the offending and its impact on the victim more victims. It has detailed the circumstances of the offence and, therefore, takes that severity into account in passing sentence. As far as I understand the law, there is a range of sentences possible for any particular offence.

The Hon. JOHN AJAKA: Correct. There is usually a maximum and sometimes there is even a minimum.

Ms MAMONE: There is a maximum sentence. It is unusual for that maximum sentence to be imposed.

The Hon. JOHN AJAKA: Especially for the first offence.

Ms MAMONE: Especially for the first offence, understandably, because the maximum would be imposed where there is the worst case of that category of offence. Most cases are not going to be the worst type offence. Yes, I would say that the sentence imposed is a more accurate way to measure the severity of an offence.

The Hon. GREG DONNELLY: My fellow Committee members are probably tired of me raising this, but one thing exercising my mind is understanding the history of why sexual offences are treated differently from other offences in how matters may be spent. The bureau of suggestion is that part of this goes back to a sense that sexual offences, being intimate by their nature, have been regarded as different to breaking and entering, and other sorts of offences. Part of my concern with changing the law is whether such a change has a knock-on effect of informing society and young people that perhaps we are lightening up a little bit as a society regarding sexual offences, as they were treated differently and separately in the past. This morning I was reading a research paper from La Trobe University, with which I am sure you all are familiar. Every couple of years the university produces this research paper entitled "Secondary Students and Sexual Health" and this is the 2008 report.

La Trobe University is a well-regarded sexual research centre. The report covers all schools, that is, public, private and Catholic systemic. In the 2008 survey the university covered 105 schools and interviewed 2,926 students. It compared data from its 2002 survey with what it discovered in 2008—that is over a six-year period. With respect to year 12 women the direct question asked was "Have you ever had unwanted sex?" The result shows a jump from 27 per cent of the cohort in 2002 to 39 per cent in 2008—quite a significant increase over that period of time. I know the offences about which we were talking may not necessarily constitute matters as serious as this and, arguably, perhaps these are instances of rape at the extreme end whereas we might be dealing with matters further down the spectrum. However, if a survey such as this demonstrates a significant issue with respect to males perpetrating acts, in effect, of rape against females at these levels amongst secondary school students in Australia, surely we need to be careful about changing the law that has treated sexual matters or offences a little differently in informing social norms about behaviour. Would you care to comment?

Ms WILSON: Certainly my initial response would be that we would base our response on what the evidence shows us. When we are developing our responses as to how we deal with these young people we look very much at what research is available in formulating those programs and responses. The research is indicating to us that dealing with young people, for instance, around whether or not a sentence can be expended in relation to sex offences is actually a better result for the community out the other end if we can work with young people in getting an education and employment. Often having an offence on your history is going to impact on that, which also then goes on to impact on further offending. So, I suppose my initial response is that we would be looking at the most effective way to deal with young people who come into our jurisdiction.

The Hon. GREG DONNELLY: I am sorry, would you clarify what you mean by "effective"?

Ms WILSON: Effective for us is whether or not we can impact on their offending behaviour. There are a range of criminogenic risk factors to do that, one of those being issues around education and employment. That is what we see. Our ultimate aim is to impact on that reoffending behaviour.

Ms LEMBKE: I make a couple of points. The starting point is the fact that young people are actually sentenced for an offence and that does not change under this; that it has not made any different sentencing, so in terms of a deterrent or message to the community, these offences will continue to be seen as serious offences with an appropriate outcome, and that is a key thing to remember. I guess what we are saying is that when you then look at these young people, juveniles, and you look at the trajectory post that offence, we are seeing very few actually translate into further offending. That then segues into Megan's point about the need then to allow them to move on with their lives. If they are going to reoffend, they are going to reoffend sexually within three years, the research might be suggesting and of course it all starts again, but I do not think it necessarily will send a negative message to the community because we are not changing the front end of the sentencing.

Ms MAMONE: Can I just make a note on that particular question?

The Hon. GREG DONNELLY: Yes, of course.

Ms MAMONE: In the school survey that increase in the number of year 12 women—

The Hon. GREG DONNELLY: In percentage terms?

Ms MAMONE: In percentage terms saying that they have experienced unwanted sex, that increased victimisation may actually reflect a greater willingness to report rather than an actual increase.

The Hon. GREG DONNELLY: I heard those arguments before, yes.

Ms MAMONE: In that high victimisation.

The Hon. GREG DONNELLY: It also may well also demonstrate that increase as well?

Ms MAMONE: It may do.

The Hon. LYNDA VOLTZ: Am I correct that what you said before, Natalie, was that the sex offences were not predatory in nature?

Ms MAMONE: What I am saying is that a significant group—probably the majority but I do not have the actual figures—of juvenile sex offenders are not committing sexual offences that are predatory in nature like an adult sex offender would.

The Hon. LYNDA VOLTZ: I am referring back to Mr Tolliday's evidence of 29 March 2010 where he said:

> We see that often with young people who come to us. The initial description is that there has been some level of consent. We then see that advantage has been taken, or exploitation by way of intellectual capacity, occasionally substances being used, and more usually specific knowledge by the actor of the sexual nature of the conduct …

Ms MAMONE: Yes.

The Hon. LYNDA VOLTZ: But you do not perceive that as being predatory?

Ms MAMONE: I am referring to predatory sexual offending as the sex offender who is seeking out and targeting victims for the sexual offences and therefore is at high risk of committing further sexual offences.

The Hon. DAVID CLARKE: You do not believe that most sexual offences are predatory in nature?

Ms MAMONE: No, I would not say that. You see, I have worked in the adult criminal system as well. I have worked with Corrective Services as well as working with Juvenile Justice and in working with adult sex offenders, because I worked in CUBIT at Long Bay Jail, and with adult sex offenders there was definitely predatory aspects to their behaviour.

The Hon. DAVID CLARKE: That is the great majority?

Ms MAMONE: Yes, certainly the people I worked with, they were predatory in their offending. They were also much less likely to commit other kinds of offences. So, if they were committing sexual offences against children, generally that is what their offence history was, generally speaking. With the juveniles, there are a much larger proportion of juvenile sex offenders who are what we call versatile offenders. Versatile offenders are people who commit different kinds of crime so they might steal handbags or cash; they might take drugs as well as sex offending and stealing cars or whatever, so they are versatile offenders; they are not specialised offenders.

The Hon. LYNDA VOLTZ: So of the 93 people in your system, how many of them were offending against a person in their immediate knowledge such as a sibling or relative?

Ms LEMBKE: We have the figures on that: 12 per cent against a biological sibling; 14 per cent against a half or step-sibling; 8 per cent, a cousin; 2 per cent, a family friend; 5 per cent, a neighbour; 8 per cent, a class or school mate; 2 per cent against a schoolteacher; 12 per cent, a peer or friend and 32 per cent were a stranger, a person they did not know 24 hours previously and most likely to be higher in the group that Dale Holliday dealt with.

The Hon. LYNDA VOLTZ: A lot higher in the group that Dale Holliday dealt with?

Ms LEMBKE: Yes.

The Hon. LYNDA VOLTZ: How would that compare with adult offenders?

Ms MAMONE: I do not know the figures off the top of my head anymore but certainly most victims are victimised by someone within the family or close proximity but when you get an adult male offender who targets victims that are not within the family, they can offend against hundreds of victims, so it is a little bit of which question are you asking?

The Hon. LYNDA VOLTZ: What I am trying to get clear is that with predatory behaviour, it is obviously quite often someone they know, someone in close proximity. By adulthood, that is removed quite often from their proximity. How many of these children understood what they did was wrong?

Ms MAMONE: How many of the juvenile sex offenders understood that what they did was wrong?

The Hon. LYNDA VOLTZ: Yes?

Ms MAMONE: It is a difficult question to answer. They would have an understanding that they are doing something wrong.

CHAIR: Before or after? Before or by the time you get them?

The Hon. LYNDA VOLTZ: At the time of the offence?

Ms MAMONE: At the time of the offence I would assume, but I do not have research to back me, that they would have an awareness that what they are doing is wrong at the time of the offence.

Ms SYLVIA HALE: Would they know why it was wrong?

Ms MAMONE: They would not necessarily know why it was wrong. They would not necessarily understand the impact it might have on the victim. They would not necessarily understand those things, again depending on the age of offender.

The Hon. LYNDA VOLTZ: It is more likely with a 15- or 16-year-old as opposed to the 13-year-old?

Ms MAMONE: Yes, the 13-year-old is much less likely to understand the full impact of their actions. I just want to clarify a couple of things. With the adult sex offenders, about 10 per cent will target strangers, that is, victims that they have not known in the last 24 hours. Stephen Smallbone from Queensland argues that sexual offending can actually be cued by the environment without the offender engaging in planning, so in that sense whilst any sexual offence is abusive, some sexual offences are not predatory because they are not planned in the same sense, and there I am talking particularly about juvenile sex offenders.

We have had clients who have offended sexually because they are in a social situation where the opportunity has arisen, albeit because they are with someone who is planning the offence albeit because there is pornographic material around or they are surfing the Net and come across something pornographic or people are emailing or texting sexual messages.

The Hon. DAVID CLARKE: You are not suggesting that predatory offences have to be planned offences, are you?

Ms MAMONE: Stephen Smallbone certainly thinks that predatory offending is offending that is planned.

The Hon. DAVID CLARKE: Do you agree with that?

Ms MAMONE: I think so. Certainly in the adult system the offenders I was treating had varying degrees of planning, from very short-term planning to very elaborate planning. Juvenile offending does not always have that same character of planning.

Ms LEMBKE: There may be a bit of a semantic issue about how we generally might use the word "predatory" and what it might mean within the sex offending literature. I think we perhaps have to be mindful of that. I think the last thing we would be suggesting is that any of this offending is not abusive because it is.

Ms MAMONE: It is always abusive.

Ms LEMBKE: It may not, in the sex offending literature, perhaps be so described. Predatory might mean something quite specific.

The Hon. GREG DONNELLY: There is the dictionary definition of what predatory means and then there is the conceptual idea of how it is used in these sorts of matters, is there not?

Ms LEMBKE: That is right, and that is the issue. One would not suggest that offending against your sibling, cousin or anybody is not abusive and we did not see it as abusive.

The Hon. JOHN AJAKA: I want to ask you some specific questions. Firstly, we know that for a conviction to be spent that is not a sexual offence for a juvenile is if he or she received a penalty of less than six months jail. If we were to now remove the exemption in relation to sexual offences so that now with a sexual offence it would apply for a juvenile, would six months be sufficient or should it be increased, as the new Federal model is recommending, to 24 months? Do you have a view on that?

Ms MAMONE: We have considered that question as an agency.

The Hon. JOHN AJAKA: I am happy for you to take any of these questions on notice.

Ms LEMBKE: I think it is a complex issue and we have asked for some data to give a better-informed response. We will take the question on notice.

The Hon. JOHN AJAKA: I am happy for you to do that. With your experience and what you have been seeing, do we want to allow spent convictions if a juvenile has been sentenced for 20 months, because one would assume to have received 20 months it must have been a fairly serious offence, or is six months the appropriate level if we are going to remove that exemption for juveniles? The second question is: following that analogy, is that currently it is six months and three years. I understand that the Federal proposal is to increase it to 24 months, but it will not be spent until five years. Should we leave it at three years or is five years the more appropriate level?

Ms LEMBKE: The research is indicating that if young people are going to reoffend, they are going to reoffend, 70 per cent, after three years, so if it is going to happen, I think it will happen by that period.

The Hon. JOHN AJAKA: Before the three years?

Ms LEMBKE: Yes, so the 70 per cent is probably not good evidence to support the five years. If they are crime-free after three years, the literature would be suggesting they are going to remain crime-free beyond that period.

The Hon. JOHN AJAKA: How does the extra two years affect their ability to obtain employment, et cetera, which are all the matters you raised earlier? So if you could you consider that in responding, we would be grateful?

Ms LEMBKE: Yes.

The Hon. JOHN AJAKA: The provision for spent convictions for juveniles and adults, whether it is a sexual offence or otherwise, only applies if it is the one-only offence. Should consideration be given to looking at whether it is one or two offences and still allow it to be spent, simply because there maybe juveniles who will commit one offence, a month later commit another offence, a month later commit another offence, something happens and all of a sudden they become model citizens for the next three years and then forever. Should we limit juveniles to the one offence only? Again I am happy for you to take that question on notice.

Ms MAMONE: I would suggest that the important criterion with spent convictions is that the person has integrated into society in a pro-social lifestyle. For a juvenile who has been offence-free for three years you are looking at someone who is highly likely to have adapted their behaviour into a pro-social lifestyle. To me the important criterion that you are talking about there for a spent conviction is that three-year good behaviour.

The Hon. JOHN AJAKA: Irrespective of whether it is one, two or three offences?

Ms MAMONE: I think that is the most important criterion and that is the most telling one. Future behaviour is predicted by past behaviour, and if past behaviour is three years good behaviour crime-free, it is highly likely that that is what I am going to continue doing if I am a juvenile.

Ms SYLVIA HALE: Does that mean that even if a juvenile commits two or three offences after that third offence and they manage to stay offence-free for three years that their previous convictions therefore should be spent?

Ms MAMONE: Yes.

Ms LEMBKE: Just to add to that as well. One of the things that we look at when we are dealing with young offenders, because of the nature of their offending and their levels of maturity, is not necessarily that there will be an offence and then a complete cessation of offending but we also look at the length between offending and the severity of offending. So, in fact, if the further offence is a less serious offence then I guess there is an argument for whether that should count in every instance.

CHAIR: It has been interesting in these hearings to know that despite whatever changes may be made from this committee's recommendations or otherwise in relation to spent convictions the Child Protection (Offenders Registration) Act covers the most phenomenal number of employment opportunities, particularly for people of low learning ability. The committee has been informed that it is also under review. What effect will that have because once a sexual offence is recorded then the Child Protection (Offenders Registration) Act kicks in? Committee members may talk about sentences disappearing but, in fact, they do not.

Ms MAMONE: Registration of juvenile sex offenders, according to Elizabeth Laterno from the United States of America, is basically a bad idea. Registration of juvenile sex offenders does not appear to have good outcomes, and may even have some negative ones. We should be able to provide the committee with more detail.

CHAIR: That would be very useful to the committee because there is a contradiction.

Ms LEMBKE: In fact, Elizabeth Laterno is in Australia and is speaking on that very topic probably as we speak.

Ms WILSON: Certainly we work very closely with the Commission for Children and Young People and will be very interested in putting in a submission to that review as well.

CHAIR: The committee would like you to respond to its questions on notice and its formal questions for our reporting process. The committee may also have further questions as time goes on.

(The witnesses withdrew)

(Luncheon adjournment)

CHAIR: Mr and Mrs Cox, I welcome you to our second day of public hearings for this inquiry. Thank you very much for attending today. This is an inquiry into spent convictions for juvenile defenders. The inquiry was established to consider whether convictions for minor sexual offences should continue to be excluded from the spent convictions scheme. In developing recommendations on this issue, we need to balance competing interests. First and foremost is the need to protect the community from sexual offenders. This imperative needs to be weighed against support for persons who have committed minor sexual offences, sometimes when they were very young, to put their past behind them and become law-abiding members of society. Today we have a broad range of witnesses, including yourselves.

We have some procedural matters that must be attended to. There are broadcasting guidelines that apply to the way in which proceedings are filmed, dealt with and broadcast. The media representatives who work here understand those guidelines very well. If you have a mobile phone, it is good to either turn it off or put it on silent mode and away from recording equipment. I thank you very much for coming along. I am very grateful that you have come to see us today. It is very good of you.

LYN ELIZABETH COX, and

NEVILLE WILLIAM COX, sworn and examined:

CHAIR: Mrs Cox, in which capacity are you appearing before the Committee?

Mrs COX: I appear in a private capacity to support my husband, Neville.

CHAIR: Mr Cox, in which capacity are you appearing before the Committee?

Mr COX: I am here today, hopeful of some resolution of this thing that has carried on for a long time.

CHAIR: I understand that you have been discussing issues with the secretariat and are quite comfortable with this being a public hearing today.

Mrs COX: Yes.

Mr COX: Yes.

CHAIR: That is very good. It means that we can use your evidence in our deliberations for the report in a proper way, so that is excellent.

Mr COX: Yes.

CHAIR: Do you have a statement that you wish to make? Do you want to tell us a bit about your story up front before we start? You do not have to.

Mrs COX: Neville and I grew up in the same street and we knew each other from a very, very young age. We used to play together when we were young, and then we got to become teenagers. We became very good friends and fell in love. We never had any other girlfriend or boyfriend. My parents did not really agree, but I was an only child and Neville was from a family of six. We just got on well. We used to meet every afternoon and then it just came about that we started going out. We fell in love and I got pregnant. We tried to hide it. I was at school. It was getting hot and I had to wear this jumper. I managed to hide it until about a month before. I remember I was called in. I had this silly plan—I was only very young, 15—with a girlfriend. I was going to go to this country town and I was going to book in under a false name and have this baby. It was just probably immaturity. We did not know what else to do. We knew that we could not go to my parents because my father would have just throttled us. But in the end, it was found out anyway. My grandmother and mother took me to Sydney.

CHAIR: We know it is sad. It is okay.

Mrs COX: That is where the baby was born. A long time after—about 1970, I think—the rules were changed. This girl contacted us and she was really cranky that we had since got married and had other children. That was terrible at the time, but she has grown up now. She is 42. We just went and spent her last birthday with her. She had a really sad life whereas our children and us, we are really close. That was the worst thing. We did not know Neville had a criminal record until probably about three years ago when he got offered a contract to work at schools. He had been a football coach. He is a roof tiler. He had put on roofs on high schools. You know, it never was an issue until the new laws came in. All of a sudden we just felt so terrible that this had happened to us. He cannot apply for any jobs because you have actually got to tell your whole story. Some people think it is quite funny because we have got both our children being police officers.

They think it is quite hilarious that here we are in this situation, and we do not think it is quite hilarious at all. Even to work at a hospital as a grounds person, and for most of the jobs now, you have to have a criminal check. As I understand it, when they looked up to see that Neville has not got a criminal record, it actually comes up like a red flag because he is a sex offender. They are not interested in why or how or that; they just know that this person is not good enough for the job. That is really why we would just like to have something done.

CHAIR: It is actually the Child Protection (Offenders Registration) Act that is copping you.

Mrs COX: Yes. When they did the check for Neville to be able to work with children, that was when it was knocked back. Neville could not get a clearance.

The Hon. JOHN AJAKA: But Neville, you are registered because of the fact that you still have a criminal conviction recorded against you that has never been spent. Is that correct?

Mrs COX: Yes, that is correct.

Mr COX: I never ever knew about it until I applied for this job.

The Hon. JOHN AJAKA: That is the reason: he has been registered.

Mr COX: They knocked me back because of my criminal record. Nobody told me I had a criminal record.

The Hon. JOHN AJAKA: You never understood. How old were you at the time?

Mrs COX: Sixteen. I think we were 15 and 16.

Mr COX: Sixteen or 16 and a half, or something like that.

Mrs COX: Fifteen and 16 maybe.

CHAIR: What was the charging process at the time?

Mr COX: They charged me with carnal knowledge.

CHAIR: Okay.

Mr COX: From memory—it was a long time ago—I think the judge said something along the lines of if I saw Lyn again within the next 12 months, I would be in trouble. We were married within the next 12 months.

Mrs COX: In the next 12 months because we lived in the same street. Nobody understood.

Mr COX: We did not have a wedding. We had nothing. I had an old Valiant car and everything we owned was on the back seat. We went to Canberra. Mr Brooks married us in front of my grandmother and my mother—no wedding gowns or suits or anything like that. We went back to my mum's and had a Vegemite sandwich and a cup of tea.

CHAIR: Now, that is an Australian wedding.

Mrs COX: Yes.

Mr COX: We hopped in the Valiant and I started work in Canberra the next morning. I left Lynnie on her own in the flat. We have been together ever since. We love each other very much. We love our children. It just sticks in my craw that I am carrying this around on my shoulders, even though I only found out about it three years ago. I just do not think it is fair. Maybe I might roof-tile when I retire; I do not know. But if something happens and I still cannot run my business, I might like to apply for a job as a groundsman or anything like that, but I cannot do it. As Lyn said, I coached kids' football sides for 10 years. I have put roofs on high schools. I have repaired roofs on primary schools. Nothing, nothing, has ever been done or said.

Mrs COX: It was when the new laws came in.

Mr COX: I had never been asked about any criminal offences or anything like that. Just because I applied through Joss down in Wagga Wagga to do maintenance on schools in the Riverina, I had to fill out some forms. They rang me three days later and said, "We can't employ you", the reason being a criminal record. Subsequently, I have not applied for any jobs involving schools or any government departments. I think it restricts my business a little bit. I am well known in Wagga. I have been tiling for 43 years. A lot of people ask me to do work, and now there are areas where I just cannot. I just say, "Sorry, I can't."

Mrs COX: The other thing I think is unfair is that I do not think that everybody this has ever happened to is in the same boat because the parents did not make the charge. Some people are in the same boat as us, but they have no criminal record, whereas my parents were very vindictive at the time because I was an only child. It would not have mattered who it was: it would have been a drama anyway. My dad is dead but my mum has Alzheimer's. I am sure that they would come today and support us, if they were able, because they would realise that they were hasty. They got to love Neville. My dad helped us build our first home. The only reason we got to know them was because we were visiting Neville's mother and our car broke down in front of my mum and dad's. We were petrified that dad would come out with a shotgun, but he did not. He said, "What's wrong with this old bomb?" He took us inside and we took the baby in, who was Greg, our son. I had had another baby by that time. From then on they came to know that Neville was good.

Mr COX: We became the best of mates, actually.

Mrs COX: We were very close to them and we looked after my mum for over 12 months. We took her to our home because she has Alzheimer's. The only reason I put her in a home was because she was waking up in the middle of the night and yelling out that she was lost and she was bawling, and I was working all day. That was a really hard thing for me to do but she is happy there and it is a lot better for me.

The Hon. JOHN AJAKA: We have only a little bit of time so please do not think I am trying to be short with you. I congratulate both of you for being wonderful citizens and family people. It is really sad that you are in this situation. I want to get to some specifics because it will help us determine that this will not happen again to someone else and it might resolve your situation. Clearly, you were charged and convicted but my understanding is you said you were basically given a slap on the wrist and the judge told you to go away. You did not get six months or more.

Mr COX: Oh no.

The Hon. JOHN AJAKA: Under our system this would have been a spent conviction if it was not a sexual matter. It has hounded you since then. Have you ever attempted through lawyers or applications to the courts to try to have your name removed from the register?

Mr COX: Yes.

The Hon. JOHN AJAKA: Can you tell me what has happened to you in that regard? Did you get the stonewall?

Mr COX: It would be better for Lyn to tell you that because she was a legal secretary.

Mrs COX: I am a legal assistant for one of the partners at Creaghe Lisle, one of the largest law firms in Wagga, and Anthony Paul, who has since been in a little bit of trouble, was the criminal lawyer. Because

Neville was so down about it and we are really well known in Wagga and we are respected people, I went and told him one day and he wrote to the New South Wales Commissioner of Police and said what had happened to us and that we were girlfriend and boyfriend and we have never had any charges or convictions of any sort since, and asked for it to be expunged. They wrote back and said no, this was the criminal history, and they did not have power to expunge it.

The Hon. JOHN AJAKA: I think you have answered my next question, but I will ask it: have you ever had any other criminal offence—

Mr COX: Two speeding fines in my life.

The Hon. JOHN AJAKA: They are not criminal offences, so you have a clean sheet other than this.

Mr COX: Yes.

CHAIR: I want to refer to one earlier matter. It is the Commission for Children and Young People Act not the offenders registration that relates to your case. You are not on the register. You are affected by the other Act, but you would know that already from your legal dealings.

Mrs COX: Yes.

CHAIR: I am just tidying up what I said earlier.

Ms SYLVIA HALE: Mr and Mrs Cox, I notice that when you made your submission your names were suppressed at your request but now you are happy for your names to be used.

Mrs COX: Yes.

Ms SYLVIA HALE: Is that because you think it is better to be able to confront these things openly when you go back to Wagga or have you been concerned in the last three years that somehow someone might find out about this and it would have a big impact on you as individuals?

Mr COX: No, we are not ashamed of it. We are definitely not ashamed of it.

Mrs COX: Just because our children are police officers. That was one thing. We just had a talk to them because they are in positions of power or authority, whatever you call it, and we did not want them to feel embarrassed. They know the story obviously.

Ms SYLVIA HALE: What I am looking at is the difficulty with someone who does not know the story but just knows Mr Cox has been charged and found guilty of carnal knowledge. That really casts an entire slur over your character, doesn't it?

Mrs COX: It does, yes.

Mr COX: That was 42 years ago.

Ms SYLVIA HALE: I know, but when people assess things they do not take into account all the facts. That is one of my problems with people who might be in your situation. Right down the track they suffer—whether it is rumour, innuendo, inability to get a job—because of what happened when they were much younger.

Mrs COX: That is right. We do not feel ashamed of what we did because it was natural, but we just feel a little ashamed that Neville has this criminal record that we did not really know about. We thought probably his name might have been on some sort of list for 10 years maybe, and it is nearly 42 years ago now. Whether we apply to the court and they judge every single case on its merits, I do not know what the answer might be, but it would be lovely if those convictions in our sort of situation could be spent, especially as there are other people that it has happened to and they have never been charged. That is where I think it is really unfair.

The Hon. LYNDA VOLTZ: With regard to the checks that the Commissioner for Children and Young People is required to do on employment issues, have you ever tried to appeal against the commissioner flagging you?

Mr COX: No, I have not.

The Hon. LYNDA VOLTZ: Am I correct in understanding from the commissioner yesterday that there is a process whereby you can appeal the commissioner's decision?

CHAIR: This is about the regulation, I think, not about the other Act.

The Hon. LYNDA VOLTZ: That is right.

CHAIR: The appeal process is about the register, but this case is not about the register. This is about part 7 of the Commission for Children and Young People Act. The other one is the Child Protection (Offenders Registration) Act. That is the one that can be appealed.

The Hon. LYNDA VOLTZ: Which one is Mr Cox on?

CHAIR: He comes under the Commission for Children and Young People Act.

The Hon. LYNDA VOLTZ: I was not clear on that.

CHAIR: That is why I tidied up what I said earlier, because I made a mistake.

The Hon. LYNDA VOLTZ: Even if the law is changed in regard to spent convictions it will not solve the problem for you of the register itself, will it?

Mrs COX: No. That is what we would like to do—to know there is a process by which we can apply to get his name off so that if Neville does apply for employment somewhere and they do a criminal check it will not come up with the red flag that he is a sexual offender and not suitable to be working with children. That covers so many areas it is just not funny.

Ms SYLVIA HALE: Have you encountered people who are in a similar situation to yourselves or is it something you just do not talk about?

Mrs COX: We probably do not know anybody. I have discussed this openly with all my work colleagues because now we are at an age where we do not feel we have done anything wrong, we are just victims of circumstances. Some of the girls at work did know of other people that would be in the same situation. On the other hand I know people who were married or had babies young and they are not in this situation.

Ms SYLVIA HALE: Really you are a victim of former attitudes as to what is morally appropriate.

Mrs COX: That is right.

Ms SYLVIA HALE: We are facing a community now where those attitudes are undergoing a significant change.

CHAIR: But people are still being charged today by fathers.

Ms SYLVIA HALE: There would be nothing to stop someone pursuing another person, I imagine.

The Hon. JOHN AJAKA: Would you be able to provide us with copies of the letters that were written by your lawyers and the responses you got back? Would you have any objection to that if you can get them?

Mrs COX: No, that will be fine.

The Hon. JOHN AJAKA: That would be great. Maybe the secretariat will contact you in relation to those being tabled.

CHAIR: The secretariat also needs to know whether you are happy for those to be public or not, or whether they are just for our information. They do not need to know now but when they talk to you about that situation.

The Hon. GREG DONNELLY: Can I ask a question, which is a delicate one, but I want to raise it anyway. Obviously in the circumstances back then you were two young people in love with each other, and I understand what you have explained to us and I am not questioning that. Equally, there are occasions where circumstances are such that this situation does not apply. We are not talking about people who fall deeply in love and that manifesting itself through marriage and a continuous relationship. This is part of the challenge for us because it is true there are instances where women, typically, are prevailed upon by males to participate in non-consensual sexual activity, aren't they?

Mrs COX: Yes.

The Hon. GREG DONNELLY: I do not need to ask this, but I will ask it anyway: Obviously that is completely unacceptable to you and any reasonable person.

Mrs COX: That is right.

The Hon. GREG DONNELLY: Do you understand that we are looking at circumstances like yours that took place some years ago and then moved forward to the law today but still contemplating the reality that while there are instances of young people being sexually active and having children there are other instances in society where there are criminal acts of rape by males against females? We are trying to delicately navigate ourselves through this whole thing.

Mrs COX: Yes, I understand that.

The Hon. GREG DONNELLY: It is a question of how we can accommodate that. When Mr Cox appeared before the magistrate were you involved in that exercise at all, Mrs Cox, or did you just appear?

Mrs COX: No, not at all.

The Hon. GREG DONNELLY: Mr Cox, did the magistrate ask you—I know it is a long time ago so if you cannot answer it just say you cannot remember—questions about this young woman and how you felt towards her?

Mr COX: I am sure he went down that path. It was said to him exactly what Lyn said today, that we had been seeing each other for some time. It is just, as Lyn said, her father did not really like me. He never knew me.

The Hon. GREG DONNELLY: Was he involved in that court proceeding?

Mr COX: No.

The Hon. GREG DONNELLY: Did you appear by yourself?

Mr COX: Yes.

The Hon. GREG DONNELLY: Did you have a solicitor at the time?

Mr COX: No. My mother and I.

The Hon. GREG DONNELLY: I know this is casting your mind back, but did the magistrate basically ask you a series of questions?

Mr COX: I cannot recall exactly what the questions were but he did ask some questions, yes.

The Hon. GREG DONNELLY: How long did he deliberate on the whole thing before he said, "Go away. I don't want to see you in 12 months"?

Mr COX: Not very long at all.

The Hon. GREG DONNELLY: Did it happen the same morning or the same afternoon?

Mr COX: Within half an hour or an hour.

The Hon. GREG DONNELLY: Did you leave once that had taken place?

Mr COX: I left. I knew I was a juvenile and I just presumed that when I turned 18 it was "all over red rover". Obviously not.

The Hon. GREG DONNELLY: I presume from that answer it was not explained to you; you were just told to go away and not come back?

Mr COX: No. Nothing has ever been explained to me. I never even knew about it until I applied for that work with Joss.

The Hon. LYNDA VOLTZ: This morning we were talking to a psychologist from the Department of Juvenile Justice and one of the questions I asked her was what is the perception of the young people who come before her on sex offences. Obviously there is a large range of understanding, but invariably to some extent they knew that what they were doing was not right and that they would be in some kind of trouble if it was discovered. At the time you must have had some perception that there might be issues about your relationship. In hindsight everything is wonderful, but if you can go back to the time—

Mrs COX: I only thought we would be in trouble with my parents. Neville's mother knew and she did not discourage us at all. I was there a lot of the time. I do not think we ever thought for one moment that we would be in trouble with the law because I do not think we knew the law at that time.

The Hon. LYNDA VOLTZ: And times were very different. My mother in those days was married at 17. It was very common for people to marry at 17 whereas today I would be horrified if my daughter decided to marry at 17?

Mrs COX: That is right.

The Hon. LYNDA VOLTZ: If some 15-year-old boy comes near her I will find a big stick and chase him away.

Mrs COX: I had the child that we adopted in 1968 and we were married in February 1970, so it was not that far after. I know you are going through: How do we get this right? How can we fix it? Would I be able to suggest that if there was some sort of a law made that only those people—like, if Neville was a real paedophile, a real crook, a real criminal, and there was something that could be made that those people who wanted to be pardoned or spent or something could apply, I am sure the real crooks would think there would be no use applying. Do you think that? And the people who were generally—like, I really think we are a victim of circumstances simply because my dad was vindictive at the time. If my mum and dad did not charge Neville we would not be sitting here today. You know, that is the silly thing about it. If my mum and dad did not charge Neville we would not be sitting here today—that is the silly thing.

The Hon. JOHN AJAKA: Mrs Cox I suggested earlier—and I think you have raised exactly the same point—that if we had a system of a panel with a judge, crown prosecutor, psychologist, psychiatrist, two lay people and a police officer on that, is that what you are suggesting? Namely, in your circumstances you should at least have been able to apply for that panel?

Mrs COX: Yes.

The Hon. JOHN AJAKA: The panel would have reviewed all the circumstances. I would be fairly confident that on the circumstances you have said that that panel would have said this just had to be extinguished? Is that what you are suggesting?

Mrs COX: Yes, that would be just lovely because even if we could be taken—not us but Neville—if Neville could be taken off that register, so that if they did a criminal check it would not come up with this red flag that looks like he is a bad person, that would be just great.

The Hon. JOHN AJAKA: It is not just the register.

Mrs COX: And the criminal record as well.

The Hon. JOHN AJAKA: To focus on the issue we are looking at, he would want the criminal record as well would he not?

Mrs COX: Yes.

Ms SYLVIA HALE: Mrs Cox I put it to you—and I think this is the view in some of the submissions the Committee has received—that some children have such a bad experience with the law, and Mr Cox's experience seems to have been very benign—?

Mrs COX: Yes.

Ms SYLVIA HALE: —so much so that your children are police officers. That even if there are grounds for people being able to go before a panel to say that an offence should be spent, extinguished or whatever, they would be reluctant to do so because they would feel they did not have the money, the expertise or event the confidence in the justice system to go that way? And would you think it would be reasonable, particularly where we are talking about young people who may have had a sentence of no more than six months and they have not re-offended for a three-year period, that those convictions be automatically extinguished but there be a right for a magistrate, the police or whomever to appeal against that extinguishment if they thought it was appropriate?

Mrs COX: Yes, that would be fine.

Ms SYLVIA HALE: You would be happy with either of those situations?

Mrs COX: Yes.

CHAIR: Our time has concluded—you should have been given more time. Certainly if either of you has any more to contribute the Committee would be grateful to receive it. The secretariat may well contact you as we have already discussed getting some more information. Both your submission and your time today have been incredibly valuable to the Committee in helping towards the outcome of our considerations. Thank you very much for taking the time to travel here and presenting your important case to the Committee.

Mr COX: Thank you for having us.

The Hon. JOHN AJAKA: We seriously congratulate you.

Mr COX: We think we are pretty fair citizens.

The Hon. JOHN AJAKA: You are not just fair citizens; you are great citizens.

Mr COX: The driving force to come here today was that we do not believe we have done nothing wrong.

The Hon. JOHN AJAKA: And you have not.

CHAIR: Congratulations on your wonderful life together.

Mrs COX: Thank you.

(The witnesses withdrew)

DEBRA GLADYS MAHER, Representative of the Law Society of New South Wales, and

WARWICK JAMES HUNT, Representative of the New South Wales Bar Association, affirmed and examined:

CHAIR: I welcome you both to the second public hearing of this inquiry into spent convictions for juvenile offenders. I will not repeat the formalities as they already appear on the record. If either of you have a mobile phone I would ask you to turn them off. If either of you take any questions on notice would you please return your responses to those questions within three weeks. If we do not get through all the questions that were sent to you today the secretariat will resend what we do not get through. Would either of you like to make a short opening statement?

Mr HUNT: Ms Maher will start and I might supplement her comments.

Ms MAHER: I have a short opening statement to make but the lawyer in me cannot make it until I make the following points from being in the room while the previous people were giving their evidence. There are three things that keep constantly intertwining and they were so entwined in the discussions with Mr and Mrs Cox that it was very difficult. The first one, of course, is the spent convictions that the Committee is looking at. The second thing is the working with children check, which is the flag that comes up. The third thing is the Child Protection Register. I know there has been some discussion, and I have read the previous evidence from Monday, about what action can be taken to stop the flag coming up for the working with children check. That appeared to be the trigger for Mr Cox; he applied for the job and there was a flag.

His offence under the Commission for Children and Young People Act—I guess I had better look it up before I say this—is not capable of being put aside, even on application. So I was not sure whether there was that confusion. Because of the type of offence that it is designated as, it is exempted from any application. With the Child Protection Register, although the reporting requirements might be for a certain time, and although you can make an application to no longer have to abide by the reporting requirements, you remain forever on that register. So it is not something that when the reporting requirement period is up you are no longer on the register. It just means you do not have to abide by all of the other conditions about saying where you live and what car you drive.

The Hon. JOHN AJAKA: If Mr Cox's conviction—in your opening if you would not mind addressing the one area I am very confused about—was suddenly spent because we passed a new law, it was retrospective and he becomes a spent conviction person, that still will not affect the fact that he is on that register, will it?

Ms MAHER: No, it will not affect either of those other two acts: the Commission for Children and Young People Act or the Child Protection Register. That does bring me very neatly to part of my opening statement—and I will do in a slightly different order than I intended—that is, that young people are especially disadvantaged in relation to the way the law treats sex offences. This comes about for two main reasons. The first reason is that all sexual contact with a child under 16 is illegal—even consensual acts. The second reason is that any sexual offences committed by a child on a child victim are automatically designated as child sex offences. So if a 40-year-old man commits a sexual offence against a 40-year-old woman that will not alert the Child Protection Register, but if a 15-year-old boy, or in fact 17 because for the purposes of the register a child is defined as under 18, if a child offender offends against a child even though it is age-appropriate, if I can call that and I do not mean that—it is probably a poor choice of words, but you know what I mean.

The Hon. JOHN AJAKA: We understand.

Ms MAHER: That offence automatically becomes a much more serious offence. It is almost always aggravated just because of the age. But the age is because the offender is a child. So what you are in fact doing is making a child offender much more liable, open to much higher penalties and much more serious offences, that an adult doing the same thing would not be faced with. Of course, those registers and those protections are very good, and what they are looking at doing is to protect children from adult predatory behaviour that specifically targets someone a lot younger than themselves, but where both people are juveniles then, of course, that seems to be unfair and almost discriminatory.

It is also the case—I am getting a little bit of track but I promise I will come straight back on—with apprehended violence orders [AVO]. If the boy here has a fight with the boy next door about whose cricket ball

broke the window and they take out AVOs that becomes a reportable incident for the working with children check, because it is an AVO taken out for the protection of a child. It does not look at the fact that the other person is a child as well, which is a bit of a nonsense. Really what it is trying to do, and what it should be doing, is identifying behaviour where an adult is committing some sort of harassment of a child.

CHAIR: Are you participating in the review?

Ms MAHER: I am not sure. I will just go back to my on point with spent convictions because I have done it myself—

The Hon. JOHN AJAKA: It has been very helpful.

Ms MAHER: I am sorry but it is an occupational hazard. With regards to the questions that you sent to the Law Society, we are meeting in the next two weeks and we will be able to provide a much more comprehensive written response to all of those questions. Unfortunately there was not sufficient time for that to be done before the written submission went in. I do have an undertaking from the Law Society and the committees that I am on that we will be able to send that back in. So that relates to questions; the only question that we may not get to is the very last one, which is about research in other countries, but certainly all the other questions will be covered if we do not get through them today.

What I wanted to say in my opening statement was that the Law Society while it has said it supported option B has had more discussion since then and is of the view that the six-month maximum penalty is too restrictive and should be broadened. We believe that sexual offences should be dealt with in exactly the same way as other eligible offences in their ability to become spent. I note in saying that that this means for adults that they still will not be spent if there is a penalty imposed of greater than 12 months. That would remove from the scheme the vast majority of sexual offending by adults, because it is only a very small number that would fit into that under 12 months. In my experience you would be looking at minor indecent assault rather than any actual sexual assault offence.

We also believe that the 24 months for juveniles, as in sentenced imposed, would be a good measure, because that makes special allowances for everything we know about adolescent development and it makes perfect sense for the level for juveniles to be different than from adults because we have to recognise those differences in the law. I mean there are lots of examples in existing legislation in things like the United Nations Convention on the Rights of the Child, the Children (Criminal Proceedings) Act that we have in New South Wales, or even the Young Offenders Act, they all start by enunciating principles that the law and the courts have to have regard to when dealing with children. So it is very well established in both legislation and case law that children should be treated differently, and that is part of the reason why we would support the 24-month level for children and the 12 months.

Twenty-four months for children, because of the different issues that are taken into account in sentencing children, would encompass a broader range of offending than that 12 months would for adults. So you would be incorporating, if I could say, some more serious offending. But again, it is weighing it up against what we know about adolescents and how they came to commit the offences. We have used sentence imposed as a measure. There is no ideal measure, but certainly we are of the view that the maximum penalty allowable under the law is not a good measure. Any one charge can incorporate such an enormous variety of behaviour that you really cannot use it as an indicator.

Again, as I said to you before, if you look at juveniles in particular, the fact that their offending is often against another juvenile puts it in a more serious category anyway, and they have much higher penalties that are available. That is why we say that sentence imposed is a much better indicator. To finish, based on how I started following the Coxs, it is very difficult—and I am not sure how you can do it—to look at spent convictions, as you have been asked to do, without coming to some view about consequential changes to working with children and the Child Protection Register.

Ms SYLVIA HALE: May I seek clarification? You say you have changed your view. You say that now for juveniles it should be sentences imposed up to 24 months, is that right?

Ms MAHER: What we have said is that it should be what is recommended in the spent convictions bill for the normal run of offences, and that should apply to sexual offences.

Ms SYLVIA HALE: What about the five-year non-offending period?

Ms MAHER: I have not addressed that. The three-year period is judged to be adequate. We cannot see what basis there is for increasing that from three years to five years; there does not appear to have been any research on it. Maybe it has just been because they looked at all the States and came up with what was the most common number. But it has been three years for juveniles and 10 years for adults, again in proper recognition that children have to be treated differently. Sometimes it only takes three years to take them from being children into being adults anyway, and then of course it is a whole new ball game.

CHAIR: Mr Hunt, do you wish to make an opening statement?

Mr HUNT: The Bar Association appreciates the opportunity to speak to the Committee today and I am happy to give evidence on behalf of the association. Being a lawyer, I want to start with a couple of caveats of my own. I am in a position to express the Bar Association's general position. There might be some things that come up that I need to take on notice, to get any institutional position. Having read some of the transcript of the first hearing, I suspect that some of the questions might have answers that I can provide from my personal experience, and I will try to make those distinctions if I can.

I think members of the Committee on the first day of hearing seemed to recognise that this was a vexed, difficult and really challenging inquiry to undertake. One of the reasons for that, I would suggest, is what Ms Maher has said: the interlocking with the commission and the *Working with Children* check is complex and the spending of a conviction which will have some effects will not have other effects, even if the recommendation of this Committee is—and then the Government accepts—that there ought not be an exclusion for sexual offences for children, or certain of those.

The other reason it is vexed is that, in my contention, really what is being examined by the Committee—rather than what might seem to be a balancing between a community interest in protecting those who might be affected by wrongful sexual behaviour in the future and the interests of a juvenile offender—is two competing community interests: a community interest in properly safeguarding wherever possible people who might be offended against in the future, and our community interest in having good, viable, rehabilitated members of the community.

The Bar Association did not put in a submission. That ought not be seen as any suggestion by the association that we do not consider this a serious issue—indeed, we do. I, until fairly recently, was under the apprehension that a couple of submissions that the Law Council made to the Standing Committee of Attorneys General in relation to the model bill might have found their way to you. There are some really useful and detailed comments, and Ms Maher's association and the New South Wales Bar Association both contributed heavily to those submissions. I would seek to table those, and I have made some arrangements with Ms Foley for copies to be available. Some of it is on point; some of it is off point but might assist members of the Committee in consideration of some of the peripheral issues.

One thing that I think when we stray away from institutional positions might be helpful for members of the Committee to understand is the kind of experience that we each have in our professional lives, so that if we are making personal comments you can evaluate them. Obviously, the last witnesses had some very personal comments that were derived entirely from life experience. Ms Maher is modest, but she has in the past prosecuted child sexual offences as a solicitor with the New South Wales Director of Public Prosecutions. She runs the Children's Legal Service within the New South Wales Legal Aid Commission. For my part, I was a Children's Court magistrate for some years before coming to the bar, and apart from a criminal practice I had a significant practice, mainly briefed by the Department of Human Services, erstwhile the Director General of the Department of Community Services in relation to child protection issues. I think that, in terms of our personal professional experience, some weight might be given to the views that we have that are not institutional views.

That is really all I wanted to say by way of introduction, save for this. I have not been in a position to see what the evidence was from psychologists today, or what other enquiries the Committee might seek to make. One thing that strikes me—and this is a personal observation but it is grounded from the roles I have just outlined—is that more than occasionally, and I do not have firm evidence of this but there is strong anecdotal support, one of the ways in which children who have been sexually offended against deal with that experience is by acting out sexually themselves. So that some of the children who are caught as sexual offenders will in fact be people who fall into the first category of communal protection—that is, people who have been offended

against and are trying to deal with that, sometimes with siblings who are within the same age cohort or a bit younger.

I think it needs to be said that some of those children may not have been sexually offended against themselves but have grown up in very sexually dysfunctional family environments. Indeed, some of those children will be children for whom the State has parental responsibility, and the State has chosen, usually cautiously and properly, to intervene to say: We can provide a safer background to bring up his child. Yet, within that circumstance, whether it is in foster care or in some refuge or something, there has been sexual misbehaviour towards them that is some indicator of their later sexual offending.

There is one other matter I want to pick up in terms of something the Hon. John Ajaka asked a witness about on Monday. I cannot remember who the witness was; I suspect it was one of the people from the Department of the Attorney General. The honourable member asked whether a view ought to be refined in relation to whether a group of offences ought to be treated as an offence. I suspect that the Bar Association position—and I have certainly spoken to the chair of the criminal law committee of the association on this issue—is that a group of offences that are related in terms of being the one incident ought be treated as a single offence.

Generally, experience suggests that very often—regardless of whether the complainant was in fact a willing participant but a complainant nonetheless because of their age, or indeed somebody who has been fully offended against in the sense that it was invasive, uninvited, predatory sexual behaviour—there will be a number of things that happened to that person but each constitutes criminal acts, even though they might have happened within minutes of one another. Generally there will be an array of charges that relate to one event. Speaking plainly, somebody who touched the breast of somebody might be charged with an indecent assault in relation to that, and if the person then digitally penetrated that person in some fashion he or she would be charged with sexual assault or sexual intercourse, as the case may be.

There are broad definitions of what is indecent assault and the fairly extended definition of what sexual intercourse is. One of the things, I suppose, that is important to reflect on is that whilst we properly concern ourselves with community attitudes, informed community attitudes are different from uninformed community attitudes. I suspect that we all tend to think of the worst kind of sexual invasion, and of course we want to protect people against that and every other kind, but our mind generally tends to go to the more heinous behaviour. Whether we are talking about adults or juveniles, even if we are talking about the extended period suggested by the model bill, heinous behaviour will simply not be caught. Even if you talk about 24 months for juveniles and 12 months for adults, heinous offenders, or offenders who by that very fact ought to be the subject of protection orders in relation to them, will not be caught by not excluding sexual offences. I am happy to also speak at some stage, if I am invited to, about the wilful and obscene exposure issue, which is slightly different to a lot of the other issues. But I think some light can be thrown on that.

The Hon. DAVID CLARKE: Mr Hunt, we have a written submission from the Law Society. Is it possible to get a written submission from the Bar Association? The voice of the Bar Association is a voice that is respected in the community, and certainly respected by me. I think it would be very worthwhile and of great assistance to this inquiry if we could get a written submission from the association. We would like to hear what the Bar Association has to say. As I say, it is a respected voice, as is the voice of the Law Society. Secondly, you heard the evidence of the Coxs before the Committee. Can you offer any insight into this aspect? Presumably there are many other cases of a similar nature. Can you provide any insight, assistance, or possible solutions, that would allow these matters to be finally resolved in a way that administers compassion and a sense of humanitarian justice to people so many years after such events?

Mr HUNT: In relation to the first question, the short answer is yes—although I am probably making a rod for my own back as well as for others. It may be that a formal submission from the Bar Association tends to adopt—as I do now on behalf of the association—the Law Society's position in terms of what has been tabled. Broadly, we are at one with the Law Society, if that helps you understand where the Bar Association's formal position is. But, yes, I will attend to that. I will be in dialogue with Ms Foley about when that can happen, but the three weeks sounds attractive.

In relation to the second question, although it is outside the express terms of reference of this Committee's inquiry, I would contend, having heard the last part of the evidence from the last witnesses and the interchange, that it would be a helpful thing for this Committee to make some comment about a proper review of historical cases. I know a statutory review is coming up in relation to the commission and the young person

section of it. I am not as versed in the interaction with that and the working with children check as Ms Maher probably is, but some recommendation of this Committee for a review that incorporates some re-examination perhaps of other historical cases or cases that fall into a lack of statutory consent but willingness of participants would be a helpful measure. Anecdotally, I suggest probably lots of people are in that position and that it is not an aggregation of people who probably have a community user group or some web link. I suspect it is rather the silent minority.

The difficulty even today, and this came out in the evidence of those witnesses, is the random application of the law. Sometimes either a State agency or a parent will bring about a prosecution even today of people who are not in a legal position to give consent although they are willing. Within some of the discussion papers and, indeed, the transcript of this inquiry there have been questions about whether we should make exception for that which is consensual. The legal difficulty with that is that if you are dealing with somebody who has not attained the age of 16 years, it cannot be consensual in law, even if it is willing and, indeed, sometimes enjoyed. The random application of the law to a situation—where you have some people who are criminals and have the knock-on effects we have heard about and those who do exactly the same thing within the same peer group and are not—creates a difficulty in our society in balancing those things we were talking about earlier.

Ms MAHER: Could I make one comment about that and, again, it comes back to the Coxes. They would present in a way that would be very hard to feel anything but complete sympathy and a wanting to fix the problem. For argument's sake, let us say that the pressure of everything that happened to them meant that at 18 and 19 years they did not marry but separated and went their own ways. Mr Cox coming back then at some time in the future would, in a lot of ways, be a far less sympathetic applicant. Yet, what actually happened would not be any different at all.

The Hon. JOHN AJAKA: Yes, that is a very good point.

Ms MAHER: I think that is really important when you look at those sorts of issues. That was a personal view.

CHAIR: Like the use of the word "aggravated" to describe underage?

Ms MAHER: Yes.

The Hon. GREG DONNELLY: On the issue of the spending of a conviction and specifically possible models, the Hon. John Ajaka in earlier questions today referred to the idea of a panel considering matters on a case-by-case basis to assess whether a conviction should be spent—and there probably are other models around this sort of review process. I have not had the chance to read through your material but would you care to comment on that? In other words, are there possibly sweeter options we could consider in dealing with the spending of these convictions?

Ms MAHER: Yes. We are of the view that a combination of options is normally the most appropriate. The regime where you look at maximum penalties—the 12 months and 24 months—and you have a period of time, which we say would still be 3 years and 10 years, to automatically spend everything that falls within that group. That will still leave some offences outside that group which, by their nature, would be more serious. When I say more serious, that does not mean the most serious offending that you always want to know about and which should never be able to be spent. Perhaps there is a place after the first group for an application process for the second group. One has to be careful again of the interplay of a number of different Acts. You give rights in one Act, you take them away in another and you take them the old way. So, it is the linkages that often make those changes. You put in an application process but you exempt something. Those sorts of ongoing things are difficult.

The difficulties with an application process and why we believe they should be limited to much more serious offending is that the likelihood of juveniles especially accessing that sort of process is very low, for complicated reasons. Having had the experience at court, many people do not want to go back. They are not aware. For instance, if you look at the client group that Legal Aid might use, you are talking about severe disadvantage, literacy problems and general social exclusion. The access of people to that kind of scheme would be limited by their disadvantage. From reading all the submissions and knowing some of the stuff anyway, I know that when they looked at the homelessness review they found that this sort of thing was very predominant in having a part to play in ongoing disadvantage. That is why our position in the first instance is that things

should become automatically spent and should not require any application process. There is perhaps a place for a more serious offence, but not the most serious offences. The law looks at gradations all the time. It is part of the process.

The Hon. GREG DONNELLY: Are you able to shed any light on the history of why these matters dealing with sexual offences have been in the non-spent category?

CHAIR: How did they get there?

The Hon. GREG DONNELLY: I have been trying to establish whether there is an intellectual, philosophical or legal argument. Are you able to shed any light on the basis upon which this happened or where we came from to have that general view?

Ms MAHER: I would be limited to just giving you my opinion on that. It is an opinion based on being personally a prosecution solicitor for a long time as well as a defence solicitor. It is a little unusual to have done both for an extensive period. Part of the problem is the politicisation of sexual offending, and I use that in the broadest sense. It is very easy for uninformed information to get out there. Nobody wants to be seen as unsupportive of victims in these sorts of matters. That is a good position and again it is that competing interest. We have to be clear about the separation between being supportive of victims and being supportive of especially young offenders who require the maximum assistance in getting their life back on track. It is of no assistance to the community for that young person not to get their life back on track because they cannot get the job—they really have turned over a new leaf and they cannot proceed as they want to proceed as a law-abiding, functioning and contributing person.

A lot of work has been done in the victims area, and it is really good work. There have been lots of improvements in legislation about victim impact statements and the accessibility of the court to see and hear those, and the rights of victims to be informed about different matters as the court process is going on. It is really good work. But it is very difficult for anyone in the public arena to be open to an accusation of not caring enough about victims. I guess it is hard to present it as dispassionately as I am trying to do. I guess it is not a dispassionate area. It is a very difficult area with high emotional stakes.

The Hon. GREG DONNELLY: I thought part of the history may have been that given the intimate and almost unique nature of these types of offences—and in the context of child offenders obviously I am not comparing it to offences like breaking and entering, loitering or a range of things—there is something particularly offensive about that breach of trust towards another human being in that you would offend them in such an intimate way that it almost needs to be considered particularly to, in a sense, act as a reminder that we are really dealing with something that, it could be argued, stands alone compared to a number of other offences that any person, not just a juvenile, could commit?

Ms MAHER: I agree with that. It is possible to even go a little further and say that all offences of personal violence of course are of the most serious kind, and sexual violence is a separate and much more serious category. My personal belief and, again, it is a personal view expressed as a feminist, is that there has been a period of catch-up where the law and the community are acknowledging in some way that in times gone by they were not as responsive and receptive as they could have been and that in the law and in the community sometimes the prevailing attitudes were not as supportive as they should have been in these areas of sexual offences against children, women, married women or whatever. Part of that move now is to say that now we really are. We should be. I am not saying that is a bad position. It is just an interesting juxtaposition in that there was a period where victims and complainants were not properly and fairly treated. We fixed that but we are a little afraid of being accused of going back to where we were.

Ms SYLVIA HALE: A number of witnesses have suggested that the cut-off point should be six months because the majority of young offenders particularly are unlikely to be sentenced to more than that and the more serious offences will fall outside that six months sentence barrier. Why do you suggest a far greater period, given that most juvenile offenders would appear to be covered by the six-month cut-off point?

Ms MAHER: We would both like to answer that, but I will start. I do not agree with an assertion that most juveniles being sentenced for sex offences get a penalty of less than six months. I certainly do not agree that adults with sexual offences get anything but quite serious sentences of 2, 3 or 15 years.

Ms SYLVIA HALE: I am referring just to juveniles.

Ms MAHER: The public perception is that the level of sentencing and the actual level of sentencing are very different. I believe that six months is not good for a number of reasons. The first one is that nobody gets a lock-up sentence, be it a control order as a juvenile or imprisonment as an adult, of six months because there is a section in the Crimes (Sentencing Procedure) Act that says you cannot give someone a sentence of six months and under and set a non-parole period. You actually are forbidden to do that. That came about because they did not want prisoners serving short sentences. They figured that they should be subject to some kind of rehabilitative or non-custodial options. To my mind, six months is almost as silly because nobody gets six months. You cannot get six months. Yes, you can get a shorter fixed term, but for this sort of offending you would always be looking at a sentence that was structured with a non-prole period and a supervising period in the community. Anyone with this sort of offending is going to require a supervised period in the community. By definition you cannot get a sentence of six months or less. That is why I think it makes no sense.

Mr HUNT: One thing I wanted to say about that was that I agree with what Debra has just said but, as well, there is an argument in favour of uniformity with some of these things in terms of national legislation that mirrors State legislation. The Law Council, for instance, has a position that uniformity ought be the rule unless there is something demonstrable otherwise, so that the 24 months, for instance, for juveniles would be in line with that uniformity.

Against that I speak in favour of the three-year period, which is a New South Wales initiative and there is some material in the discussion paper—the more principal of the two documents that I tabled earlier—about that and as Ms Maher said, there is no real evidence as to why it is desirable to increase it from three years to five years for juveniles. But against that I think that historically six months was probably a more significant period as a threshold when this legislation was originally introduced in terms of offences other than sexual offences.

The reality is that 24 months would capture most offences that are dealt with in the Children's Court to finality and offences that go from the Children's Court to the District Court that are of sufficient seriousness that they ought to go to the District Court or are sent there by the magistrate but against that that are not so serious that they attract a sentence more than two years. I reiterate what I said earlier, that the kind of offences that we would think of as heinous or serious sexual offences will always attract more than that in my experience if they are really serious offences. I think whilst there might not be empirical research right on this point, it is inescapable that periods of sentencing have gone up over recent history and over a couple of decades so that even though standard non-parole periods, for instance, do not relate to every offence and do not relate to juveniles, standard non-parole periods have the effect of elevating sentencing patterns generally.

One knows that because if one appears for somebody who is charged with some recent sexual offences and what we call historical sexual offences against somebody decades ago and there is a need for the sentencing tribunal to sentence the person for the sentencing practice at the time of the offending, there will be a much more stout set of sentences for the recent matters, not just because they are second or further offences but because the current sentencing regime is far more severe in terms of the length of penalty than would have been the case say 20 or 30 years ago, so I think that is a justification for putting that period up.

Ms SYLVIA HALE: On a slightly different issue, you referred to Mr Ajaka's instancing of multiple charges that might arise out of one incident. If the spent regime were to be the same for both sexual and non-sexual offences committed by juveniles, do you think that that period, the 24 months, should cut in only in the case of a first offence or where there are a number of offences of a different nature, say, stealing a car and then six months later committing a burglary of some sort and then perhaps six months after that there might be a sexual offence involved? Should the 24-month period cut in after the last offence or should it be if you commit more than one offence then your—

CHAIR: The three-year period, you mean?

Ms SYLVIA HALE: No, I am talking about where you look at the offence.

The Hon. JOHN AJAKA: I think you are mixing two concepts together.

CHAIR: The 24 months is the incarceration time; the three years is the waiting time to fall off.

Ms SYLVIA HALE: Yes, sorry. If you commit a number of offences over a period of time, should your conviction be capable of being spent despite the fact that you have committed a series of offences over time or should it only relate to people who have only committed one offence?

Mr HUNT: The Law Council submission talks about the kinds of later offending that will not breach the qualifying period, so some minor offences and some traffic offences will not breach the qualifying period or the waiting period, as the Chair describes it. I think there is—this is a personal view but I suspect it would find favour with the Bar Association as an institutional view—probably an argument for a more dilute regime in relation to juveniles. Some of the research tends to show—and you have been taken to this in, say, Professor Kenny's submission to the inquiry—that you get a mixed type of offenders as juveniles in that somebody might steal a car and commit an indecent assault. That is the pattern of generalised risk-taking and instability, often against the kind of sad backgrounds that I was giving evidence about earlier.

I do not quite have a recommendation as to how it would be structured but there is some benefit to a view that may be an aggregation of offences ought to be reached, whether sexual or otherwise, for juvenile offenders before there is a need for a qualifying period, if I am asking the question. In other words, if there were some convictions that got spent without a qualifying period, there are probably some persuasive reasons why that would be a good thing, given what we know about children's development.

One thing I meant to say earlier just in relation to the area of sexual offences is that it is inescapable, apart from what I said about some of the offenders having been past victims, that the time until one turns 18 and one is amenable to the jurisdiction of the criminal law is an area of hormonal turbulence and although there are some children who get guidance and have either cultural or religious backgrounds that support them in remaining chaste, there are a lot of children for whom one of the challenges of adolescence is how they deal with sexual matters generally, so it is a heightened area of risk for juvenile offenders developmentally, not just in terms of their brain development and their ability to measure what is a safe, righteous or incorrect thing to do but also the physical and psychological terrain of adolescence and so sexual matters are more likely to be part of that poor decision-making process than perhaps for some of us who are older.

The Hon. JOHN AJAKA: If I can go to the one main area where you talk about the options. The difficulty I am having with this is the more you look at it and examine it and the more evidence you take, you realise that it is not one size fits all. That is the real dilemma with this area, whether we are firstly talking about protecting victims, as we should, or talking about protecting young offenders and giving them a chance to rehabilitate and not put obstacles in front of them. Mr and Mrs Cox are perfect examples, in my view, of the system failing them miserably. There is no need for them to be going through what they are going through at the moment. The dilemma is the nature of the offence and the circumstances. Trying to set one strict boundary of what occurs is where I am having difficulty.

We are looking at one area only in this inquiry: should sexual offences be dealt with in exactly the same way as other offences, by way of spent convictions, whether it is the current New South Wales legislation or the proposed uniform Federal legislation. We have three options. Option number one is that we simply leave the law as it is and do not change it. Option number two is that we actually say to ourselves, that it should be treated exactly as every other offence, which means that sexual offences will come within the same regime, whether it is the current New South Wales regime or the proposed uniform Federal regime. Option three is that we actually create something new whereby we create a panel-type system, and I gave that as an example. Ms Maher, you indicated that there is really a fourth option, that is, to combine some of the options together. Do we consider that for minor sexual offences they should be treated the same as any other offence and for the more serious sexual offences we suddenly have a panel situation?

Ms MAHER: In regard to option two, which is to treat sexual offences the same as the other offences, while that appears to be what you would be doing on the surface, it is not, in fact, what you are doing because the 12 months and 24 months limit would incorporate other offences in a different way than it would incorporate these offences because the nature of the sentencing process in sexual offences means that the sentences are generally a lot longer, as they should be, so in a way you will be capturing the bottom end of sexual offences whereas in a lot of other categories you would be incorporating a much greater mix. So while we are saying they are being treated the same, that is not completely accurate.

The Hon. JOHN AJAKA: Using the current law of six months as opposed to the proposed law of 12 months, for an offender who has been given a sentence of six months or less, it really would be a non-serious sexual offence?

Ms MAHER: There is not an offence that is classed as a sexual offence that carries a six-month penalty except for the indecent exposure one. In the category of sexual offences, there are some minor indecent assault offences that might carry two, three, four, five and seven years. They are at the absolute bottom end but, generally speaking, all of the offences that are listed under the definition of sexual offences carry 10, 14, 16, 19, 20, 25 and life, so the vast majority of what is defined as sexual offences carry those very high-end penalties, much higher than for other things that you are looking at like break and enter, or assault.

CHAIR: Successful political movement?

Ms MAHER: Yes. But it means that the likelihood of a penalty of six months for those sorts of offences, especially where a juvenile is concerned where you are talking about aggravated is very slight.

The Hon. JOHN AJAKA: Mr and Mrs Cox were the perfect example. If I had to have a guess at the evidence he was giving, he probably got a 12-month bond, because he kept using the words that the magistrate said, "I don't want to see you in 12 months time"—the usual words that Mr Hunt would have used on an occasion or two. Mr Cox was charged with what appeared to be a serious sexual offence of carnal knowledge. He obtained a sentence of less than six months imprisonment with a bond of, say, 12 months; yet in the current regime that conviction will not be spent if we allow the law to remain as it is. If we have a regime within the 24 months, which is probably more realistic, and if we assume we are going to uniform legislation, the two choices we are faced with is that we allow it to operate on the basis, "Well, the sentence you receive is the guide and if it is less than 24 months, then why wouldn't you spend a conviction for a sexual offence as you would for any other offence" or we have to have another regime by way of a panel-type system where someone can make an application?

Ms MAHER: One of the difficulties with the option of the panel is again the possibility of politicising that process, and I again mean that in the broadest sense.

The Hon. JOHN AJAKA: From a victim's perspective?

Ms MAHER: And also from the perspective of the various agencies involved in what they believe their responsibilities would be.

The Hon. JOHN AJAKA: That was part two of my question; if we could leave that for a moment.

CHAIR: We are supposed to finish now.

Ms MAHER: One of the strengths of the judicial system is the separateness and impartiality of that system. It is not a system that has to listen to the *Daily Telegraph* or, in a direct way, has to listen to the espousing of various politicians at various times, with apologies. Of course, it listens to legislation and that sort of direction through the Parliament. But the strength of that impartiality is crucial to the fair operating of the system so any panel would have to be equally as impartial.

The Hon. DAVID CLARKE: A judicial panel?

Ms MAHER: A judicial panel with perhaps the assistance of experts. If you look at the sort of information that is in section 9 of the model where it talks about what you would look at, those are all really relevant important things, and you include what the offender has done since then as far as getting their life back on track. It is phrased broadly, which is good, because it is not just looking at "Have you done the sex offender program?" but "What have you done with your life?"

The Hon. JOHN AJAKA: Any changes to spent conviction legislation, especially if it is to be retrospective to allow someone like the conviction of Mr Cox to now be spent, would also need further amendments to the other legislation to either allow a review or some other mechanism because having his conviction spent will not solve his problem.

Ms MAHER: That is exactly right and that was my opening point that without change to the children's commissioner legislation or the child protection legislation.

The Hon. LYNDA VOLTZ: How many sexual offences can be heard in juvenile courts?

Ms MAHER: A lot more. The situation with the jurisdiction of the Children's Court is quite different. If you think of adults starting in the Local Court and more serious matters going up to the District Court, children start in the Children's Court and more serious matters go up to the District Court. There are far fewer a sexual offences matters that are able to be dealt with in the Local Court, most of them have to go up to the District Court.

The Hon. LYNDA VOLTZ: How many sexual offences can the Children's Court deal with?

Ms MAHER: The Children's Court can deal with a lot more than the Local Court can because the regime—I am not sure if I can explain just now in a minute—the way it works in the Children's Court is we deal with many, many matters that for an adult would be strictly indictable and, therefore, have to go to the District Court. Offences that are designated as strictly indictable offences if you are an adult are not strictly indictable offences for a child. So many more sexual offences stay down. Generally speaking in the Children's (Criminal Proceedings) Act there is a category called "serious" children's indictable offences.

The categories drive us mad. Those are listed in the Children's (Criminal Proceedings) Act and they include some sexual offences. Generally they are at the very high end—ones that attract a penalty of 25 years or more. So many more offences are dealt with to finality. Now this is the complicating factor—matters that do not have to go up to the District Court can go up to the District Court. So an offence may be able to be finalised in a Children's Court but, on application of either the offender or the prosecution, and approved by the magistrate, the matter can go up to the District Court even though it does not have to. Sorry, the answer is not straightforward.

The Hon. JOHN AJAKA: Is there a list of sexual offences matters that are considered at law for juvenile offenders that are indictable for sexual offences?

Ms MAHER: Yes, it is in the Children's (Criminal Proceedings) Act and they are listed under the definition of "serious" children's indictable offences. I will provide that as part of the submission from the Law Society. I can also give you the list of middle ground offences that do not have to go up but can.

The Hon. LYNDA VOLTZ: From my understanding the police said that matters heard in the Children's Court at maximum will get custodial orders of up to 24 months?

Ms MAHER: That is correct as a general rule because that is the maximum penalty the court can impose, except in some circumstances where there is more than one offence it is possible to accumulate past two years. Generally speaking it is a penalty of two years and under.

Ms MAHER: Essentially if a matter is heard in the Children's Court we could basically say that it would fall in a 20-month custodial period, unless there were multiple offences, which would not be considered for spent anyway?

Ms MAHER: Yes, that is correct. The other issue about prosecuting sexual offences in the Children's Court is that the Director of Public Prosecutions takeover carriage of child sex offences. With the greatest respect to police prosecuting process, the Director of Public Prosecutions solicitors do bring a higher level of expertise to the prosecution than would normally happen when it stays with police prosecutors. So they are dealt with at a very professional and proper level.

The Hon. LYNDA VOLTZ: A number of people gave evidence about the development of the teenage mind and that until one's mid-20s they have difficulty putting on the breaks. Why are three years more suitable than five years spent, given that you may have offenders of the age of 13 who do not get through that period of development of their brains to put on the breaks and pose a risk to people?

Mr HUNT: A misconception might be that a vast number of children who are really difficult offenders will escape with the spending of their conviction. A really troubled 13-year-old, whether it is a sexual or non-sexual offence, who is having difficulty of a developmental kind and a behavioural kind, if I might say, the bad eggs will never make the three or the five years. The people that the committee in the public interest are protecting victims are worried about, we need not be worried about with the three year or the five year model because those children will be back within six months repeatedly. That very small group of recidivist juvenile offenders will not meet either. If a 13-year-old with significant behavioural issues makes three years or five

years without coming back the prognosis generally can be very good. On my reading of the research and on my anecdotal experience the very odd teenage person who has sexual proclivities that are going to make them an adult and a serial offender, those proclivities will have them back before the court within either waiting period.

Ms MAHER: But it is an extremely small percentage.

Mr HUNT: Minute.

The Hon. LYNDA VOLTZ: The figure we were provided is 70 per cent will not reoffend within three years.

Ms MAHER: That is generally, yes.

The Hon. LYNDA VOLTZ: That leaves 30 per cent who do offend in that time or in the period afterwards. What is the real difference between three and five years? What is the difference between erring on the side of caution? I assume we are speaking about mainly male offenders?

Ms MAHER: Yes. One issue that reduces a person's opportunity to re-engage is employment. So the advantage of the three years is that, all things considered, it should be over at a time to allow a young person, especially a young man, to engage in employment. If it happens when the person is 15 or 16 you are looking at someone 18 or 19 who, if they are going to stay crime-free, need to develop a work ethic, get a job, earn money, not get money through illegal means so extending it to five years could put it past the time that would allow them to do that. It is a big difference between "Okay 18, I can start to apply for jobs and they are not going to look for my criminal record". Again it is at a time, as you say, when the adolescent brain is still developing and you want to encourage as much pro-social activity as you can. That is why I think the shorter period is better.

One of the things that Juvenile Justice look at when it is evaluating re-offending is whether the re-offending is of a reduced kind. It is not just semantics, you know, sometimes kids who re-offend are still judged to be on the right path, if not fully there, because they are not re-offending in the same violent way. On a personal note I have had clients who have come back after a period of time crime-free and instructions have said to me, "If you look at my offences, before I hurt people but this time I broke into their garage." Now that does not make it right but it shows that a person has turned their mind to, "Yes, I have fallen off the wagon and I have re-offended but I have not anywhere near gone back to what I was doing before". Especially for juveniles, the longer you make it the more chance, in a way, I guess, you could be pushing them off the wagon as opposed to encouraging them.

The Hon. LYNDA VOLTZ: If they do their 24-month sentence does the spent conviction start after their release?

Ms MAHER: No, the counting starts at their release date. I think it is actually at the end of their sentence, yes. So a 24-month sentence would be looking at a total sentence, I imagine, so generally they would have been released on parole and be supervised. So the 24 months is the entire sentence including the non-parole period and then at the end of the sentence my understanding is that is when the count starts. I guess that would be five years, would it not, from the offence for those at the maximum.

The Hon. LYNDA VOLTZ: How do suspended sentences work?

Ms MAHER: Suspended sentences in different legislation count differently but they work by the sentence being imposed and the person being released on entering into a bond to be of good behaviour during the period of that sentence. If they breach that sentence by committing a further offence, generally speaking they have to come to court, serve the sentence that was suspended and then the new sentence for the breach offence is added onto the end of that suspended sentence.

The Hon. LYNDA VOLTZ: I meant how do they work with a spent conviction?

Ms MAHER: I do not think that they do.

The Hon. JOHN AJAKA: My understanding is to be suspended it cannot be more than two years in any event so the juvenile will fall within the 24 months.

Mr HUNT: I think the question is whether the qualifying period starts at the end of the suspended sentence.

The Hon. LYNDA VOLTZ: No, I was wondering if you went for a six-month period how it would work with a suspended sentence. Do they count as sentences per se or are they considered like a bond?

Mr HUNT: In terms of strict sentencing law, they are treated as a sentence. You could have a 12-months sentence fully suspended that would be outside the six months.

Ms MAHER: I do not think they count.

CHAIR: You can do 11 months and then get caught and then go into jail for 12?

Mr HUNT: Yes.

The Hon. LYNDA VOLTZ: Will you take that question on notice?

Ms MAHER: Yes, we will.

The Hon. LYNDA VOLTZ: Juvenile Justice told the committee there are 92 offenders who they are dealing with in terms of sexual offences at the moment. Would they have been mainly non-custodial sentences?

Ms MAHER: No, it would be a combination. They would be juveniles who received a non-custodial sentence but with an order for supervision, so they would be supervising them, or they would be juveniles who received a custodial penalty but have been released on parole and were being supervised on parole. So it would be a combination of both. It would be across the whole range of sexual offences from less serious to more serious.

Ms SYLVIA HALE: You referred in your opening remarks to what I might call unintended consequences and you referred to apprehended violence orders and juveniles who were receiving automatic designation as offenders. Are there any other instances that you can think of?

Ms MAHER: No. They are the two main situations. If I think of any more, I will include it in the submissions. But the apprehended violence one is something that is quite serious.

Ms SYLVIA HALE: And quite common, I would imagine, is it?

Ms MAHER: It is extremely common. As we become an increasingly litigious society, people's recourse, and even organisational recourse, to AVOs is higher. For instance, you might get a situation where schools encourage people to take out AVOs. Another common area is children in care where you might have children in the full-time care of the Minister who live in a sort of house with five other people. They have a bit of a barney and the next thing you know the police are called and AVOs are put in place for the children against each other. I often think, as I am dealing with these matters, how many times the police could have been called when I was a child for fights between my two brothers, but we will not go there.

Ms SYLVIA HALE: When the AVO order is issued, does that result in the offence being recorded? What happens when the AVO order lapses?

CHAIR: It puts a flag.

Ms MAHER: The difficulty with the AVO is that it does not come up on any criminal record check because it is not a criminal record. It is a civil order that the court puts out. The difficulty with AVOs is that you list the allegations that are the basis for the application, but legally there is the capacity for the person against whom the order is sought to say, "I accept the conditions of the AVO, but I make no admissions as to the content of the allegations." But, of course, that AVO has been accepted and gets filed away. If you apply for a job in the future, it comes up as an AVO taken out against you for the protection of a child.

The other complication for AVOs is that because it is a civil order, it is a different standard of proof. If you are charged with an assault, the standard of proof in a criminal court is beyond reasonable doubt, which is a higher standard of proof, as it should be. But in the civil order, the standard of proof is the balance of

probabilities. In any case where an AVO order is made out against you, and it is put to the court by one party saying, "This is what happened", and the other party saying, "No, it isn't", it really is a kind of a fifty-fifty weighing up. There is not the protection that you get afforded with the beyond reasonable doubt requirement. I am sorry, I know this is off the track a bit, but it is an area that severely disadvantages children and is fairly recent, as in only about the last five years. We will see the difficulties with this as these children become adults.

CHAIR: It is becoming more popular.

Ms MAHER: Yes.

CHAIR: Thank you very much indeed for attending. You evidence is very important. We look forward very much to your further information coming forward. The secretariat will be in contact with you about that and we will await your meeting for answers to the questions.

Ms MAHER: Thank you very much.

CHAIR: Thank you very much for attending. I will not ask if you have anything else to tell us because I know you have.

Mr HUNT: That is exactly right. Thank you all.

(The witnesses withdrew)

(Short adjournment)

JANE SANDERS, Solicitor, Youth Justice Coalition, affirmed and examined:

CHAIR: Thank you for attending. I will not go through the formal processes, except to say that this is the second day of hearings. If you have a phone, could you turn it off or put it onto silent mode.

Ms SANDERS: Yes. I have just done that.

CHAIR: That is very good. I very much welcome you to this inquiry. First of all, will you state the capacity in which you are appearing?

Ms SANDERS: I am speaking in the capacity of a representative from the Youth Justice Coalition. As I think you know from the submission, the coalition has a network of lawyers, youth workers and others who have an interest in justice. I represent the Youth Justice Coalition today. My primary position—or my day job, as one would call it—is as principal solicitor of the Shopfront Youth Legal Centre. We work primarily with young people who are homeless or who are at risk of homelessness. We work with a large number of young people who are victims of child sexual abuse, a very small number of whom perhaps have or have not been sex offenders also. We also get a lot of requests for advice from young people about the laws surrounding the age of consent. We also get a lot of requests for advice and training from youth workers in youth services about those issues as well. That just goes to a bit of background as to my personal experience and background.

I do not want to take up all the time by making an opening statement or repeating what is in the submission, but one of the Youth Justice Coalition's main concerns is what we consider to be age-appropriate consensual sex between peers that currently is criminalised in New South Wales. In other jurisdictions, for example Victoria, and in fact I think all jurisdictions apart from the Northern Territory, there is a two-year age buffer. Conduct which is lawful just south of the border—for example a 17-year-old having sex with a 15-year-old partner—would be criminal in New South Wales.

Although in many cases young people in those sorts of relationships do not come to the attention of the police and are not prosecuted, there are a significant number who are prosecuted. I do not have statistics about this, but anecdotally I think it is about a third of the young people who appear before the Children's Court for sex offences who are in fact in that category. It is consensual sex with another young person of relatively similar age that is being criminalised, and for which they are being convicted. Even should the court see fit not to record a conviction, such a conviction is of course deemed under the Criminal Records Act to be a conviction, and it is never able to be spent. Our primary position is that that is the situation, which is unjust. Our wish would be for reform of the age of consent laws. I know that is outside the terms of reference of this inquiry, but certainly that may be something that the Committee raises in discussion, or for further discussion perhaps further down the track. That is the very fundamental thrust of our submission.

Another thing that we would add is perhaps the threat of prosecution for under-age sex that also deters a lot of young people from seeking help with sexual health, with pregnancy, and with family law-related issues if they happen to have a child of that relationship. Leaving aside that issue, which we consider to be the most important, and perhaps turning to young people who fit the more conventional model of sex offenders—those who are actually abusing younger kids or are committing sexual assaults where there is not any sort of consent—we are still of the view that those convictions should be capable of becoming spent, except in the more serious cases where a very significant sentence is imposed.

There is a lot of research to which we have referred in our submission showing that offending tends to peak in late teens and early twenties, and then for most young people tends to trail off and possibly disappear altogether around the mid-twenties. The stigma of a conviction is something that we believe in many cases—all but the most serious—is unwarranted for somebody who committed an offence as a child to carry through their entire adult life, particularly when they would appear to be at very low risk of reoffending and being a danger to the community. I will leave my remarks at that and take questions.

The Hon. LYNDA VOLTZ: In terms of decriminalising, which really is not part of our terms of reference, what would you deem to be the appropriate cut-off for the age of consent?

Ms SANDERS: Perhaps we could adopt the Victorian model. I do not have their legislation with me, but my understanding is that the age of consent is set at 16, but consent is a defence if the perpetrator is less than two years older than the victim. For example, if somebody aged 18 is having sex with a 15-year-old that would

still be an offence as the age gap is too large. If somebody aged 16 is having sex with a 15-year-old that is not criminalised because the age gap is less than two years, so as long as there is consent. Clearly it would still be an offence—

The Hon. LYNDA VOLTZ: Is it at the discretion of the magistrate, for example if it is a 14-year-old and a 12-year-old, whether it should be considered an offence?

Ms SANDERS: No, I think it would be the legislation. If there were less than a two-year age gap consent would be a defence. Certainly if a 14-year-old rapes a 12-year-old that is clearly an offence because there is no consent, but if a 14-year-old has consensual sex with a 12-year-old, and it is genuine consent, it would be lawful and would not be criminalised. There would be a lower age level, for example, 10—I think in Victoria and other jurisdictions it is generally accepted that there has to be some lower limit and that it is just not on for anybody to have sex with a child under 10.

The Hon. LYNDA VOLTZ: Does the Victorian model take into consideration whether the younger child understood?

Ms SANDERS: Obviously, if the child does not understand it does not have the capacity to be able to consent. That would be lack of consent and sexual assault. It is like our current sexual assault laws in New South Wales. If the alleged victim has an intellectual disability or is so intoxicated that they are incapable of understanding what is going on, or perhaps is coerced or threatened into consenting, at law that is not consent. It has to be free and fair consent.

The Hon. LYNDA VOLTZ: But how does a 13-year-old define—

Ms SANDERS: That is a very good question and it is something that we children's lawyers spend a lot of time and energy thinking about and advising about every day. This is quite unrelated but perhaps it is an analogous example: A child can consent to medical treatment if they are mature enough to understand the nature of the treatment that they are about to undergo or that they are asked to consent to. That depends on the capacity of the individual child. It has to be assessed on a case-by-case basis with every individual child. There may well be kids who are 12 years old, for example, involved in sexual relationships who really do not understand what they are consenting to or who are being pressured into consenting. If they are really being pressured into consenting that would still be sexual assault because there would be a lack of free and fair consent.

There are situations, thousands of them all over Australia, with children who are 15 or 16. Often there are two partners who are very similar in age but they might fall either side of 16. Their relationship is consensual. Of course young people do things that in hindsight they might later regret. They might not always be having safe sex; perhaps they might be at risk of pregnancy at an age when they are not really mature enough to handle it. Nevertheless, they are entering into these sexual relationships consensually and with their eyes open in as much as they know what they are doing.

The Hon. LYNDA VOLTZ: Given that anecdotally, and probably it is true, there are lots of 16-year-olds out there, the Department of Juvenile Justice has informed us that there are 92 offenders on their books being prosecuted for sex offences. If you worked on the 30 per cent principle that would mean there were 30 cases. Why are those 30 turning up to court? How do they end up at court when the others do not? Are there other factors involved?

Ms SANDERS: You mean why are some kids in consensual relationships prosecuted and others not?

The Hon. LYNDA VOLTZ: Yes, for example, we had the Coxes in earlier and obviously the father had been instrumental in that case. You can understand that happening forty years ago. It happened in the 1960s.

CHAIR: It has not changed.

The Hon. LYNDA VOLTZ: It may not have changed, but is it because the parent is the complainant in these instances?

Ms SANDERS: I think that is often the case. Normally those sorts of behaviours might go undetected and unprosecuted, but in cases where they are prosecuted it may be because dad does not like the boyfriend and calls the police. I think parents do have a role in prosecuting sometimes. Sometimes it may be that they have a

child and further down the track somebody does the sums and works out that the child was born when the mother was 16. There are a few calculations and possibly somebody with that information refers the matter to the police. It can come to the notice of the police in a variety of ways. The majority are not prosecuted. Some might ask what the problem is if the majority of kids are not prosecuted. Why worry about changing the law? Who is it harming? My point is that the threat of prosecution and the knowledge that this activity is illegal does deter many young people from seeking appropriate assistance and advice when they need it, whether in relation to sexual health, pregnancy or possibly family law. We put a case study in our submission about two young people who had a baby. The father of the baby was being denied contact with the child. He did not want to put his name on the birth certificate or admit he was the father because that would mean revealing he had had sex with his girlfriend while she was under age and he did not want to risk prosecution. The likelihood of his being prosecuted may be quite low but the point is that the risk of being prosecuted is certainly a deterrent to young people seeking help.

The Hon. LYNDA VOLTZ: But did he understand that he had offended the law?

Ms SANDERS: Yes. My point is why should it be criminal? It is two people of similar age. This is where it really becomes an anomaly. Our sexual assault laws are gender neutral, as you would know. Clearly, about 30 years ago they were not and it was always the male who was the perpetrator of rape and the female who was the victim. If there are two young people—they could be two young men or two young women or a heterosexual couple—and they are both 15 and in a consensual relationship, who is the offender and who is the victim? Both are simultaneously offender and victim. It is just a completely anomalous law. It does not take into account young people of similar age having consensual relationships.

The Hon. GREG DONNELLY: Except that falls apart really because the reality is there are a lot of people not in consensual relationships. I am sure you would be familiar with the study published by Latrobe University in 2008 about secondary students and sexual health. It comes out every few years.

Ms SANDERS: Yes, I have it here.

The Hon. GREG DONNELLY: In that report, under the heading "Ever had unwanted sex?"—

Ms SANDERS: Yes, I think 38 per cent of young women or was that even more?

The Hon. GREG DONNELLY: Indeed. In 2002 it was 22 per cent of those surveyed. It was a pretty big survey and the figure had risen to 39 per cent in 2008. I have heard the argument that there may be increased reportage, but putting that aside for the moment, whether it is increased reportage or not, 39 per cent of young women in this survey voluntarily acknowledged that they had had unwanted sex. That rings alarm bells for me. The issue of consent has a lot of issues associated with it that need some careful examination. You are portraying this whole issue of sexuality of young people in the context that there is consent and non-consent, to the extent that the non-consent is almost not getting a hearing. I would argue that the non-consent is a very big issue as a matter of social policy that we need to be very worried about.

Ms SANDERS: That is true. My response to that would be to ask whether criminalising any and all sex involving anybody under 16 is the way to go because it criminalises a lot of activity that is consensual.

The Hon. GREG DONNELLY: For heaven's sake, this is rape?

Ms SANDERS: Could I respond to that by saying that we have got to be very careful about what we mean or what respondents mean to that survey by "unwanted sex".

The Hon. GREG DONNELLY: You are not going to deconstruct this now, are you?

Ms SANDERS: I think maybe I should, because whether unwanted sex actually means rape, as in no consent or consent obtained by fraud or coercion, or it means I do not really want to have sex but I am going to do it because I feel that I should or all my friends are doing it or my boyfriend tells me he will leave me if I do not, or whatever. Now I have been in situations, I might say, when I was a young woman and I had sex that I considered was unwanted and, perhaps, that I regretted later. I would not consider any of those experiences to have been sexual assault because I did consent. It may not have been, in hindsight, right for me at the time but that falls very short of being rape and my sexual partner would fall very short of being a rapist.

So I think we have to be really careful of what we mean when we say "unwanted sex". But I do agree—and please forgive me for I am not trying to be facetious—there are a lot of people working in jobs where they are being exploited, they are being low paid and they have really bad conditions, you could say that those conditions are unwanted and they do not want to go to work, yet it falls short of slavery. They are not coerced. They may be left with little practical choice but there is a difference between, perhaps, unwanted and unenjoyable jobs and slavery. I think we have to be careful to know what we are talking about when we say "unwanted sex". It may not always be rape.

CHAIR: This is a an incredibly important issue in relation to the Committee's inquiry but it is a side issue—

Ms SANDERS: Yes, it is.

CHAIR: Because the Committee is trying to work on the spent convictions.

Ms SANDERS: That is quite right.

CHAIR: The Committee realises that there is a clause in there about consensual sex but it is in relation to our spent conviction issue. Through this inquiry the Committee has also picked up some side issues that it will have to deal with in order for this to make any sense at all. I recognise that your issue is very important but it is another process as far as law changing is concerned. I am not meaning to cut you off. It is very relevant to your submission but it would be good if we could stick to the—

Ms SANDERS: I do agree that it is outside the terms of reference, yes.

The Hon. LYNDA VOLTZ: When we are talking about those 30 percent of offences that do come before the courts, would they tend to be sentenced around the lower range for sex offences?

Ms SANDERS: Yes, and they may not even be supervised by Juvenile Justice. The court might think that technically it was an offence but it was consensual, they are similar aged, there was no abuse going on and it will give the person a short probation order or good behaviour bond and not put them under supervision because they are not an offender and they do not need any assistance—

The Hon. LYNDA VOLTZ: So if we accepted either the Commonwealth model or had a State Government model in regards to juveniles that sexual offences could be considered spent after three or five years, even if we only went for six months, they are likely to have captured those people within that range?

Ms SANDERS: I think so, yes.

Ms SYLVIA HALE: You probably heard the witnesses who just gave evidence. They were suggesting that for a conviction to be spent, whether it be of a sexual or non-sexual nature, for a juvenile that should encompass any offence for which a sentence of not more than 24 months was imposed and that the spending should take place within three months of the completion of the sentence?

Ms SANDERS: Three years.

Ms SYLVIA HALE: Yes, would you subscribe to that view?

Ms SANDERS: Yes, I would. The sentence of 24 months would encompass the serious offences and the three-year crime-free period—I know there has been discussion about making it five years for juveniles—but I did hear the tail end of the evidence of the others when I came in explaining that the crime-free period only starts after completion of the sentence. For example, the offence might be committed when a young person is 16, for a sex offence, if it is a serious one particularly, it would usually take some time for the court process to be completed. They might be 17 or even 18 by the time they are sentenced. They then receive a sentence that may be up to 2 years or whatever. If they receive a control order, a custodial sentence, they might spend six months in detention and then another 12 months on parole. If they receive a probation order it might be a two-year probation order. It is not until all of your parole or all of your probation is completed that the crime-free period starts counting. So it could be that by the time you complete all of your obligations under your sentence it might already be about three years after the offence and then you have another three-year crime-free period to go. That is still quite a significant period.

Ms SYLVIA HALE: Because the difficulty in having such a prolonged period, even the three years, as was pointed out by earlier witnesses, is that it is likely to cover exactly that period when young children are trying to get jobs, finish their education and be, in fact, the most vulnerable to having a criminal record. Do you think three years is too long?

Ms SANDERS: As a children's advocate acting on behalf of defendants in criminal matters I suppose I would have to say the shorter period the better. What I would like to suggest is that if the court decides not to record a conviction—and the Children's Court has discretion whether or not to record a conviction—our position would be that if the court decides not to record a conviction then there is no conviction—the conviction is immediately deemed to be spent. Currently under the Criminal Records Act a non-conviction for a sex offence is deemed to be a conviction anyway and it is never spent.

So if the court sees fit not to record a conviction what the court is saying is that this young person's offending is not in the scheme of things all that serious, and maybe they are unlikely to reoffend or are not at great risk of reoffending, somebody whose life's prospects would be damaged by a conviction and is not of sufficient risk to the community for a conviction to be recorded, and therefore telegraph that to the whole world. So if the court sees fit not to record a conviction what we would like to see is for that to be spent immediately. Where the court does see fit to record a conviction I suppose I would have to say that the fact of the recording of the conviction has to have some sort of meaning, but maybe two years, three years, or maybe the crime-free period should date from the date of conviction rather the date on which all your sentencing obligations—

Ms SYLVIA HALE: From your experience how quickly does the court impose a non-conviction?

Ms SANDERS: For a sex offence?

Ms SYLVIA HALE: Yes.

Ms SANDERS: I could not say that, and I am sorry I have not got any statistics that I could give you. I suppose that is something we might be able to look at. I think BOCSAR would have that in its Children's Court statistics. I do not know because I do not act for enough young people on sex offences to be able to even estimate.

Ms SYLVIA HALE: Is that because they are relatively rare or is it just the nature of the children that you appear for?

Ms SANDERS: I think it is a bit of both. I think sex offences among juveniles are relatively rare. I think the majority of offences that go before Children's Court are more likely to be property offences or offences against the person, things like robbery in company, break and enters and whatever. Sex offences in the Children's Court are still quite rare. Certainly if you subscribe to the literature that suggests that young people who have been victims of abuse often go on to become perpetrators, most of our clients by rights ought to be perpetrators themselves but we have had very few clients actually charged with sex offences.

Ms SYLVIA HALE: From your more general knowledge, where children do commit these offences is there evidence that there is a greater tendency for them to do so because they are subjected to peer pressure or pressure from even someone who is older than they are?

Ms SANDERS: That would probably depend on what kind of offence it is. Obviously there is, we think anecdotally, about one-third who are engaging in what I would describe as normal teenage sexual behaviour, which we older people might be uncomfortable with and certainly—

Ms SYLVIA HALE: Would you describe it as experimentation or—

Ms SANDERS: Yes. There are then young people who may abuse siblings, for example, or other children in their immediate circle. They are often young people with very deep-seated problems who if not sexually abused have been physically and emotionally abused, and they are really acting out things that perhaps have been done to them or that they have seen or been exposed to. Then you have perhaps young people, typically young boys in the older teens, mid to older teens, who are committing the more traditional sort of "rape" type offences, who are aggressive and violent towards women, who perhaps acting groups. I think in that scenario there would definitely be peer pressure involved.

If I broaden it out not to just sex offences but to offending by young people, young people do often commit offences in groups. Robbery in company is a very common offence committed by young people involving two or three or a larger group of kids going up to another kid and stealing their mobile phone, their iPod, their wallet, their shoes or whatever. That is such a problem, that kind of group offending, that Legal Aid has seen fit to produce—I do not know if any of you have seen it but it is excellent if you have not—a short film called *Burn*, which is about a kid who goes on a drive in a car with some slightly older kids, suddenly he is involved in a very serious armed robbery, somebody then dies and he is charged with murder. It demonstrates the dangers of that joint enterprise offending and how quickly you can become involved in that. So group offending and peer pressure is a very big problem for young people when it comes to offending. And I think with sex offending if it is that sort of sexual assault in company type offence, yes, I think there is peer pressure involved. I am sorry, that was a very long-winded answer.

Ms SYLVIA HALE: Not at all, it was very interesting.

The Hon. DAVID CLARKE: Do you think it is appropriate for the model bill to take the sentence imposed as the main indicator of the severity of the sex offence rather than the category of offence? Do you have a view on that?

Ms SANDERS: The view of the Youth Justice Coalition is that the severity of the sentence is probably the main indicator. There may be some categories of offence at the lower end of the scale, perhaps, such as indecent exposure or indecent assault that might always be considered lower categories. It is always difficult putting things into categories. For example, an indecent assault, which consists of sexual touching, is generally considered to be a lower level offence and you may have, often when it comes to children, a pattern of abuse where a young person is indecently assaulted over a long period of time by a particular perpetrator.

The most serious offence that that person is charged with might only be indecent assault, but cumulatively the sentence imposed may well be quite severe—as it should be for that sort of pattern of abuse. Probably the overall sentence is a more reliable reflection. Having said that, obviously there is great variety between magistrates and judges as to the sentences they impose. Obviously there will be circumstances personal to the offender that may make a sentence less severe than it otherwise would be. The offender may have an intellectual disability, for example. So it is quite difficult to say. I think, to be fair, there are arguments on both sides, I would have to say. For what it is worth, they are our views.

The Hon. DAVID CLARKE: Could you comment on the marked increase in the number of criminal record checks over the last 20 years, as noted in your submission?

Ms SANDERS: The comments on the marked increase came from articles, referred to in the submission, written primarily by Bronwyn Naylor from Monash University. She has done quite a considerable amount of research on criminal record checks, and particularly criminal record discrimination in employment. She quotes statistics, which I think are quoted in our submission. I do not want to spend too much time rifling through papers, but she quotes statistics that show that in 2006 and 2007 the Australian Federal Police processed more than 600,000 requests for criminal record checks. That was a 700 per cent increase from 10 years previously. That has been a seven-fold or eight-fold increase over 10 years. I think those figures speak for themselves.

The reason why that might be happening, I think, is that there is an increase particularly in child-related employment. There has been legislation enacted, I think, in just about all Australian jurisdictions requiring people who apply to work in child-related employment to undergo criminal record checks. I cannot comment on the reasons, but I think that is one of them.

The Hon. DAVID CLARKE: A greater awareness in the community about predatory sexual conduct?

Ms SANDERS: Possibly. It is not necessarily confined to sexual conduct, but I think there is a greater awareness in the community about predatory sexual conduct and sexual abuse, as it should be. A really large percentage of my clients are victims of sexual abuse. I think that whatever reasonable steps we can take to protect our children from sexual abuse should be taken.

The Hon. DAVID CLARKE: This increase is not necessarily a bad thing?

Ms SANDERS: Yes, and no. I think it is not confined to sexual offences. It may also have something to do with national security concerns—for example, concerns around terrorism. I think the environment post 9/11, since 2001, has been one of increasing fear around not just terrorism but criminality, security and risk. Certainly we have seen it in stricter terrorism laws, more surveillance, and increased security checks at airports. Perhaps the increase in criminal record checks has been part of that as well. That would be my speculation; I cannot really say why.

In terms of the Working with Children Checks specific to sex offenders or offences against children, I certainly think there is room for that, and I think there is a reasonable basis for it. I think perhaps one of the previous witnesses, Ms Maher, might have touched on this. We have to be very careful that it is the right people that we are targeting in these criminal record checks, and that a kid who is 16 years old and has sex with his 15-year-old girlfriend is probably not the sort of person who should come up as a high risk when it comes to the Working with Children Check.

There is argument perhaps—and I think Bronwyn Naylor in some of her writing makes this argument—that overreliance on criminal record checks as a screening tool for employment can perhaps lead to complacency, and it is not the best means of predicting risk and not the best means of protecting children, other employees or the public.

The Hon. DAVID CLARKE: What would be a better means, do you think?

Ms SANDERS: I think that is something that may be a bit beyond my expertise. I think Naylor suggests measures like very comprehensive training in the workplace, awareness training, child protection training, procedures such as not having staff unsupervised having one-on-one contact with children, always having two staff members present when they are with a client who is a young person, and those sorts of measures. But again, that is perhaps going a little bit beyond my expertise.

The Hon. DAVID CLARKE: That is more long term. It is more nebulous, is it not?

Ms SANDERS: Yes. There is a role for criminal record checks, whether it relates to specifically the risk of sex offending or other offending. I think we have to be careful what we do with that information. If people are being denied employment or being denied opportunities because of a criminal history that is really irrelevant, that is problematic. That is where I think the balance has gone too far. It is probably not going to protect children, but it is going to stigmatise a young person and prevent a young person with a criminal history from rehabilitating and getting employment. Conversely, it may mean that they are more likely to reoffend because they have few resources available to them.

Ms SYLVIA HALE: This may be slightly outside the scope of this inquiry, but it was a point that was raised in one of the submissions—whether it was from the Privacy Commissioner or the Public Interest Advocacy Centre, I cannot be sure. They were suggesting that it is one thing to say convictions are spent but it is another thing for those convictions not to be raised when people reappear in court for any reason, even if it is for totally unrelated matters. Is that your experience?

Ms SANDERS: There is an exception in the legislation that convictions that are spent can still be taken into account in subsequent court proceedings. They may be spent as far as the outside world is concerned, but they could still appear on your record that gets handed up to a court.

Ms SYLVIA HALE: Do you find that this has any implications for children?

Ms SANDERS: I think it can. With regard to the clients that I act for, because they are quite young, they are all under 25, most of them are not in a position where their convictions have been spent yet. I think Warwick Hunt made the comment that there are certainly some young offenders, the more serious offenders, who will never successfully sit out that three-year crime-free period because as soon as they turn 18 they will be offending as adults, and by then, if they do stop offending eventually, it will take 10 years for their convictions to be spent now that they are adult convictions.

I do not have many clients who have spent convictions. I do have some who get in touch with us a few years later and say, "Remember me? You acted for me. Do I still have a criminal record?" It is certainly an issue. I have seen the odd criminal history for people who are in their thirties or forties; you see these things on them from the Children's Court. I even saw one "uncontrollable; exposed to moral danger"—in the days when it

was an offence for a child to be uncontrollable. I think that spent convictions being taken into account by courts is an issue. I do not know how many people it affects, but it is perhaps something that needs to be looked at.

Ms SYLVIA HALE: Given your earlier position that if a magistrate does not record a conviction that should be the end of the matter, would that be your view with regard to spent convictions as well: that having been spent they should then be totally expunged?

Ms SANDERS: I think so, for most purposes. Incidentally, if a magistrate declines to record a conviction, it will still be on the person's criminal history and it is still taken into account in subsequent court proceedings.

Ms SYLVIA HALE: But you think that should not be the case?

Ms SANDERS: I think that has to be the case. Otherwise—and let us leave out juveniles for the time being—you are 18 and you get caught with a gram of pot or whatever, you go along to court, the magistrate says, "All right, don't do it again. Section 10"—which means a finding of guilt but no conviction. You then get busted a year later with pot again. The court needs to know about that, otherwise they keep giving new section 10s again, again and again, and treating you as if you are a first offender. I think there is a reason why the court needs to know about it.

Clearly, if the matter is dismissed because you are not guilty, that should be completely irrelevant; it has no place on a criminal record. If there is a finding of guilt but no conviction is recorded, I think the courts need to know about it. Subject to this, there is a provision in the Children (Criminal Proceedings) Act—I think it is section 15—whereby if a young person has been dealt with in the Children's Court, and if the court declines to record a conviction, if there is then a two-year crime-free period after the expiry of whatever sentence the person got in the Children's Court, that is, he or she has managed to stay out of trouble for at least two years, if the person is then charged with an adult offence the court cannot take into account those earlier Children's Court matters—but only if no conviction was recorded and the person has managed to stay out of trouble for two years.

Ms SYLVIA HALE: You say that is the case?

Ms SANDERS: That is the case. So maybe there is a case, after a certain period, for spent convictions and non-convictions to be totally expunged so that they do not even get taken into account by a court.

CHAIR: Especially if they are dissociated, I suppose?

Ms SANDERS: Yes.

CHAIR: Thank you for your assistance today. Earlier you were provided with questions that we have not had time to touch on today. The secretariat will contact you regarding those questions, and we would appreciate it if you would provide the answers within three weeks.

Ms SANDERS: All right, I think we can do that.

CHAIR: Thank you for your attendance today and for your submission.

Ms SANDERS: I did not do most of the work on the submission. I will pass on the thanks to those who deserve it.

(The witness withdrew)

CLAIRE GASKIN, Clinical Director Adolescent Mental Health, Justice Health, sworn and examined, and

JULIE BABINEAU, Chief Executive, Justice Health, affirmed and examined:

CHAIR: Thank you for your attendance at the second day's hearing of this incredibly complex inquiry. I will not go through the formal process as we have already done that for today. If you take any questions on notice during this process, we would be grateful if you could provide the answers within about three weeks so that we have time to read them thoroughly. Would either or both of you like to start by making a brief opening statement?

Ms BABINEAU: First, I thank the Committee for the opportunity for both of us to appear today. I would like to make this short opening statement—I will not go into more detail unless you ask for it—about Justice Health and the services we provide that might assist the Committee. I think it is important because our role is very restricted I guess within the environment that is discussed in this inquiry today. Justice Health is a statutory health corporation. We were created and established under the Health Services Act, so we are part of the health department. We provide health services for people who come into contact with the criminal justice system: adults and adolescents. We look at the whole continuum of services for those who come into contact with the criminal justice system. The window of opportunity for Justice Health to provide health care services to young people is usually very brief with 65 per cent of young people remaining in custody for less than a week.

I know that the Committee heard this morning from Juvenile Justice, so you probably have some of the information of its role. Its role is a lot more about psychological services as well as welfare and counselling services. But we provide the rest of the health services in all the centres across the juvenile justice system. The way I describe adolescent health is that all of the juvenile justice centres are like little many communities and every community has a community health centre. We operate these little community centres in all of the juvenile justice system. That gives you a little bit of an idea. We provide all of the services from adolescent health, Aboriginal health, clinical and primary health. We look at all of the streams: drug and alcohol and mental health, which is really the role of Dr Gaskin, among other things. We work hand in hand with Juvenile Justice to provide these services. Our role really is about looking at the health services of the young people who come into contact with the criminal justice system.

We also look after people in the community and we have expanded our services. Since 2003 we have been looking after young people in the juvenile justice system. Not long after that we started implementing some services before they go to court, when they are in court, people at risk, people who are mentally ill with drug and alcohol issues. We work with the kids, the family and the magistrates, and upon release as well. We have a community integration program where we work with the kids and the family to try to help to reinsert them into the community. At the end of the day, if you work with them the evidence demonstrates that you actually will help them and decrease recidivism. That is what we are on about. That is the only time we kind of get out of our health world because we think that we have to work in partnership and it is about the socioeconomics as well.

We work with the Department of Housing, Education, obviously continue with Juvenile Justice, and Community Services. We also have beds that we opened in a new forensic hospital at Malabar for adolescents, the first of its kind in Australia. We have some beds for forensic adolescent patients. I spoke a little earlier about our relationship with Juvenile Justice and the scope of our services. The only service we provide in the adult centres, although this is about the Juvenile Justice Centres, is actually the provision of anti-libidinal treatment. Only people who are referred to us by Corrective Services who actually operate the CUBIT programs or people who come into custody and already are on anti-libidinal treatment we will continue. The numbers are incredibly low. We actually provide services to 6 patients out of almost 11,000 in the adult centres right now. The numbers are low.

We do not provide services specifically for people committed for sex offences. A lot of the people who come for sex offences—Dr Gaskin will give you a lot more of the research evidence and the clinical reasoning behind it—actually have other illnesses, mostly mental or intellectual disability illnesses. This is what we work with. We do not treat people who are sentenced or on remand for sexual offences. I wanted to clarify that for the Committee to ensure that you are aware that our role really is to treat the general health of these young people who come to juvenile justice centres.

CHAIR: Thank you. Would forensic adolescents be those who had committed "heinous crimes" so that they would not be part of the spent conviction process?

Dr GASKIN: No. The term "forensics" probably is misconstrued. In legal terms a forensic patient would be those found either not guilty by reason of mental illness or unfit to plead. Those are the two reasons why you become a formal forensic patient. The other group of patients we take in the adolescent service would be those convicted of an offence who have a pre-existing mental illness that becomes unable to be treated safely whilst in custody and their behaviour is too risky to be in a local hospital setting, so we transfer them to the secure hospital, now that we have that facility, because we obviously have a high level of security there, or those who develop a mental illness whilst in custody. We want to be able to carry out full assessment of that and look at the ongoing needs. Sometimes our local area health service partners are not able to offer the length of assessment we can in the forensic hospital in a safe way. They are the three groups of patients we have in the adolescent scene.

CHAIR: That has no relationship to our terms of reference?

Dr GASKIN: Not usually, no, but we would not discriminate in terms of sentence or sentence type. The risk issues would be our admission criteria on detainability, the need for mental health treatment and risk.

CHAIR: Can you tell us if you have any role in providing services to juvenile sex offenders? Do you play a role in dealing with adult sex offenders?

Ms BABINEAU: As I said earlier, the only role we play with adult sex offenders is actually in the provision of medication. They are referred to us and the numbers are incredibly low. Or we treat other illnesses. It is important that it is not about the crime; it is really about the clinical assessment that we look at.

CHAIR: The treatment programs we hear about belong to Corrective Services?

Dr GASKIN: Yes, the sex offender treatment programs and serious violent offender programs belong to Juvenile Justice and are run by psychology services. I think Natalie Mamone may have spoken to you about those. We work closely with Natalie and Juvenile Justice in identifying. Really the only role we would have is if there is a comorbid mental health issue and someone happens to be referred to our services, particularly mine, in terms of adolescent mental health. If they were referred to us for assessment and happened to have committed a sexual offence, there may be some role in assessing parts of their presentation in regard to their access to treatment and things like that. That would really be the role. Part of a comprehensive assessment of an adolescent presenting mental health issues is to take a psychosexual history and that obviously would include issues that might come up around their sexual preoccupations or fantasies and things like that. That would be a normal part of a forensic psychiatrist's role in assessing young people.

Ms SYLVIA HALE: In the course of doing that, which may not be all that often, are you conscious of any significant differences in, say, mental health of juveniles who have been convicted of a sexual offence as opposed to those who have been convicted of another offence?

Dr GASKIN: Generally when somebody initially is referred to us we do not go into detail about the circumstances of their offence unless there is a good reason to do so because obviously they are there and we are treating their health issue. The fact they may have committed one offence or another is neither here nor there in regard to that. If we are asked specifically about somebody's sexual preoccupations or sexual behaviour, then it may come up as part of that, I guess. It would only really be anecdotal evidence. I would not have any specifics because we do not have records of what type of offences the young people we see in mental health clinics have committed because obviously we are a health service, so we do not personally keep that information. That would be in the Juvenile Justice realm to have that information.

We would not really know and I would be just picking it out of the air if I said so. Clearly, some young people present with serious and complex presentations of which sexual offending may be an issue. They are probably the ones we would he talking very closely with Juvenile Justice about joint management of particular issues around not only their mental or physical health but also perhaps their offending profile and issues of risk related to their mental illness that might affect their risk of future offending. I guess that is where we would be getting involved in offences specifically.

Ms SYLVIA HALE: Obviously some juveniles are unfit to plead?

Dr GASKIN: Yes.

Ms SYLVIA HALE: In that circumstance they never actually would be eligible for a conviction to be spent because they would never have a conviction?

Dr GASKIN: That is right.

Ms SYLVIA HALE: What happens to those children? Is their position constantly reviewed, say, every 6 or 12 months?

Dr GASKIN: In the unfit to plead group?

Ms SYLVIA HALE: Yes?

Dr GASKIN: Yes, they would be reviewed by the Mental Health Review Tribunal. That would determine their ongoing needs. Most of them do not have a mental illness; they have intellectual disability, as you would know. It is problematic that they are there for a health issue, if you like, because although they may have concomitant health issues and mental health issues, because those things are more frequent in that population, their major issue is their intellectual disability and the fact they are not going to understand the process at any point. Some young people we have had through the system are unfit because of mental illness and they become fit over time. That would then be reviewed again by the Mental Health Review Tribunal with submissions to it around what should then take place for them.

Ms SYLVIA HALE: If they subsequently recover, are there any instances where they are then charged with the original offence?

Dr GASKIN: That would be a legal issue to answer rather than mine. I basically concern myself with their mental health. If their mental health is such that they recover fitness, if that was the reason they were unfit, I would make sure the tribunal was aware of that and then that would be for the tribunal to decide.

The Hon. DAVID CLARKE: Following on from that question, are you aware of any cases that have come to your attention?

Dr GASKIN: Who are sexual offenders?

The Hon. DAVID CLARKE: Those who have subsequently recovered and then been charged?

Dr GASKIN: Not that I am aware of, no.

Ms BABINEAU: In the adult population it is part of the whole clinical pathway for the forensic patients. So when the not guilty by reason of mental illness get better they will not go back to court and get a sentence because they are not guilty. The unable to plead might go back to court because they are basically unable to plead. If they do get better, the unable to plead will have to go and sit through the court case. As Dr Gaskin said, most of them have an intellectual disability. Most of them we have in our hospital or in the system will not be able to plea at one point, but that is defined by the Mental Health Review Tribunal. Everyone in the forensic hospital and everyone who is a forensic patient is reviewed by the Mental Health Review Tribunal, every one of them. We work very closely with them.

In the adult system the people not guilty by reason of mental illness will serve a time in a maximum forensic facility, which is now at the Long Bay facility that Justice Health operates and they are maximum secure. They will then move to the medium secure environment and then to the low secure environment. Some of them eventually will move to the community, but it has gone through a very long pathway. There is evidence that demonstrates—I will have to take it on notice if you want the source of the information—that someone who is released back into the community that is a not guilty by reason of mental illness patient actually serves longer time than people who actually commit a homicide and get their sentence.

Ms SYLVIA HALE: Do juveniles follow the same path?

Dr GASKIN: Juveniles would follow the same path if they are found not guilty by reason of mental illness. Basically their release would be determined on risk and their treatment and the fact they have responded to treatment. We have had very few in the system, for a variety of reasons I suspect, but you would hope that if somebody has a mental illness and they recover from that mental illness, their risk was clearly associated with their mental illness and they continue to respond to treatment, that their release would be appropriately agreed to by the tribunal because the legal situation around that changed with the change in the forensic provisions Act.

CHAIR: Fairly recently?

Dr GASKIN: Yes, and therefore I cannot say what would have happened and we are not at a point of asking for release of any of our forensic patients, which we only have two of at the moment in the State that I am aware of. So previously we have had young people who have served their time in Juvenile Justice custody despite being found not guilty by reason of mental illness, which is somewhat of a strange situation, especially coming from the United Kingdom, where I come from where if you are found not guilty for reasons of mental illness you would go to a hospital, you receive treatment and you are released from hospital, whereas prior to the change in the Act and prior to the provision of beds at the forensic hospital we were not able to do that so young people stayed in custody until they were released.

Ms SYLVIA HALE: And in theory, someone who was unfit for plea could be there for life?

Dr GASKIN: In theory I would hope not, but in theory there are issues around the unfitness. It is reviewed regularly by the tribunal and if someone is to remain unfit for more than 12 months, usually what they would request is that it goes back to the court to make a decision around sentencing so then they can be given a limiting term. I suspect you would know about that. That would be the minimum amount of time they would need to remain and then from there a decision would be made about release. That is one option for those situations, but definitely in my experience in the United Kingdom they changed the law to prevent that happening for people who were intellectually disabled particularly who were not able to plead to offences so they could be released on conditional release into the community at a much faster rate, if that was the appropriate outcome for them and the appropriate risk assessments had taken place.

Ms SYLVIA HALE: I suppose in some ways when we are looking at juveniles who commit sexual offences and the question of whether their conviction should be spent after a particular time, the same issues are involved, that is, the need to protect the rights of the individual and not see them carry a burden throughout their entire lives, but also to protect the community from the possibility of reoffending or whatever?

Dr GASKIN: Certainly.

Ms SYLVIA HALE: They are really the same issues, are they not, with people who are incapable of pleading?

Dr GASKIN: I guess there are similar issues. As I said in the submission that Justice Health presented, young adolescent sex offenders come from a whole range of different reasons; they are what we call an androgynous group, a mixed group or a mixed bag, if you like. It is like saying all robbers are a particular type of person. Of course all sexual offenders are not the same and with adolescent sexual offenders, I think the majority, from the evidence and the research that we have, which is fairly minimal, it has to be said because it is a difficult area to research, but the evidence, which I think you have the references for, indicates that most young people who commit sexual offences are actually committing other offences as well so they are not usually the just sexually offending group but their sexual offending is part of a broader range of offending.

Clearly within that group you are going to get a very serious group of offenders who are violent, sadistic sexual offenders whom we need to identify very early in the piece and try and provide, hopefully through Juvenile Justice psychological support, other things and medication if they become old enough, if appropriate, et cetera, but the majority of those adolescent sexual offenders would not present significant ongoing risk in terms of their sexual offending because it would not be part of the paraphilia, for instance, a particular preoccupation with a type of victim, sort of paedophilia type of presentation.

There are some and we would have to identify them or the appropriate services would identify them, but the majority of sexual offences committed by adolescents in the evidence is that most of that is part of a broader range of offending. It would be like any other type of offending, you would look at patterns of offending when you are assessing risk and look at escalation of risk. Those would be the things, as an adolescent forensic

psychiatrist, if you were asked to assess someone in terms of their risk of ongoing sexual offending, you would be looking at those types of things, as well as their fantasy life, their particular preoccupations and other things around their psychosexual history, as I said. Those would be the types of things you would take into account.

The Hon. DAVID CLARKE: Some submissions advised that juvenile brain development continues until young people are into their mid-20s. Do you agree that young people may need help with reasoning to control their emotional responses? What has your experience found in this area?

Dr GASKIN: I am not a researcher in neuro-cognitive development but what I do know from attending appropriate lectures and reading literature is that is absolutely correct. Brain modelling that has taken place shows very clearly that brain development particularly in the frontal lobes, which is responsible for judgement, impulse control, the sorts of problems you see within attention deficit type disorders and control disorders, definitely proceeds onwards to around the age of about 24 or 25 in most people and some outside that range is always the case; it is always a bell curve of normal distribution but the majority of people will be in that range. Some will develop quicker, some slower. I think there is every reason to treat adolescents and young adults differently than we treat adults in terms of looking at both their mental illness and their presentations of mental illness but also their offending patterns that are often associated with those things.

But judgement, impulse control and things do improve with time, and we know that for a definite. You only have to look at the numbers of young people convicted of speeding offences while driving cars and the number of young people killed in cars compared to the number of 35-year-olds killed in cars and you will see there are clearly significant differences in the reasons behind those accidents to show that impulsivity and risk-taking are much higher in that group. I think some very good evidence has come out from Melbourne and other places to support that.

You need to take those things into account when you ask assessing not only mental illness and its presentation, which can be very different in adolescence, and that is why I specialise in this area and I am not just an adult psychiatrist because they do feel very differences, but also in terms of risk and the prediction of risk into the future; that you will have to reassess that and look at it in quite some detail, particularly in terms of the psychological help and support you might give someone and their ability to improve with that and to make significant progress compared to maybe an adult offender who might make less progress given that lack of brain development going on.

The Hon. DAVID CLARKE: I assume following on from that you would have to take that research into account in assessing age of consent issues and so forth, such as, for instance, we have heard the suggestion today that there might be different laws applying to juveniles who are, say, 17 and 15 rather than an older age?

Dr GASKIN: In terms of consent to sexual activity?

The Hon. DAVID CLARKE: Yes?

Dr GASKIN: I think it is a very difficult area for me in terms of the capacity of young people to understand the legal process when they are charged with offences. I think we use a very adult legal stance at the moment in terms of assessing capacity to stand trial and perhaps that is why the unfitness issue is avoided in many cases because the outcomes are not good but actually if you applied the criteria very robustly, I think far more young people would be found to be unfit. You only have to look at the figures coming out by the Youth in Custody Health Survey from 2003, and we have just repeated that now, to show the numbers of young people unfortunately being held in custody who do have a very clear intellectual disability to show that there is something going wrong about how we assess that and how we apply perhaps adult criteria to an adolescent population that do not have the same ability to comprehend, compute and make judgements about information that they are given.

There is a lot of research in the United States in this area in terms of capacity to stand trial, competence to stand trial and other things, which have shown that even young offenders that you might expect to be able to be competent for fairly minor offences, when you actually test them more robustly, they are not and a lot of them do not understand the just basic detail, so I think it is very much an issue that when you are assessing somebody and looking at their future prospects, rehabilitation prospects and their life in general that you do have to take those things into account if you are making judgements at 15 or 16.

The Hon. DAVID CLARKE: But that evidence in juvenile brain development may suggest that there is not genuine consensual agreement between, say, a 16- or 17-year-old?

Dr GASKIN: It would depend on the individual circumstances of those. We all know there is a whole range of ability to teach young people things, so we can teach them the basics of information. Even people with intellectual disability can be taught what is okay and what is not okay if they are given the information in the correct way, so you can make decisions around those things based on legal parameters, but I guess in terms of judgement and the impact of homosexual relationships and all the other issues that come into that, I doubt that huge numbers of 16-year-olds are making those decisions in a thought-through adult type of way, certainly.

The Hon. GREG DONNELLY: I take your point about the heterogeneity of the background, so it is not as if there is a typical youth sex offender and we can study that model and derive our answers from that. In terms of treatment, there might be a range of reasons for how young people reached the point of offending and interfacing with the criminal justice system. In your experience in treating juveniles, what is the process of enlightening them to an understanding that the behaviour, action or act was something that society does not accept or that it was against what we as a society accept as the norm? Is that a hard task? I acknowledge this is a difficult question to answer but I am trying to get my head around this process of treatment beyond the act; it has some implications beyond the act in terms of a person hopefully recovering or ultimately moving beyond something that that in many instances will not be repeated?

Dr GASKIN: I guess in terms of treatment I do not treat sex offenders who do not have concomitant mental health issues, although as part of my training I was involved with sex offender treatment because that is part of what you do in training to get a general view. I do not do that as a consultant adolescent forensic psychiatrist now, so I cannot comment specifically on the treatments available in their effects, sizes, et cetera. What I would say in answer to that—and again it is a bit of a woolly answer—would go to the individual assessment of the young person, so there is some good evidence of offender groups in general and not specifically sex offenders that certain types of psychological work can improve the sorts of things that you are talking about—understanding of effects on the victims, understanding of effects on the general population; reduction in what we call hostile attributions.

A lot of young offenders tend to see the negative in responses from other people, even if they are not there. If somebody bumps into them in a bus stop is always the example I give them. They will tend to assume immediately, not all offenders but a large majority of young offenders if you ask the question, "What would you think about that", they would immediately be on the defensive. They would immediately think someone had deliberately knocked into them and they were doing it to wind them up.

We call that hostile attributional style. A lot of violent and sexual offenders and general young offenders who tend to be aggressive in a variety of ways will have that sort of style of interacting with other people, adults and young people. There is some good evidence coming out that what we call cognitive behaviour and diametrical behaviour treatments that address those things can actually reduce both the hostile attributional style and their tendency to get involved in aggressive interactions with other people, be they aggressive in a physical sense or perhaps in a sexual sense. There may be hostile aggressive sexual offending as much as there is hostile aggressive and other types of offending.

That evidence does show that there are things we can do that address those general risk factors that will increase the likelihood of somebody becoming aggressive in the future. In terms of sex offender risk, a lot of the risk factors that go to predicting ongoing risk of offending unfortunately are things that cannot be changed. As you know probably from other evidence that has been given to you, they tend to be static risk-factor tools that are used to assess risk.

They do not take into account perhaps the more dynamic factors that we are talking about, you know, situation, environment, family influence, the things that will affect how young people act much more so than how adults act. I think in the right setting with the right group of people providing the right treatment there is definitely evidence that a proportion, a fairly substantial proportion, of people will respond to treatment and another proportion will not. I do not know the exact numbers. I can take that on notice if you like, that information from the trials?

The Hon. GREG DONNELLY: Yes.

Dr GASKIN: I am very happy to gather what I have got available and to consult with Professor Greenberg who is really an expert in this area and who works with Justice Health as well. I guess that is the general sense that there are things we can do. Within the forensic hospital we definitely are doing those things and looking at what programs we can provide to mental health patients who also have offending issues, some of that is sexual offending, and how we can improve those outcomes in terms of reduction of risk.

The Hon. GREG DONNELLY: In your experience with young patients who have offended in this area and have a combination of mental health issues and other issues, have any expressed to you during treatment the challenge they face in going out into what is a pretty sexualised culture? You might be explaining a range of things to them and they kind of get it, but then they leave the treatment regime. They leave the influences around them and set out about their lives and find they are, to coin a phrase, almost swimming in that general culture? Does that present a challenge to them to go back into that culture and in a sense keep everything in perspective?

Dr GASKIN: I think that is a huge issue for all of our patients. The patients that present the most challenges to us are the majority that are in custody who actually unfortunately have drug and alcohol issues as well as mental health issues and once they are exposed to those things back in the community any judgements and ability to make sensible choices become less likely. I think that young people that we have treated most intensely would be those in the hospital at the moment because although we are involved in the treatment whilst they are in custody we do not get involved in the psychological treatment there. We get involved in the mental health treatment that is more medication based.

I guess for the ones that we have had in the hospital today that have offended sexually, and who do have significant mental health problems, that is an enormous challenge for them. Even their interactions with their fellow patients can be misconstrued, when you have offended sexually, unfortunately, everybody will be much more likely to respond to you. Knowing what is okay and is not okay about touching other people is often a problem. I think a lot of young people in custody, our youth survey shows, a lot of them are having sexual relationships very, very young.

The Hon. GREG DONNELLY: How young?

Dr GASKIN: From the survey, the majority of young people said they had sexual contact by the age of 14, I think it was. Most of them are saying they are having sex with friends, partners, whatever it is by 14, and multiple sexual partners and taking multiple risks in terms of unprotected sex. That is in the general offender population without mental health issues, without drug and alcohol issues so if you add those things in as well the likelihood of them making bad choices. Do those bad choices stay with them for life and prevent them being able to rehabilitate into appropriate services, live in appropriate accommodation when they are older? I have some concerns about that.

The Hon. GREG DONNELLY: And have stable relationships.

Dr GASKIN: Absolutely. There is evidence that a lot of young people can change their pathways with the right treatment by meeting an appropriate pro-social partner and being involved in pro-social activities. That is one of the main aims of what do is to try to get them involved in more pro-social stuff and move them away from the anti-social peers, because the peer group influence is so enormous for mental health patients and the ones without.

CHAIR: Our lack of spent conviction process at the moment increases their chances of not moving?

Dr GASKIN: I would say so, definitely, with the ones I have come into contact. As I said, I do not have contact with the majority of young offenders unless they have an additional mental health issue, but I would certainly say that it would be an enormous barrier to them being rehabilitated to the community in an effective way if there are lots of restrictions on what they can and cannot do, and where they can associate. Most young people associate with other young people. Asking them not to do that is going to seriously affect their development both emotionally and cognitively and in many other ways in terms of pro-social activities, interaction at school and things like that. If you can get them back into those is so important, and has been shown to be important to address in reducing the risk of ongoing aggression, and aggression includes sexual offending.

CHAIR: Is there something we have not asked that you would like to tell the committee? We would like you to provide answers to those questions we sent you in the next three weeks. They are very important for our considerations for the reporting process. Whenever witnesses appear we are not obedient and ask our own questions and issues we want to put forward.

Dr GASKIN: Yes.

The Hon. GREG DONNELLY: The table you referred to is that in your submission?

Ms BABINEAU: It is not because we are still actually analysing the data from the Young People in Custody Health survey. It is the one to which you referred this morning with the people from Juvenile Justice. We are doing this together. We have finished the adult inmate house survey.

CHAIR: Juvenile Justice said it would be available in three weeks.

Ms BABINEAU: We are doing this together. Our research centre is actually doing with them.

CHAIR: They said we would get it fairly soon.

Dr GASKIN: It would be the preliminary key findings though because the investigation includes Justice Health and Juvenile Justice and they are working together, yes.

Ms BABINEAU: Although we represent Justice Health, and Dr Gaskin might be able to talk about this in more detail or I could forward you more information, about a program called the New Street Adolescent Service.

CHAIR: They have appeared before the committee.

Ms BABINEAU: One will start in Dubbo shortly.

CHAIR: And Tamworth.

Dr GASKIN: New Street is very good.

Ms BABINEAU: It has done a good evaluation as well at Westmead. You should try to get it from them.

CHAIR: Do you have it in your hand?

Ms BABINEAU: Yes, I will have to check that it is a public document before I table it. It was done in May 2006 but if it is not I will do it with their permission, it is not a problem. It is actually a good evaluation and it works with the type of people to whom you are referring.

CHAIR: We are still waiting for their current one.

The Hon. DAVID CLARKE: Keep in mind that some of the questions on notice you have already answered today.

Dr GASKIN: Would you let us know which ones they were?

CHAIR: Yes.

Dr GASKIN: I heard the previous witness speak about young people who have been mixed up with intra familial abuse. I think New Street might have been able to give you some information about those. I would be very concerned about that group in terms of this legislation that takes that into account. They may have offended against siblings or wider family members in their context and have had abuse, and that really needs to be taken into account when considering what their future risk might be. The evidence is that the minority of young people who have been abused themselves will become abusers in the future but that does not mean that you do not need to take into account those things. Obviously convictions at that age in that circumstances would need to be taken very carefully.

The Hon. DAVID CLARKE: Is it a significant minority?

Dr GASKIN: I think the best paper would be the David Skuse's paper, I think. I would have to make sure that I reference the right one and will provide that to you. It looked at young people who had admitted to an unwanted sexual contact as a young person and went on to follow those in terms of how many became offenders themselves, and it was a significant minority.

(The witnesses withdrew)

(The Committee adjourned at 5.25 p.m.)