LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Members present:

Mr PS Russo MP (Chair)
Mr JP Lister MP
Mr SSJ Andrew MP (via teleconference)
Mr JJ McDonald MP (via teleconference)
Mrs MF McMahon MP
Ms CP McMillan MP

Staff present:

Ms R Easten (Committee Secretary)
Ms M Westcott (Assistant Committee Secretary)

PUBLIC HEARING—INQUIRY INTO THE YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 19 JULY 2019

Brisbane

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The committee met at 10.33 am.

CHAIR: Good morning. I declare open the public hearing for the committee's inquiry into the Youth Justice and Other Legislation Amendment Bill. My name is Peter Russo, member for Toohey and chair of the committee. With me here today is James Lister, member for Southern Downs and deputy chair; Corrine McMillan, member for Mansfield; Melissa McMahon, member for Macalister; and by teleconference Jim McDonald, member for Lockyer, and Steve Andrew, member for Mirani. On 14 June 2019 the Hon. Di Farmer, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, introduced the Youth Justice and Other Legislation Amendment Bill 2019 into parliament. The parliament referred the bill to the committee for examination to report by 9 August 2019. The purpose of today's hearing is to hear evidence from stakeholders to assist the committee with its examination of the bill. Only the committee and invited witnesses may participate.

Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the standing rules and orders of the parliament. In this regard I remind members of the public that under the standing orders the public may be excluded from the hearing at my discretion or by order of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from the committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings. These images may be posted on the parliament's website or social media sites. I ask everyone present to turn mobile phones off or to silent mode.

The program for today has been published on the committee's web page and there are hard copies available from the committee staff. I remind all witnesses that they should not mention any matters awaiting or under adjudication in a court exercised in a criminal jurisdiction. Witnesses should only refer to those matters where the verdict and sentences have been announced or judgment given.

BYRNE, Ms Marion, Manager, Policy and Reporting, Office of the Public Guardian

SIEGEL-BROWN, Ms Natalie, Public Guardian, Office of the Public Guardian

CHAIR: I now welcome Natalie Siegel-Brown, the Public Guardian, and Marion Byrne. Good morning. I invite you to make a brief opening statement after which committee members will have some questions for you. This part of the session is due to conclude at approximately 10.50 am.

Ms Siegel-Brown: Good morning committee, and thank you for the invitation to speak about the Youth Justice and Other Legislation Amendment Bill. First, I acknowledge the traditional custodians on the land of which we are meeting, the Jagarabal, Yuggara, Jagera and Turrbal peoples, and pay my respects to their elders past, present and emerging. I also pay tribute to the thousands of Aboriginal and Torres Strait Islander children and families who experience our youth justice system and acknowledge the history and the trauma that so often has predicated this contact. I absolutely acknowledge that the issues that have given rise to the need for these amendments are both complex and challenging. I strongly commend the intentions and efforts of the government in introducing this bill and in seeking to transform the Queensland youth justice system, particularly through seeking to remove barriers that prevent young people from being appropriately released on bail and remand.

At the outset, I support the statement of the Hon. Di Farmer in her explanatory speech introducing this bill stating the government's commitment not to detain children in watch houses other than for normal processing. I am hopeful that this bill will bring positive change to the youth justice system, particularly in relation to regulating how children are managed in watch houses. The proposals in my submission are aimed at ensuring that any legislative changes to the youth justice system are lasting and positive. But the purpose of my submission and what I want to make abundantly clear to the committee today is that I have concerns that the intentions behind the bill will not be able to be realised in its current form. I fear that, without commensurate soft and hard infrastructure behind some of these reforms, there are provisions and intentions in this bill that may be frustrated in their effect.

In essence I am concerned that, without additional amendments coupled with a redirection of the current youth just investment, the noble goals of the bill are unlikely to be fully realised. It is true that in the last two days we have seen a drastic reduction in the number of children held in watch houses, but we are still holding children in the regional watch houses, some for very long periods. Ultimately, we still are without safeguards from that happening in the bill and from the numbers billowing again. There are no safeguards to prevent children being held in watch houses now and in the future. It would be important that, if the intention of the bill is to prevent children staying in watch houses for more than normal processing, as the Hon. Di Farmer committed in her introductory speech, there is then a corresponding explicit prohibition on stays for longer than normal processing which is also articulated in the bill.

Importantly, it would also really need to define what we mean by 'normal processing'. How much time should that actually take? The question I raise in my submission that I would like to emphasise here is this—what urgent measures are required to ensure that there are no intentional consequences from the bill's efforts to lower the threshold for receiving bail? I commend the government on seeking to lower that threshold. This bill aims to rectify a long needed change, that is, that a child should not be detained purely because they lack a home, have no child protection placement in the community or because they are committing survival crimes just because they feel unsafe either in a placement or in their own home.

As a human rights agency, the OPG thoroughly agrees that children should not be detained for this reason, which is what currently occurs. When we do so we only further punish the child's trauma. Importantly, we need to recognise that it is exactly this trauma that has given rise to the alleged offending behaviour in the first place. However, given that so many of the children who come into the youth detention system are there because they find family on the streets, where will these children go when they receive bail? Will they remain homeless? Without an immediate commitment to procuring the services for them to be bailed somewhere safe with real psychological intensive support or disability support, given we know the prevalence of intellectual and cognitive impairment amongst our youth detention population, at best we may inadvertently end up bailing children back into homelessness or unsafe environments. At worst, we have lost the opportunity to disrupt recidivism, disrupt reoffending and get to the heart of why a child has engaged in an alleged behaviour in the first place to create lasting real generational change, the change that I think this bill is actually seeking to achieve.

What happens after that point of arrest is an opportunity to put a child on one path or another. Entrench the trauma, or seek to actually address its causes. Similarly, in my submission I refer to a critical need for child safety staff to report to the court regularly about what they are doing to find a child appropriate accommodation. I can see the support of many of my colleagues amongst the submissions to this bill reiterating the need for legislation to place a positive obligation on child safety staff to find appropriate and safe accommodation.

To that end, I emphasise my recommendation that the bill should include an equivalent provision to section 28(5) of the New South Wales Bail Act which empowers the court to direct a government service like Child Safety to provide information about the action being taken to secure suitable arrangements for accommodation of an accused child. This would buttress the effect of the bill's current efforts to ensure that a child is not detained purely because they have no home in our community.

I conclude here so the committee can ask me all the question it would like, but I cannot leave without strongly underscoring the scientific and neurological case for change. If we want to change behaviour as our ultimate goal, we must look at what is driving it. Last year, a study of the West Australian youth detention population found that 89 per cent of children detained had at least one form of severe neurodevelopmental impairment, while 36 per cent were found to have Foetal Alcohol Spectrum Disorder. There is no reason to believe that the Queensland statistics are vastly different from that. The observation of my community visitors and child advocates reinforce this finding as relevant to Queensland. Taking punitive measures that only re-traumatise or entrench the symptoms of trauma or disability will not only damage human lives in the long-term but actually increase recidivism, which is what we are trying to interrupt.

I believe this is where the heart of the bill is coming from, but it does not go far enough to take up what undisputed medical science tells us that locking away children who are under 14 years of age, particularly with the life stories they have, takes away the chance for them to change their lives. The government recognises this and the bill seeks to achieve this, but I fear that, in its current form, we may see only momentary change, if at all. The recommendations in my submission would make the bill's intentions a reality, not just for now but for generations. Thank you.

Mr LISTER: Thank you for coming before us today. You have been very prominent in exposing the problem that we are trying to deal with with this bill. When did you first alert the government and, indeed, the minister about your concerns in this area?

Ms Siegel-Brown: Are you specifically relating to the watch house?

Mr LISTER: Yes.

Ms Siegel-Brown: That would be April 2018.

CHAIR: I have a question arising out of your submission. On page 5 of your submission you recommend the raising of the minimum age of detention to 14 years except in cases of utmost criminal seriousness based on the findings of the Royal Commission into the Protection and Detention of Children in the Northern Territory. Can you provide the committee with more details of the specific findings that you referred to? It may be something that you have to take on notice.

Ms Siegel-Brown: Sure. It was certainly a finding of the Northern Territory commission that no child under the age of 14 should be detained. That was subsequently considered, as I understand it, in a bill that was to be presented to the Northern Territory parliament that was subsequently deferred. The exact provision, as I understand it, was that no child under the age of 14 should be held or detained unless in the most serious of circumstances for the protection of the community, or for their own protection. This was the result of numerous submissions to that commission of inquiry that, as you would be aware, received a lot of public attention. It was quite a comprehensive inquiry chaired by Margaret White and Mick Gooda. Does that give you enough information?

CHAIR: I am just trying to identify where in the report, or the findings of the royal commission, that that appears.

Ms Siegel-Brown: May I take that question on notice?

CHAIR: I am not trying to catch you out. I figured it was a question that you would have to take on notice.

Ms Siegel-Brown: I would be happy to send the committee an excerpt of the relevant finding and the subsequent consideration by the Northern Territory government.

CHAIR: That would be helpful. Thank you.

Mr McDONALD: I note that there are amendments to your community visitor program. Firstly, were you consulted on the drafting of the bill? Given that you contacted the government in April 2018, surely, you would have been disappointed about the slowness of the government to respond?

CHAIR: Jim, first of all, one question at a time and, secondly, in that last part of the question you asked for an opinion. Could you rephrase the question and ask one question at a time?

Mr McDONALD: Were you consulted on the drafting of the bill?

Ms Siegel-Brown: Yes, I was consulted on one of the earlier exposure drafts, not the final exposure draft of the bill. If I am correct in understanding your former question, you were interested to understand the amendments in respect of how they arose in relation to community visitors. If I may speak to that? I personally specifically requested that that change go into the bill. The reason is this: under the current Public Guardian Act, there is a raft of sites that my community visitors can visit—foster care homes, kinship care homes, mental health services, disability services. There is a raft that relate to adults as well but, specifically in relation to children, you would be interested that we visit sites that are either specifically youth detention centres or sites where the department of child safety funds the accommodation or funds an aspect of the accommodation. It was on that basis that I was able to declare the Brisbane city watch house a visitable site when I started visiting there in August-September last year. At that point in time, the department of child safety was providing funding for food and then it has provided funding for its staff to be present in the watch house. I was able to declare it as a visitable site. I also reached agreement with the then police commissioner on visiting it. I was unable to visit the regional watch houses, because none of them received any such funding.

When the changes occurred whereby the youth justice department was established, that meant that the watch houses were no longer technically receiving funding from Child Safety. Rather, they were receiving it from the youth justice department, which, therefore, technically legally disallowed me to continue visiting the Brisbane city watch house. That said, the police commissioner provided an open invitation for my staff and I to keep visiting the Brisbane city watch house and the regional watch houses and I commend him for that transparency.

On that basis, until this bill becomes legislation, I am entering these watch houses at the invitation of police. I cannot technically exercise my full legislative powers. The basis on which the amendment has been proposed in this bill would then enable me to visit watch houses and exercise

my full legal function because, it will say—assuming that amendment is passed unaltered—that any site that is funded through the youth justice department will still afford my oversight and my legislative powers. I hope that makes sense. It is quite a complex change.

Mr McDONALD: Yes, thank you for that.

CHAIR: That brings to a conclusion this part of the hearing. Your response to the question that I took on notice—

Ms Siegel-Brown: I would be very happy to provide that excerpt and the relevant reference.

CHAIR: It will be required by Wednesday, 24 July, so that we can include that in our deliberations. Thank you for your attendance and for your submissions.

BARTHOLOMEW, Mr Damian, Chair of the Children's Law Committee, Queensland Law Society

DE SARAM, Mr Binny, Legal Policy Manager, Queensland Law Society

POTTS, Mr Bill, President, Queensland Law Society

CHAIR: Good morning. I invite you to make a brief opening statement after which committee members will have some questions for you.

Mr Potts: Good morning, chair, and good morning members of the committee. I would like to thank you for allowing us to appear at the public hearing of the Youth Justice and Other Legislation Amendment Bill. As the committee will no doubt be aware, the Queensland Law Society is independent and apolitical and is the peak professional body for solicitors in Queensland. Our central ethos is for good law, good lawyers and, so far as this committee is concerned, the public good. Our views are representative of our near 13,000 members in this regard. I note the substantial advocacy efforts of the Children's Law Committee. I also acknowledge that we have been consulted both in the exposure draft an in a number of meetings. I acknowledge in particular meetings with respect to Mr Bob Gee and Mr Mike Howard of the department. That consultation process has been very helpful, we hope, both to this committee and to the process of formulating the bill, which this committee is looking at.

The Law Society supports measures that reduce youth offending, keep children out of custody and protect young people. The four pillars, which were put forward in the Atkinson 2018 report on youth justice, in summary are as follows: A, intervene early; B, keep children out of court where possible; C, keep children out of custody; and D, reduce offending. In this regard, we welcome several positive aspects of the bill, such as the timely finalisation of legal proceedings, the removal of legislative barriers to bail and detention as a last resort, and a significant amount of funding committed to youth justice initiatives in this year's budget.

We are pleased—very pleased indeed—to hear as recently as yesterday afternoon that there are no children held in the Brisbane watch house as of today. We understand that there are six children in other facilities within the regions. A few weeks ago it was reported that there were some 85 children both within the Brisbane watch house and in the regions, so there has clearly been a significant amount of work done and we note that with some degree of gratitude. We strongly urge the government to commit to release all children from watch houses and to make a firm commitment that no children will be detained in Queensland watch houses for more than a short period of time.

Misquoting someone far smarter than I, can I say this: it is a truth universally acknowledged that the Queensland parliament in possession of a youth justice crisis must be in want of a workable and sustainable solution—a quote that some of you may well recognise, slightly twisted, slightly bent, but I hope absolutely apposite to the deliberations of this committee. The submission that I now make very briefly crosses effectively two departments. One is the department led by Minister Farmer and, secondly, the honourable Attorney-General's department.

The first principle that we would like this committee to consider is the raising of the minimum age of criminal responsibility from 10, as it currently stands, to the age of 14. This was particularly the subject of specific opinion and scientific evidence given in the Northern Territory. It seems that there is a great body of scientific evidence that, because of the formation—or lack of formation—of the prefrontal cortex of children and their development, that age should be raised to the age of 14, as it is in some 61 other countries. It is something that would be of significant assistance and requires, in our submission, both moral and strong legal leadership by Queensland. I understand that it has been discussed at the Council of Attorneys-General. I appreciate that a response is something that must be done universally across the nation, but this is a real opportunity for Queensland to show some leadership in this area rather than, for example, the smaller jurisdiction of the Northern Territory.

The second part of the solution, about which we have already heard from Ms Natalie Siegel-Brown and which was the subject of much consultation, is this: much of the concerns about finding solutions come down to one word, one solution, and that is accommodation. There needs to be a significant, urgent and sustainable investment by this government in providing alternative accommodation for the safety of children who are in watch houses. We have heard of FASD—foetal alcohol syndrome. We have heard of mental health issues. Children who are born into poverty, into intergenerational violence, who are born into a situation over which they have little or no control leading to mental health issues where they are most often very vulnerable victims themselves, do not improve by being placed in jails, in watch houses, and that requires a long-term investment.

Recently, Michael Grant, the Chief Justice of the Northern Territory, gave a speech to the Law Council of Australia. In that speech, he urged this: that instead of the three-yearly law and order justice discussions that we have as elections approach in deciding who is toughest on crime, what is necessary is a 50-year program. That is, a program designed to effectively rescue and prevent our children over a lengthy period of time, lest they be effectively consigned intergenerationally to the dark Satanic Mills, in essence which is our youth justice system. I urge seriously that it be given some absolute consideration across a bipartisan, bi-party approach to ensuring that, instead of a law and order auction, we have a genuine commitment over a lengthy period of time to address this most serious of issues, which effectively is leaving this state not merely within crisis but effectively showing a lack of both moral and political commitment. I urge that upon you. I now defer briefly to Mr Bartholomew, who I suspect I have stolen half his thunder.

Mr Bartholomew: Not at all. The society would just like to raise a couple of issues, some of which are not contained within our written submission. Bill has addressed you in relation to the significant issue of the criminal age of criminal responsibility and also in relation to the issue of young people being detained in watch houses. Certainly, we would urge that the Youth Justice Act include an amendment that a child should not be held in a watch house for more than a period of 72 consecutive hours without the authority of a court. In addition, we continue to urge the government to consider more strategies to reduce the number of young people held on remand. We note that there are provisions within for adults restricting the amount of days that they can spend in a watch house and there is no provision in relation to children.

Thirdly, in relation to the bill, we would restate our strong opposition to the application of clause 4 of the bill to children and young people. This provision states—

In determining the appropriate sentence for a child convicted of the manslaughter of a child under 12 years, a court must treat the victim's defencelessness and vulnerability, having regard to the victim's age, as an aggravating factor.

Obviously, we have particular concerns in relation to that where you are dealing with children who may actually be charged and may be equally and in some situations as vulnerable and have been as defenceless in terms of their lives.

Also, we would raise concerns about the provisions in relation to body worn footage in the detention centre. Most particularly, we are very interested to see the guidelines that might exist in relation to that body worn footage and how it is going to be regulated. That is of particular concern given the privacy issues that might pertain and the potential for misuse of that body worn footage of those young people residing in the detention centre.

Finally, it is our firm view that children and young people who are subject to questioning by Queensland Police Service officers should have prompt and well-funded access to legal representation regardless of their alleged conduct. This requires certain, predictable, long-term and sustainable funding for the legal assistance sector, Legal Aid Queensland and ATSILS. We would be pleased to answer any questions from the committee.

Ms McMILLAN: I thank the Queensland Law Society for your contributions as always. Mr Potts, you spoke about the 50-year plan. As a past educator of many, many years, I have great knowledge of children in this context. Could you talk us through the milestones from your perspective? What would the 50 years look like? What would you hope we would be achieving? You are well and truly aware of the policy cycle. You are well and truly aware of how legislation is developed in Queensland. Can you talk us through how that 50-year process might look? What are the milestones you would hope a strong government would achieve?

Mr Potts: It is a very large question but I will attempt to address it as succinctly as I possibly can. What we see in reality is that there is a real politic cycle of governments turning over. This is not a matter of which side of parliament you may sit on; it is actually about committing to a plan that seeks to break what is a pernicious and ever-repeating cycle. One of the definitions of insanity is doing the same thing over and over again and expecting to get a different result. We know at the present time that the Aboriginal and Torres Strait Islander peoples are disproportionately represented in the Australian prison populations and that those people in 2016 constituted some two per cent of the Australian adult population but comprised more than one-quarter—that is, 27 per cent—of the national adult prison population.

What we see are issues which are complex in cause and therefore must in turn have complex solutions. We know that we see poverty, and that of course is not something that is simply solved by throwing money at it. Complex arrangements means arranging that there is proper employment, that there is proper use of people's time, that there is an engagement with the education of young children.

It means that there is support for families so that instead of one generation effectively being lost—as I think rather dramatically I referred to the dark Satanic Mills, quoting somebody else—we actually see some greater commitment.

You will no doubt ask me as the next question, 'What can we do? What are the solutions?' Of course, we do not necessarily have to reinvent the wheel. Can I commend to you the program which was suggested to the Northern Territory government, and the Atkinson review, as I understand it, and certainly Chief Justice Michael Grant recently referred to it. It is a thing called the Diagrama program. It is a foundation that provides an innovative approach to youth justice. It is particularly used in places such as Portugal, Spain and most recently Belgium and I understand the UK. Its broader ethos is explicitly nonpunitive of children. There is always going to be a small proportion of children who must be removed from society—we hope it is very, very rarely—effectively not only for their own protection but in some cases for the protection of society. If we do not look at the causes of it, that is an issue. I refer you specifically to the Diagrama program.

In essence, we understand and I suspect this parliament would accept that in Australia children who are involved in offending have been exposed to poverty, family violence, intergenerational trauma and formal child protection involvement. It is the institution of lengthy and detailed child support and family support programs over a lengthy period of time that we hope to break the cycle. If we just simply lurch from side to side in a law and order battle to see who is the toughest on crime, if we institute penalties which are higher and higher because we think foolishly—and I use that word deliberately—that that is somehow going to prevent crime because we think that if children are aware of higher penalties that is going to stop them. It does not.

We know the youth justice system is both expensive and not working. If we start with those two principles, look at the root causes, look to see what international solutions have been useful, then that is in my view both a socially and morally appropriate view for this parliament to take. I would urge some consideration of that program.

CHAIR: I am conscious of the fact that non-government members have not had a question yet but I do have a question. Before I ask my question, James, do you have one?

Mr LISTER: Yes. I thank Mr Potts and members of the Law Society for coming today. I bring you to clause 4 of the bill. In the society's submission, there are some strong criticisms of that clause in relation to manslaughter by a child. Could you please explain the society's concerns there in relation to the Sentencing Advisory Council's recent recommendations?

Mr Potts: I would like to chip in on it but I suspect Mr Bartholomew should also have a voice here today.

Mr LISTER: Very good.

Mr Bartholomew: In terms of the latter part of the question in terms of the sentencing advisory committee's recommendations, it is clear that those recommendations were not specifically in relation to children. In fact, they did not address the issue of children and do not appear in my reading of it to have contemplated being applied to children. Most significantly, the issue that I raised in our outline of concerns about the purpose of that section of course is to recognise the defencelessness and vulnerability of children. However, equally, in this situation, we could have a situation where you could have an 11-year-old who is charged with the offence against another 11-year-old, so there is not the same disproportionality of vulnerability and defencelessness.

Our third concern of course is about the message that it sends to the people of Queensland that in fact we do have these dangerous young people who are committing these offences of this type against other children. My own experience as a practitioner in the area for over 25 years is that I can recall there might be one instance where this section would have been applicable. Consequently, there is perhaps the wrong message being sent out. By saying that we need to put in a provision for something that is extremely unlikely to happen, that sends a message perhaps to the people of Queensland that we have young people out there who have this intent, but it is simply not backed up by any evidence.

I can also say in relation to that one young person that the court already did take into consideration of course the issue of the fact that there was a child involved in the offence, and that person received the maximum penalty they could have received without the insertion of this provision.

Mr Potts: In short, our submission is that it is redundant because the courts do it anyway. Secondly, we say it is so rare as to be almost unnecessary. In my 38 years of experience, I am only aware of one occasion. If a child under the age of 12 is committing such an offence, then there is something much more radically wrong that this legislation simply is not going to appropriately deal with.

The reports that are prepared for courts will address we hope those issues so that the court can appropriately adjust the balances so far as where justice lies. The most famous case internationally of course was the James Bulger case in England which you would be aware of and the sequela to that.

CHAIR: I am going to give up my question for the member for Macalister.

Mrs McMAHON: Mr Potts, you have raised the issues of requisite capacity. It was not part of your submission so I have kind of latched on to that a bit.

Mr Potts: Just do not quote Jane Austen.

Mrs McMAHON: No, I will not do that. I guess I want to get an understanding of that 10 to 14 space where you have recommended that there be no criminal responsibility under the age of 14. Do you have some kind of evidence where the current provisions of requisite capacity in terms of charging offenders between the ages of 10 and 14 have resulted in what you would consider a miscarriage of justice? Is there some example that backs this belief that requisite capacity is not functioning properly?

Mr Potts: I would ask Mr Bartholomew to address it initially.

Mr Bartholomew: I would say that the codification of the rule of doli incapax under section 29 of the Criminal Code is a higher threshold that has to be satisfied than exists in the common law states. I think in Queensland it is a more difficult defence to be able to apply. I can say in a practical experience that we had a case with a 10-year-old this week that came across my desk. When we raised issues around the issue of capacity with the police and how they intended to prove it, they said, 'It's pretty obvious that this offence would be wrong, for the young person to be able to understand that. We feel we can convince the court of that.' I do not know what their experience is in their particular courthouse but they seemed to be fairly confident of that.

I do think that you see many young people who are very vulnerable and appear to have very limited education who are nonetheless being charged with those offences. Of course, one of the great difficulties with that is those issues are only determined at the time of trial and post charging, and part of this legislation is to address the significant issue of remand. Those young people of course can be held on remand for a significant period of time whilst trying to establish the defence.

CHAIR: That brings to a conclusion this part of the hearing. We thank you for your attendance and for your information. We also thank you for your written submissions.

Mr Potts: Chair, I have brought in essence an extract dated 13 December 2018 called 'News and Views' which refers to the Diagrama Foundation. I can hand that up.

CHAIR: Is leave granted to table that? Leave is granted.

Mr Potts: Obviously, this is not something I can tender, but there was a BBC documentary which I commend very much to the committee to watch. It shows particularly the reduction in recidivism rates from something like about 80 per cent down to about 17 per cent as a result of that particular program. There are significant advantages and I urge the committee to have some regard to that.

GREEN, Mr Phil, Privacy Commissioner, Office of the Information Commissioner

SHANLEY, Ms Susan, Principal Policy Officer, Office of the Information Commissioner

CHAIR: I invite you to make a brief opening statement, after which committee members will have some questions for you.

Mr Green: Mr Chair, this bill certainly raises some wider human rights issues, but we have focused our attention on the privacy aspects of the bill primarily. We do support the submissions of the Human Rights Commissioner and Phil Clarke, the Ombudsman. I think they are following us, so you will hear from them directly.

One of the things about the legislation is that the privacy impacts are broader than the information privacy acts. Obviously, recording, video sharing and the sharing of information will generally be information privacy. We have also considered some of the other physical and spatial privacy issues, and I think those are particularly matters which should be addressed in the guidelines. The department has involved our office substantially in the drafting of the legislation, particularly in relation to the privacy aspect, and I believe that is very good practice. It has not been legislated in a mandatory sense that we will be consulted on privacy issues like the Human Rights Commissioner, but it certainly is good practice to consider matters before they are drafted and before they reach you.

The information sharing does seem to have a sound basis and it is very proportionate. It is to be expected in the youth justice system and the criminal justice system that the agencies responsible share in the best interests of the citizens they watch over. It appears that they are quite proportionate and well thought out in particular. The introduction of CCTV is nothing really new, particularly where it is placed and how it is used, in particular access to the information. I am not speaking simply from the privacy aspect but also the right to information. I think the Public Guardian has spoken about transparency, and that is particularly important. It has been an advantage when there is footage which casts sunshine on some of the practices and when some of the benefits of CCTV that the Ombudsman addressed in his report are realised. The guidelines will particularly address matters which I think the Law Society mentioned as far as evidentiary status, making sure it is not tampered with and that it is not erased or written over when it is needed. Those sorts of things go beyond privacy: they do go to the right to information and ensuring that there is a public record when necessary and for evidentiary purposes when it is of benefit.

The body worn cameras issue is something we have turned our minds to considerably. The office has done audits on this and published reports on CCTV generally. The introduction of this sort of technology is not particularly new. It has been used quite extensively. The department and the bill has turned its mind to such things as guidelines. I think that is particularly important, because when you create this footage it does create the burden of managing the information appropriately, particularly if there is sensitive footage, in terms of who has access and who makes approvals and whatnot. We welcome being consulted on the guidelines. We have received an undertaking that we will be, but that will be particularly important. I think others such as the Law Society should also have a voice in relation to that because the issues go beyond privacy. The issue of body worn cameras and CCTV go beyond simply privacy matters. Information security has recently been a focus. I have addressed the committee before on artificial intelligence and the use of such things as facial recognition systems where that footage is also being created. I think those issues have to be considered. I do not believe they are intended to be used in these instances, but once you have the network there is potential for it to be connected to machine learning and artificial intelligence, so we need to keep an eye on that in the future as well.

On that point, the Human Rights Commission has suggested that there be a review mechanism written into the legislation. I believe, given the gravity of some of the other human rights considerations in the bill, that would be a very constructive matter. Quite often when there are difficult issues to be addressed such as this it is imposed by the parliament in bills, so I would welcome if that were added. I am happy to answer questions, as is Ms Shanley, on the technical aspects of our submission.

Mr LISTER: Mr Green, in formulating the IC's view of the issue of body worn cameras was consideration given to the possibility that children in detention may be discouraged from seeking help—for example, medical help or legal advice—for fear, irrespective of what controls there might be, that that footage might be used against them?

Mr Green: I believe that is a consideration. I think the guidelines need to be clear that, for example, where legal advisers are coming into a facility they are not filmed and recorded, particularly audio with respect to legal professional privilege. I believe there are some exceptions in the bill for that. The big thing relates to transparency about when it is on, particularly body worn cameras. We have

had discussions about whether people should be told it is actively running. Some of the devices have lights that come on when they are turned on. That creates a safety issue in some environments, but generally it is good practice because there is a deterrent effect. One of the other things is the workplace surveillance aspect of those sorts of cameras, because if they are on—not generally 24/7—they can be recording back and then, once turned on, catch material that has happened previously like some of the home devices that are around now. The microphone is on actively in the background and can go back in history, as it were. I think those are considerations that need to be taken into account in terms of the physical operation and the actual fixed camera network as well.

From a human rights perspective, I—and I am sure others—would not like to see it all pervasive and every room, every crack and cranny of a facility being surveilled. In terms of human rights, privacy would be particularly concerning as would 24/7 surveillance, particularly in terms of psychological impacts and their ability to get services. I believe the guidelines can address that. I do not think the legislation can fully fathom all of the operational issues.

Mrs McMAHON: I know that your submission covers body worn cameras quite extensively. There was a submission made by the Public Guardian with respect to young people in custody with mental and physical impairments and disabilities and a suggestion that there should be timely notification and providing of information when a child in custody is suspected of having a disability. That obviously has large information-sharing provision issues, because obviously Queensland Health is the holder of that information. The practicalities of how to get that kind of information at two o'clock in the morning aside, do you have any comment about the current information-sharing provisions between the police, who run the watch-houses, and other government departments like Queensland Health and how that either currently works or does not work?

Mr Green: As far as I am aware, it has worked. Even going back to the coronial inquiry in New South Wales, I think it was, the coroner commented on mental health issues and access to that. It is a fine balance, because you do not want to discourage people from getting treatment and being on the public record as seeking treatment or being diagnosed, but I believe that Health has staff embedded in the Police Service who have access to health records. As far as I am aware, that has worked. I have not had privacy complaints relating to it. I have not heard where they have been impeded. I believe that in some instances where there are fast-moving operations perhaps the timeliness may not be as good as police would like or persons on the ground might need, but as far as I am aware there has not been a huge blockage there. I think in the youth arena it is even more sensitive. I think perhaps the Public Guardian might have a comment on that as well. I believe it would be in their best interests to get those diagnoses to make sure they are treated accordingly. As far as the impact of surveillance, there might be specific reasons why people have concerns about surveillance and there might be extra sensitivities where you try and downplay the surveillance.

Mr McDONALD: Do you think that the recording of children in detention centres may inadvertently discourage them from seeking advice with regard to some of their health issues or any other fears that they may have?

Mr Green: I believe it could be a factor. Hopefully the guidelines might discourage the use of body worn cameras, particularly in that sort of an instance. I think that generally surveillance can have a dampening or cooling effect on people's behaviour. One of the reasons stated is that prevention will stop people's behaviour from escalating when they are aware they are being recorded not just for evidentiary purposes. That sort of defeats the purpose. I believe it is possible they could be discouraged, but I think they need a safe environment where they are not going to be subjected to that so they can get not just medical assistance but legal advice or mental health advice, whatever their needs are.

Mr LISTER: If we could return to a question which has come up a couple of times. I wonder whether protection of the kind that the IC and you as the Privacy Commissioner are good at formulating for things like body worn cameras might be lost on younger people. Obviously, adults are more likely to be able to understand their rights, but younger people may not understand there is a system of protection there for those images and how it could potentially be used against them. Do you think it is possible to have guidelines which would protect children in those circumstances?

Mr Green: It is an interesting question. In terms of our privacy education function we have turned our minds to how we reach certain audiences. Children in general have been surveyed quite extensively, because there are some who say that children do not care about privacy anymore and it is not valued as a human right. Our surveys show that youth are generally quite privacy savvy and aware and technology savvy and aware. I do not have a great fear in terms of the technology dampening effect. I think that guidelines can help, particularly if it is clear in an organisation from the CEO down that unacceptable uses of footage are there—particularly when it mysteriously malfunctions

when some wrongdoing has occurred—versus using it to dampen people from getting advice or seeking treatment. We do need transparency as to when it will be on and when it will not be on, who has access, who can override it and the security around it. There are malicious actors out there who take control of video cameras. Body worn cameras have also been shown to be susceptible to hacking. We need to make sure that those guidelines and the security around them are clear about what is acceptable and what is not and that we have adequate safeguards built in.

I believe the Human Rights Commission, because of the spatial and the other privacy matters, which are covered by the human rights not necessarily by our act, will have an interest in that, too. You do not want them used in environments such as showers. Unless there is some really pressing security incident there should be no-go zones.

CHAIR: That brings to a conclusion this part of the hearing. We thank you for your attendance and for your written submissions.

GREENWOOD, Ms Kate, Barrister, Policy, Early Intervention and Community Legal Education Officer, Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd

CHAIR: Good morning. I invite you to make a brief opening statement after which committee members will have some questions for you.

Ms Greenwood: The Aboriginal and Torres Strait Islander legal service welcomes the intention of this bill and the adoption of the four pillars put forward in the Atkinson report on youth justice, namely, to intervene early, keep children out of court, keep children out of custody and reduce reoffending. Our submission has addressed two specific areas: the proper attempts to contact a parent of a child upon arrest and proper attempts to gain legal assistance for a child, and the new proposed section 421.

We welcome the explicit requirement for a police officer to promptly advise the parent of a child when a child has been arrested. Through our practice we are aware of multiple instances where this has not been satisfactory. In circumstances where a police officer is making inquiries we would urge that the police officer be required to keep a record of those inquiries so that it can be ascertained as to whether reasonable inquiries have been made. We have had multiple occasions where children who are under youth justice orders—youth justice have no issue contacting the parents, but somehow upon arrest of the child it was not possible to contact the parents.

The other change which has been made—and we welcome that—is the much wider definition of 'parent'. It now accords with the definition of 'parent' in the Youth Justice Act. This is particularly important for our client population, where there are notions of extended family and who is the responsible parent is a much broader definition than the European definition of what is the mother and what is the father. Again, we have had instances where a responsible adult has been with the child when police have arrested the child but refused to take the accompanying adult because they do not fall under that much stricter definition of 'parent'. For those reasons, those are very practical changes which we hope will improve attempts to contact parents of the child upon arrest.

The second comment we make—and, again, it is around the time of arrest—is about making proper attempts to gain legal assistance for a child. At the moment proposed section 421 only applies to indictable offences. In our view, proper attempts should be made to obtain legal assistance for a child for both indictable and summary offences. The reason that should be done is regardless of what type of offence it is, the vulnerabilities of the child include that they are a child, they are in police custody and they are about to be questioned without legal assistance. We would urge the committee to consider broadening that particular section. We have referred to commentary made in the courts in New South Wales about the vulnerability of a child in those circumstances and the policy reasons for having those protections in place for the child.

Again, we would seek a record to be kept of reasonable attempts to notify a legal aid organisation. Again, there is room for improvement in current practices, and strengthening the legislation would go a great deal further towards achieving the ideal situation, which is all proper attempts are made to contact the parent and all proper attempts are made to contact legal assistance for the child. We would be seeking protection for the child in that if admissions have been made by the child where they have not had access to their parent or to a legal adviser or both; that record of interview should be subject to exclusion.

While I was present during the first two submissions made to the committee, can I also add support for the recommendation of the Office of the Public Guardian that this committee take a look at section 28(5) of the New South Wales Bail Act? That would be a very practical solution to the problem which has been mentioned quite a few times this morning with children being kept in the watch houses for extended periods of time. Basically, section 28 (1) in the New South Wales bail legislation allows that a bail condition imposed by the court can require that suitable arrangements be made for accommodation, effectively giving the court an alternative to remanding a child—or an adult even—to a remand centre so that bail accommodation or a suitable alternative can be made when those remand centres are overflowing. Section 28(5) says—

> The court may direct any officer of a Division of the Government Service to provide information about the action being taken to secure suitable arrangements for accommodation of an accused person.

Again, that would be a pressure valve to release the pressure on the remand centres and youth detention centres being used for remand at the moment.

My second additional comment comes to the invitation from Mr Potts, the president of the Queensland Law Society, to have a look at a 50-year plan. May I draw the committee's attention to two projects, one which has been going on in the New South Wales town of Bourke for the last four years and has seen considerable turnaround—I saw in a newspaper article, and I do not know if it is

hyperbole, but they were suggesting that it was the most dangerous town in the world, if not Australia. Their figures have been turned right around in four years. As they would be the first to say, there is no one, single magic bullet, but they have taken a number of measures which, all working together, have created this remarkable turnaround.

As if they were not good enough already, KPMG donated some time to do a cost-benefit analysis of what is called the Just Reinvest project—and I can send the committee the links and some materials about it—or Maranguka. KPMG produced a report earlier this year. They estimate that the gross economic impact of the Just Reinvest program in Bourke in 2017 was $3.1 million. They estimate on current figures that that project will go on to save $7 million over the next five years.

The basic premise behind the Just Reinvest project is that obviously the time of arrest, refusal of bail and then being dealt with in the court is very reactive to the social problems that are occurring within that community. Instead of investing at the tail end of those problems, to invest at the beginning to address mental health issues, to address homelessness, to address lack of opportunities, to address lack of education, to address any number of other social determinants, to address trauma, which is enormous in these communities, by putting some investment up-front it dramatically reduces the sorts of figures that we are talking about which are creating the sorts of problems that we are talking about today.

There is a second project that I heard about only recently at a Cairns conference talking about policing domestic and family violence in Indigenous communities. Karyn McKluskey, who is the chief executive of Community Justice Scotland referred to very similar problems to the ones which exist here in Queensland. She had a delightful expression called 'dandelion kids' for the kids who seemed to prosper despite growing up on the wrong side of the tracks. Again, it is a very similar approach by loading investment in the early stages, being proactive rather than reactive after these problems have occurred. They are looking at remarkable changes as well. It is doable, but obviously part of what is doable is making sure there are sufficient powers in the legislation. For those reasons, we commend the provisions that are there. Similar to comments you heard earlier from the Office of the Public Guardian and the Queensland Law Society, we would like to see further steps taken to fully achieve these four pillars that were referred to in the Atkinson report.

Ms McMILLAN: Thank you for your presentation, Ms Greenwood. In relation to the provision of legal aid to our young people—all young people, but in reference to our Aboriginal and Torres Strait Islander children—can you talk me through the concerns you have around attempting to notify? My understanding is that all police need to ensure that our young people have a representative. Could you talk me through how we might address that concern?

Ms Greenwood: We do not keep precise statistics on it. I can tell you my experience. I was working in our Cairns office and on Cairns circuits for two years, in Townsville for close to two years and then down here. Some police stations are absolutely meticulous in making all proper inquiries. If they are not successful first go, they will keep on trying. With others, it seemed surprising that they did not contact us. With adults there is actually a protocol that police must contact ATSILS when there are Aboriginal and Torres Strait Islander adults in custody. There is, in fact, no protocol for children.

Ms McMILLAN: When you say 'protocol', is it a recommendation or guideline rather than a policy?

Ms Greenwood: The protocols are the protocols that the police must follow. There is no equivalent protocol for children, which seems surprising given their far more vulnerable status. Again, it very much depends on the particular police stations. There have been times when we have not been contacted. I can speak from personal experience of being in the watch house and parents have approached me and said that they have not been contacted and that their phone was on. The reason they were there was that Youth Justice found out about the child's arrest and contacted them themselves and the parent came in. Therefore, there are gaps there. They should not be there. They need to be fixed. Certainly the sooner children get representation and parental support the better. It only makes the system work better, not worse.

Mr McDONALD: Ms Greenwood, I am a little bit confused over this issue of safeguards, particularly with regards to an alleged deficiency of police not satisfying their requirements. Are you aware of any instances where police have not satisfied their requirements of notifying Child Safety? Is it simply your proposition that it should be the Aboriginal and Torres Strait Islander Legal Service that is advised?

Ms Greenwood: Generally, Youth Justice is notified when children are arrested and brought before the court. Can you repeat the question? I have managed to interrupt my own train of thought on that one.

Mr McDONALD: I was concerned about the alleged lack of notification by police. I asked a question of the police recently and they could not give me any examples or cases where police have failed to fulfil their safeguard obligations, which are heavily audited. Do you believe that police should simply be advising the Aboriginal and Torres Strait Islander Legal Service as opposed to the current safeguards that are in place?

Ms Greenwood: What we are often told is that police made attempts, but then we are also told by the parent—who is often pretty agitated at that point, having found out where their child is and what the story is—that efforts were not made to contact them. Often the way they are notified is that, where Youth Justice has been notified, Youth Justice will attempt to contact the parent.

In short answer to you, yes, we are aware of circumstances where police have not contacted the parents when there should have been no problem for them to do so. It is not a rare occasion. That is all I can give you. We do not particularly collect those statistics. Our role as duty lawyers in court is to respond to the child and the charges. Obviously, if the parent is not already there, we try to find out where the parent is. Often it is when we are contacting the parents or the parents come up to us and tell us what their experience is that we know that there has been a failure.

CHAIR: That brings to a conclusion this part of the hearing. I thank you for your attendance and your written submission.

CLARKE, Mr Phil, Queensland Ombudsman, Office of the Queensland Ombudsman

CHAIR: I welcome Phil Clarke, the Queensland Ombudsman. Good morning. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Mr Clarke: Thank you for the opportunity to appear before the committee. I appreciate the opportunity to make some brief opening statements. My statements will be brief.

The committee will note that I have made quite a brief submission to the committee. That is because, as the committee may recall, my jurisdiction in regard to youth justice matters is somewhat limited. I have no jurisdiction to deal with police operational matters and I have no jurisdiction to deal with the courts. Therefore, the specifics of the changes proposed in the bill that relate to police operations or the operations of the courts are something that I left to more experienced and more capable commentators.

However, in general terms, I absolutely support any attempts to reduce the remand or detention of young people in the youth justice system to the absolute minimum that is necessary to achieve the objectives of the youth justice system. Improving the timeliness and priority of youth justice proceedings is something that is, in my view, without commenting on the specifics of the bill, highly desirable for the high proportion of young people in detention centres and remanded in custody and not sentenced. I think other commentators and other submissions have mentioned that it is high nationally and in Queensland. Even a significant reduction in the number of young people remanded would, indeed, release much of the pressure on youth detention centres. In my view, that is at the heart of many of the problems that we are dealing with.

From about March 2018 when this issue about young people being detained in watch houses started to become prevalent, at that point in time the overcrowding in youth detention centres was the obvious cause for detaining young people in watch houses. Much of that related to the issues dealt with in the bill and, therefore, I am supportive of that. However, in my view they also related to the administration of youth detention from the point of view of the issues that arise through overcrowding and the capacity of youth detention facilities to deal with sometimes very young children.

It is the case that my office inspects youth detention facilities in Queensland on a regular basis. We do that each year at both youth detention centres. We have observed over time that the high proportion of young people remanded in youth detention facilities does have an impact on the capacity of those youth detention facilities to provide interventions targeted at criminogenic factors affecting the young person. Indeed, the number of appearances that young people must undertake also results in unsettled behaviours of young people in youth detention facilities. I am hopeful that the provisions in the bill will, in fact, obviously lead to the more timely disposition of matters in the courts and, therefore, more surety for young people if they are sentenced to periods of detention in youth detention facilities, therefore leading to greater surety for the young people and the youth detention facilities in the provision of programs.

I have commented in my submission about resourcing and the need for resourcing. While I appreciate that is not particularly specific to the committee's hearing today because it is about the provisions in the bill, in my view—and I think the Public Guardian made a comment similar to this—the significant impact of the provisions in the bill will obviously be very largely dependent on the resourcing that is applied to be able to support those provisions, whether it is in the courts, in the Police Service, in youth detention facilities, Child Safety officers' availability to assist with bail applications, supporting the new proposed bail processes. While police are 365 days a year protecting the community, these provisions will ultimately mean that the other services in regard to bail applications will also have to be 365-days-a-year applications, if young people are not detained unreasonably in watch houses or for any period longer than is absolutely essential.

A number of witnesses today have commented on the availability of accommodation. I am particularly aware of the circumstances in which that can arise. I think, again, it is a circumstance where the resourcing of the availability of alternative accommodation for young people subject to bail applications will be a critical determining factor in terms of whether the enhanced bail availability and the enhanced bail provisions will be able to be applied to their greatest extent.

In regard to body worn cameras, the committee may recall that I recommended that body worn cameras be introduced into youth detention facilities. I have considered the submissions particularly of the Privacy Commissioner and others and their reservations about the privacy concerns with body worn cameras. I acknowledge those concerns and agree that very clear guidelines for the use of body worn cameras are actually an essential part of the introduction of body worn cameras. I have no concerns with the comments made by other witnesses. However, I do believe that body worn cameras will lead to improved safety for young people in youth detention, improved safety for staff in youth detention

and, indeed, will add to the protection of the human rights of young people in youth detention facilities. Notwithstanding the requirements to have very clear guidelines and, in particular, no-go zones for body worn cameras to protect the privacy of young people, I remain of the view that body worn cameras are potentially a significant enhancement to the operation of youth detention facilities.

I think that is probably enough from me. I am happy to take questions.

Mr LISTER: Mr Clarke, thanks for coming to see us again and for your submission. Ms Greenwood from the Aboriginal and Torres Strait Islander Legal Service made an interesting point about the differing understanding of 'immediate family' in Indigenous families. How does the Ombudsman take that into account when dealing with a complaint by a young person or their family about their treatment in custody, that is, in the administrative things that you deal with? How does your office ensure that extended family relationships are recognised in order to allow extended family to represent and participate in the investigation?

Mr Clarke: Thank you for the question. The Ombudsman Act does not particularly limit my capacity to take a complaint from a third person on behalf of an individual, particularly a child. Whether it is a strictly relational person—in other words, a parent, brother, sister, aunt, grandparent, et cetera—or, in fact, a third person not strictly related to the individual I can, in fact, take complaints from those people and do take complaints on their behalf.

Once the complaint is in train, if I could use that term, we may take steps to make sure from a young person that this person is actually entitled to make the complaint on their behalf. We would make queries in that space. Subject to that clarification, and ensuring that this is not a somehow vexatious complaint or there is not some unreasonable element to it, there is no real limit in the Ombudsman Act that prohibits me from taking a complaint.

Ultimately I have the opportunity, if I wish to exercise it, to undertake investigations on my own initiative. Ultimately if there is a complaint, say, for confidentiality reasons, and this does happen from time to time, we may simply initiate that element of the act where I investigate a matter on my own initiative without reference to a complainant to be able to protect persons if that is necessary.

Mr LISTER: If you have, for instance, an aunt who may not be the mother of the child but is, in the view of the child and in practice, their mum or their carer, but there is no formal recognition of that, is there a difficulty for your office in sharing information with that person if they are not formally recognised as entitled to because they are not the legal guardian or parent?

Mr Clarke: The person who makes the complaint, if they make the complaint it is reasonably practicable for us to be able to deal directly with that person. I will put some specifics around it: if as in your case the aunt makes a complaint about the treatment of a nephew or niece in any circumstance and as part of that they ask us for information about the circumstance then we may have limits about what we can release, but it would not stop us from informing the complainant about progress of the matter provided we do not impinge some of those evidentiary and confidentiality requirements.

Mr LISTER: Is that a problem?

Mr Clarke: As I said, if someone makes a complaint on behalf of a young person, or any person, provided we can get from the person upon whose behalf the complaint is being made authorisation for the other person to act on their behalf, no, it is not a problem, but if we cannot get that authorisation then we might have to look for alternative mechanisms.

Mr LISTER: Thank you.

Mrs McMAHON: In your submission you reference that your office does conduct visits to youth detention centres in Queensland each year. For the committee's understanding, in those visits in your role as Ombudsman what aspects of the management of these facilities are you looking at? Is it specifically in relation or response to a complaint or are there general governance issues that you look at in those visits?

Mr Clarke: Thank you for the question. When we plan a visit, an inspection to a youth detention facility, there is an information gathering stage so it will include looking at complaints that have been received in regard to that youth detention facility. It will include collecting information about complaints that we have received from the other youth detention facilities that may be transferable across the whole system. We will also have access to departmental reports from inspectors, internal inspectors, about the operation of youth detention facilities. We will also pay attention to the media around public reporting and other matters.

We go through a stage of trying to collect as much information about the youth detention facility as we can. We also refer back to previous visits to the youth detention facility to look for those factors that we should be revisiting. As a general rule when we visit the centre we will look at the practices in

the centre. We do inspections of the facility. We will talk to staff who provide services to young people—that would be the psychologists, youth workers, management team, anybody who has a particular responsibility. We conduct the inspection in a way that aims to disclose any concerns that people operating the facility have about the facility itself.

We also look at policy and procedure, particularly changes to policy and procedure that have been recently introduced with a view to determining whether they have been effectively introduced into the centre. Ultimately we will then also speak to, if necessary, young people in the facility. Speaking directly to young people in an inspections regime is not a major component of our inspection, but it is available to us if we need to do it and do from time to time speak to young people. If we are conducting a specific investigation in association with an inspection, we will clearly speak to the young person who is associated with that particular complaint or investigation.

Mrs McMAHON: In the report that you have published, the Brisbane Youth Detention Centre report, there were recommendations in relation to body worn cameras. Could you outline to the committee what behaviours or activities led you to recommend that body worn cameras be implemented?

Mr Clarke: It was largely the unreasonable use of force, in a nutshell. That is the major and most significant issue that arises from officer response to situations that emerge in youth detention facilities. Without body worn camera evidence there is some considerable difficulty in verifying the testimony of various individuals when you are trying to get to the facts of a particular incident.

CHAIR: Any questions, Steve?

Mr ANDREW: No, thank you.

CHAIR: Jim?

Mr McDONALD: No, thank you, Mr Chairman.

CHAIR: Corrine?

Ms McMILLAN: No, thank you.

Mr LISTER: Nothing further from me, Mr Chair.

Mr Clarke: If I could make one quick comment?

CHAIR: Of course.

Mr Clarke: I note the response from the director-general of the department of youth justice in regard to submissions. I would just like to perhaps clarify a little bit. His response was based around interpreting my submission as requiring statutory time frames to be established in terms of dealing with matters in the courts. That is not necessarily the case. I understand the complexity of having statutory time frames established and the various other implications that can flow from that. The point I was attempting to make in my submission was really that the effective operation of administrative procedures that flow from the legislative changes will ultimately be the determining factor in their success. It is understanding what the administrative targets are, if I could put it bluntly, for the courts. In other words, how quickly are these matters expected to be moved through the courts. They do not need to be statutory time frames for them to be effective measures of success. They can be included in agreements between administrative units of government and, from my point of view, would potentially be as effective even if they are not in a statutory framework. I just make that slight clarification.

CHAIR: Thank you. That brings to a conclusion this part of the hearing. We thank you for your attendance and for your written and oral submissions. The committee will now move into a private meeting.

Proceedings suspended from 12.10 pm to 12.45 pm.

CHAIR: Welcome back to the committee's public hearing for our inquiry into the Youth Justice and Other Legislation Amendment Bill. In case any witnesses were not present when I opened the hearing, I would like to remind witnesses that they should not mention any matters awaiting or under adjudication in a court exercising a criminal jurisdiction. Witnesses should also refer only to those matters where the verdict and the sentence have been announced or judgement given.

HANCOCK Ms Lauren, Law Reform and Advocacy Officer, knowmore

STRANGE, Mr Warren, Executive Officer, knowmore

CHAIR: I would like to welcome representatives from knowmore. I invite you to make a brief opening statement after which committee members will have some questions for you.

Mr Strange: Thank you and good afternoon. By way of an opening statement, our submission is supportive generally of the bill that the committee is considering. We are focused on three particular areas: the amendments that seek to keep young people out of detention where that is appropriate, the amendments around the use of body worn cameras and CCTV technology in youth detention centres, and the amendments enabling information sharing between agencies to help in responding to the needs of children who are involved in the youth justice system.

Our submission is really framed around the context of what the Royal Commission into Institutional Responses to Child Sexual Abuse found in relation to youth detention settings and their relevance to these amendments. The royal commission found that youth detention has been and continues to be a high-risk setting when it comes to the risk of child sexual abuse and, furthermore, that children who experience child sexual abuse in such a setting are likely to have significant and lifelong adverse impacts on them as a result, which includes the potential that they contribute to later criminal behaviour and patterns of recurrent imprisonment.

I think that was demonstrated conclusively in the work that our service did during that royal commission when we engaged with all of the prisons around Queensland. We had quite an extraordinary uptake of survivors in the prison environment who were seeking our assistance. Over 900 people came forward from within the prison environment and around half of that number identified that they had experienced sexual abuse as children in youth detention settings. There is a very clear linkage between that population as children in youth detention and where they are as adults. That is all I wanted to say by way of opening remarks.

Mrs McMAHON: In relation to the use of body worn cameras specifically in youth detention centres, could you comment on the reasoning behind what might otherwise be seen as breaches of privacy? Some submitters have talked about whether children might disclose when they know they are being recorded. Could you talk about what you see as the advantages, or the improvements that we may see with the use of body worn cameras in youth detention centres?

Mr Strange: I would make a couple of comments around that. We acknowledge that, obviously, the use of that technology has implications around people's privacy but, as the royal commission found, this is a high-risk environment. The royal commission also specifically noted that the use of CCTV and other surveillance technology was a key mechanism for reducing the risk of child sexual abuse in those settings and improving responses to abuse when it does occur.

There is a deterrent effect around the use of such technology. It also helps to corroborate allegations when they are made or, alternatively, to show what has happened, which might be to disprove allegations. Obviously, we have used CCTV footage in a number of other environments. I am thinking particularly in adult watch houses. We now have the widespread use of technology that depicts what has happened within watch houses. That has had a significant impact upon police misconduct in those environments and also the capacity to properly assess complaints that are made and to investigate matters when that material is available. Generally, we see the implementation of the recommendation as consistent with the royal commission's views, provided there are appropriate safeguards around the use of that technology in youth detention settings.

Mrs McMAHON: Thank you.

CHAIR: In picking up the theme of your submission, would you like to outline why you consider it is important to detain children only as a last resort?

Mr Strange: I think there are a number of reasons that is a very important principle. There is obviously a lot of evidence that shows a correlation between time spent in youth detention settings and later offending. From our perspective, it is very significant what the royal commission found about the risk levels of youth detention environments for the purposes of the risk of child sexual abuse. We have

addressed some of those reasons in our submission. They are closed environments. They are not subject to external scrutiny. Many of the children who are placed in those environments have very limited family connections and support mechanisms that might otherwise provide some scrutiny of what is happening with their treatment.

Beyond that, it involves a concentration of young people, some of whom have been accused of sexual offences and aberrant sexual behaviour that you are putting together in one environment, which is a significant risk factor. Many of the children who are placed in that environment come from a situation where they themselves have experienced abuse and neglect. There are far better ways of dealing with what has happened to them than putting them in youth detention and expecting that they are going to somehow be able to begin to heal and recover and receive the support that they need to deal with those episodes in their lives. It is a very challenging environment. There is a wealth of research that shows the adverse effects and the long-term life consequences that can result from spending any time, and particularly extended periods of time, in youth detention.

CHAIR: I have another question—and it is not a trick question. Are there any changes that you would recommend be made to the provisions in the bill regarding information sharing to better implement recommendations 8.6 and 8.7 of the royal commission?

Ms Hancock: I think the bill is narrower than the recommendations that the royal commission made. It really envisaged a much more holistic information-sharing arrangement, which it referred to as an information exchange scheme. They particularly picked up on the existing provisions in New South Wales under chapter 16A of the Children and Young Persons (Care and Protection) Act. The royal commission said that it felt that that showed the most promise of all the jurisdictions as a model for this information exchange scheme.

Compared to the provisions that are in the bill, I think there are a few key differences from what the royal commission recommended. That goes to scope. It was much broader than the provisions in the bill. The royal commission particularly picked up on the fact that existing information-sharing provisions and those contained in the bill tend to be narrowed or focused on a particular sector—in this case youth justice—and limited to operating within a particular jurisdiction and to a particular subset of children.

The New South Wales provisions apply to all children—not just those who might come into contact with the youth justice system. There are two particular types of information sharing. The provisions of the New South Wales legislation permit both proactive information sharing by prescribed bodies as well as requiring prescribed bodies to share information when they receive an appropriate request for it from another prescribed entity. The royal commission also picked up on what is probably one of the key points—that confidentiality and privacy are obviously key concerns but there is an explicit prioritisation in the New South Wales provisions of children's safety and wellbeing. That is given precedence in those information-sharing provisions.

CHAIR: Thank you.

Ms McMILLAN: Following on from the chair's question in relation to information sharing and privacy, it is a fine line between breaching privacy and sharing information that is going to be valuable, appropriate and supportive of the young person and their future, or their context. Is there a time when we absolutely should share and a time when we absolutely should not?

Ms Hancock: I think the royal commission picked up on a few key principles. Their discussion of information sharing was quite lengthy, but the principle I referred to in the New South Wales provisions is about explicitly prioritising children's safety and wellbeing as one of the underlying principles of when information should and should not be shared. The New South Wales provisions contain some specific exceptions to information sharing. When I said before that prescribed entities are required to share information upon an appropriate request, there are some exceptions to that. I think it is a difficult question as to when information should be shared. In coming back to the underlying principle, it should be about promoting children's safety and wellbeing.

Ms McMILLAN: The complexity is that the youth justice system is about a young person's wellbeing. It is about protecting that. Thank you.

CHAIR: Jim?

Mr McDONALD: I am right, mate. I have no questions, thank you.

CHAIR: Steve?

Mr ANDREW: I am the same, thank you, chair.

CHAIR: James?

Mr LISTER: No, not from me, thank you.

CHAIR: I have a question in relation to the body worn cameras and the CCTV audio-recording technology in youth detention centres. Do you have any concerns about this technology impacting on the privacy of children?

Ms Hancock: I think there are privacy concerns, or issues that need to be addressed but, reflecting again on the royal commission, I think they were very much firmly in favour of this kind of technology being in youth detention centres provided it did not unduly infringe on children's privacy. I think that is our suggestion in our submission regarding making sure there are rigorous policies and procedures in place to make sure that the technology is used appropriately. There is precedence for that—for example, with the Queensland Police Service and how they use their body worn cameras. It is really about having the guidelines in place to make sure that the way the technology is used gives consideration to those privacy concerns and deals with them as best as possible.

CHAIR: Thank you for coming along, thank you for answering our questions and thank you for your comprehensive written submission.

DOORIS, Ms Marissa, Policy Officer, Sisters Inside

KILROY, Ms Deb, Chief Executive Officer, Sisters Inside

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Ms Kilroy: Good afternoon, and thank you for the opportunity to give evidence before the committee today. I have a short statement that I would like to read into the record and then we can take questions. I begin by acknowledging that we meet on Turrbal and Jagera land and I pay my respects to elders past and present. Sovereignty was never ceded. I also acknowledge Aboriginal and Torres Strait Islander children in prisons across Queensland today. On an average day in the 2017-18 financial year, over 70 per cent of children in Queensland's watch houses and youth prisons were Aboriginal and Torres Strait Islander children. We must not ignore the racialised impact of policing, court and imprisonment on children. We must address the disproportionate criminalisation of Aboriginal and Torres Strait Islander children head-on with legislative amendments that will actually move change.

As you may be aware, Sisters Inside is an independent community organisation that exists to advocate for the human rights of women and girls affected by the criminal legal system. We are currently funded to deliver the Yangah program by the Department of Youth Justice, a bail support service for girls under 18 years of age in the Brisbane area. The Yangah program works within Sisters Inside's model of service, Inclusive Support, to provide tailored assistance for girls to improve bail merit and maintain bail obligations. Through the Yangah program we regularly see girls at the Brisbane City watch house, other watch houses in the broader area of Brisbane and also in the Brisbane youth prison. In the 12 months between April 2018 and April 2019, we supported over 350 girls in the community to meet the requirements of bail. In this period we also supported 136 successful bail applications for girls.

Our Yangah program is funded only until the end of September. We understand that a statement released this week by Minister Di Farmer stated that no children were in the Brisbane City watch house. We hope that successful programs that have been funded—not only here in Brisbane but also Sisters Inside—to make sure that girls in particular are not in the watch house, continue because supposedly there are no children in the Brisbane City watch house. I know that yesterday there were six girls in watch houses in Queensland and this morning there were two.

We are well placed to inform the committee about the matters in the bill. We welcome action by the Queensland government to reduce the number of children in youth prisons and watch houses; however, we do not support the bill in its current form. I will raise three points in my opening comments.

First, we do not support clause 4 of the bill. This clause amends the sentencing principles of the Youth Justice Act to introduce an aggravating factor for a child who is convicted of the manslaughter of another child under 12 years. We are strongly opposed to this amendment. We note that this amendment comes from the Queensland Sentencing Advisory Council's recent report into sentencing for criminal offences arising from the death of a child. QSAC's recommendation was limited to the Penalties and Sentences Act, which applies only to adults. It is obviously inappropriate to extend this principle to children. It is apparent from the council's report that this amendment was not intended to apply to children.

Secondly, we draw the committee's attention to the provisions of the Youth Criminal Justice Act in Canada. We have provided an extract of section 29 of that legislation as an attachment to our submission. We believe that the legislation in Canada is a useful model, because it makes it clear that children must not be in prison for so-called welfare reasons. Whether it is due to homelessness, which is often connected to lack of assistance through Child Safety, or related to disability or health needs, children must not end up in watch houses or youth prisons for these reasons. The responsibility for well-functioning housing, social services and healthcare systems rests with the Queensland government, not with children. We must stop making children as young as 10 responsible for their own care.

In our experience, most girls who have repeated contact with police, watch houses and youth prisons are involved with Child Safety. These girls are pipelined into youth imprisonment through the child protection system. The bill does not contain any positive obligations on Child Safety or the Queensland government in general to stop the revolving door of homelessness and prison for children. This must be addressed.

In Canada it has been 16 years since the Youth Criminal Justice Act entered into force in 2003. Since that time, the number of children in youth prisons and in the formal criminal legal system has declined significantly. More children are being diverted away from charges by police and away from

prisons through a number of mechanisms in the legislation. Since the act was introduced, the rate of children coming into contact with police has fallen. Instead of sinking money into building new cells in Queensland's youth prisons, we believe that the Queensland government must prioritise legislative amendments and practical changes that divert children from charges, formal supervision and imprisonment.

Another issue I raise concerns a time limit for the use of watch houses for children. I have seen this week news reports that the Queensland government has cleared the Brisbane watch house. I still believe that there must be a legislative safeguard for children that clearly states the time a child is allowed to be imprisoned in the watch house. For example, for adults it is 21 days. I believe a much shorter time period would be appropriate for children, and this must be legislated. A legislated provision may provide some accountability and additional urgency to ensure children do not remain in watch houses for extended periods, as we have seen. Even if the committee does not endorse the Canadian approach, the proposed legislation could be strengthened. The wording in section 48AD(2) should be changed from 'may' to 'must' to make it clear that it is the parliament's intention for children to be released.

Finally, we strongly encourage the committee to amend the bill to raise the minimum age of criminal responsibility to at least 14. I note that the proposal has support from other stakeholders including the Royal Australian and New Zealand College of Psychiatrists, the Youth Affairs Network Queensland and Queensland Advocacy Inc. Both the Office of the Public Guardian and the Queensland Human Rights Commission support raising the minimum age of imprisonment for children to 14, in line with the recommendations of the royal commission in the Northern Territory after the horrific abuse at the Don Dale youth prison was publicly revealed. There is already significant support among key stakeholders in the community sector to raise the minimum age of criminal responsibility to at least 14. This is also in line with international standards.

Ultimately, Sisters Inside's position is that we would like the minimum age of criminal responsibility raised to 18 and all youth prisons to be shut. We see raising the minimum age to at least 14 as an interim measure to show that it is possible to support children in our communities instead of punishing them in prisons. This change would have immediate positive impacts, especially for Aboriginal and Torres Strait Islander children. The transition of 17-year-olds into the youth justice system can provide a blueprint for changing the age at the other end. Children are our future. We cannot continue to subject them to imprisonment because of a lack of political courage on this issue. We are happy to take questions and to comment on other aspects of the bill.

Ms McMILLAN: Thank you for your representation today and for the very important work you do in our systems. Can you elaborate on the issue around the aggravating factor and go into a little more detail around the concerns around adding that into the legislation, particularly around vulnerability of children?

Ms Dooris: We were involved in the process to make a submission to the Queensland Sentencing Advisory Council's review into sentencing arising from the death of children. In our opinion, that review is very much focused on concerns that had been raised by adults. To some extent it did consider the position of children, but fundamentally we cannot have a system that recognises the vulnerability of children aged under 12 years while we continue to criminalise children as young as 10. In our view, it is really inconsistent to recognise a special vulnerability on one hand in sentencing legislation while we continue to imprison and criminalise 10-year-olds. That is really our position and the thinking behind it. Given the scope of the council's recommendation, where the focus was on the Penalties and Sentences Act, we do not think it is appropriate to extend that to the Youth Justice Act. Hopefully they would have made a specific recommendation if that was what they had contemplated.

CHAIR: The Queensland Sentencing Advisory Council report dealt with adult offenders. I cannot say that I read it from beginning to end, but I do not ever recall—

Ms Kilroy: It was about adults; it was never about children. To extend a recommendation that focused on the whole research, and for a small proportion of that QSAC report now to be taken across to the Youth Justice Act, does not serve its purpose. That whole report pertained to adults charged with children's deaths.

Ms Dooris: It is very clear that that is the community concern.

CHAIR: Yes, I appreciate that. The community's concern was really with how the courts were processing adult offenders.

Ms Dooris: That goes to other things, such as the serious violent offender regime. That was also picked up by the council. In that sense as well, it is connected to principles that really apply to adults, not to children.

Ms Kilroy: We need to stop cherrypicking recommendations from other reports that are not about children and enacting them into legislation for children where it is just about punishing children. We need to stop looking for answers in a legislative framework or any other framework just to punish children. Our children are our future. The time has come when we need to support our children and those who are pipelined into being criminalised and imprisoned, because we know that they are Aboriginal and Torres Strait Islander children and children who are the most disadvantaged and marginalised in our communities. We know who they are. There are not that many. If we as adults cannot support the children who are living tough, in poverty and as victims of violence, we need to take our bats and balls and go home because what we are doing is not working. All we will see is more net widening and more children criminalised and pipelined into the prison system.

If we talk about children's wellbeing, let us be fair dinkum. Let us put sections in the legislation that treat the disadvantage as the priority, not the criminalisation. When we address any welfare issues first and foremost—be it housing, health, safety, education or training—then we can look at the offence. I believe that when those issues are dealt with as a priority the so-called offending will disappear. It is about giving the most disadvantaged children a leg-up like the rest of us may have had at some time, whether from birth or later in life. I am one of those children who was pipelined into youth prison as a 13-year-old for truanting, for wagging school, so I know exactly what it is like. This legislation will just capture more children. We just widen the net and build the prison industry so it is bigger and it costs the community more and more.

CHAIR: I have two more questions. I am not trying to divert you away from what you are saying.

Ms Kilroy: It is all right. I am very passionate about this.

CHAIR: I was just re-reading the attachment to your submission on section 29 of the Youth Criminal Justice Act in Canada. I noticed that the onus reverts to the Attorney-General. Is that something that is peculiar to Canada and would not necessarily work here in Queensland? I understand the sentiment of the rest of the justification of detention and custody and your suggestion that that should be adopted or some of it should be implemented. I am wondering if that is just a red herring and a 'don't worry about that' sort of scenario, or is that not a question for today?

Ms Kilroy: It is maybe not a question for today. The reason we raised section 29 is that Canada was in a situation where we are today. There were high numbers of Indigenous children in Canada who were on remand—like 80 per cent—and the numbers were going up and up. The only strategy, if you like, that they had was to build more youth prisons, so they actually implemented this section of this legislation so that welfare issues must be addressed first and foremost before any consideration of any form of incarceration. That is what has reduced the numbers.

There was some concern early on when that was first enacted because they just saw the white children being released back into the community, but then after a few years they could actually see that the Aboriginal children started to come down, and girls as well. Now they are actually closing youth prisons. This is the situation. We cannot think in terms of just a few years and someone's term of government and deal with it there. It is about a real, long-term vision about our children and our future.

They are now closing down youth prisons. Just this week I was reading an article that one youth prison has just seven staff in the prison and no children. It has taken its bite. It has actually worked—just changing the word from 'may' to 'must'. Those of us in the room who are lawyers understand the effect of that. It is very powerful to have 'must' in legislation. I believe if we changed the language to 'must' in that particular section we would actually see some huge changes that would benefit children. If that is what it is about—benefiting children and the care of children, ensuring their safety—that is how we address it.

CHAIR: We are running out of time, unfortunately, but I do have some questions about decisions about release and bail for children. I apologise that some of these may be double-barrelled so I will try to break them down. You believe that there must be a consistency in the principles and considerations that apply to children in relation to a number of areas. The first is decisions to charge. The second is decisions about release. I understand that the third is the decision to arrest children for contraventions of bail conditions. I will give you liberty to deal with all of them or just one or two.

Ms Dooris: I will just deal with the first one and put that before the committee for further consideration. We think the police are the gatekeepers to the criminal legal system for children and for adults, and obviously they are making decisions every day about how they deal with a particular situation. Section 11 of the Youth Justice Act does set out diversionary options at the point there is a decision to charge a child or not. In our experience, as soon as there is a charge it becomes much harder, if a child is also experiencing lots of other intersecting disadvantage, to then get them out of the system.

That is why we wanted to raise the idea of a consistency of principles to apply across those different points, because it really should not have to be that a child enters the system with a charge to then have the full spectrum of their needs considered. We should really be diverting children out of formal systems and formal processes. I think that has been another success in Canada and in other jurisdictions, and that is why we wanted to raise that. I am not sure if that goes to what you are getting at.

I think there are some principles in the bill that are trying to encourage a more holistic appreciation of children's circumstances, and we obviously support that, but children should not have to be criminalised and charged before someone starts thinking about what is going on for them. That is also part of the thrust behind raising the minimum age. It is about saying that there has to be a better way of supporting 10- to 14-year-olds. We do not manage them as criminals through the legal system. These are children and we cannot lose sight of the fact that everyone under 18 is a child.

CHAIR: Unfortunately, that brings this part of the hearing for this afternoon to a conclusion. I would like to thank you for coming along and giving your evidence. We also thank you for your written submission.

CLAY, Ms Naraja, Youth Facilitator, Create Foundation

DONOVAN, Ms Rachael, State Coordinator, Queensland, Create Foundation

CHAIR: I welcome representatives from Create Foundation. I invite you to make a brief opening statement, after which the committee members will have some questions for you.

Ms Donovan: I would like to start by acknowledging the traditional owners of the land that we meet on today and pay my respects to elders past, present and emerging. Thank you for the opportunity to speak about the Youth Justice and Other Legislation Amendment Bill 2019. I am the Queensland state coordinator of the Create Foundation. Today I am joined by Naraja Clay, a Create youth facilitator with a care experience who will bring the voice of the young people directly affected by these changes to this forum.

Create is a consumer body representing the voices of children and young people with an out-of-home care experience—a population that is over-represented in the youth justice system. We welcome the proposed amendments but argue for greater change to prevent vulnerable young people coming into contact with the justice system. The young people who do come into contact with the justice system are not the hardened criminals responsible for serious crimes or the main reason for a lack of safety in the community; instead, they have often experienced abuse, neglect and systemic failings, are disengaged from school and other support systems, and have experienced the ongoing effects of trauma. Aboriginal and Torres Strait Islander children and young people are over-represented in both child protection and youth justice systems and are often disconnected from culture and community.

Further, we have stories of young people who are engaging in crimes in order to access shelter, food and other basic necessities that are not available to them outside of detention centres. Create young consultants spoke to the QFCC about their experiences with the justice system. One young person stated—

I've been charged with wilful damage and breaking and entering. I broke into the resi to get my own stuff. I told them what time I was going to be there. People should have been there at that time but they weren't.

Another said—

Last time I got out of here I asked for a clothing allowance. I had no clothes. They told me it would take three months for a clothing allowance. I got put back in for stealing clothes.

This demonstrates that young people in care can come to the attention of the police for systemic failings or normative behaviours that are criminalised by the responses of caregivers. For example, we have heard accounts from young people that the breaking of a cup has resulted in charges of property damage.

The lack of therapeutic and supportive care environments can also limit the young person's ability to abide by bail conditions. Create supports the proposed changes to the decision-making framework around bail conditions to take into consideration factors such as developmental capacity and trauma but further states that for this change to be effectively implemented we need collaboration between youth justice and child protection systems that is supported through appropriate resourcing and a restorative justice framework.

Young people should not be kept in watch houses. As well as being retraumatising and detrimental to young people's wellbeing, it does not result in reductions in offending. This issue is exacerbated by the numbers of young people on remand, whom we wish to emphasise are not yet found to be guilty. Whilst Create is pleased that young people have now been removed from watch houses, we wish to emphasise the importance of addressing the systemic issues to understand why this occurred at all and to ensure it does not ever occur again. It is not enough that children are only removed from watch houses as a reactionary response to media attention and international scrutiny. Children should never have been there in the first place.

The amendments to improve the timeliness of dealing with matters relating to children are a step towards addressing these issues, but we need to keep young people out of court in the first place. An important means of doing this is to raise the age of criminal responsibility to 14. We must remember that we are speaking here about children. Ultimately, we should not be relying on political cycles when it comes to effecting change for children and young people. It is the responsibility of our political leaders to influence community attitudes and to tackle the stigma and exaggerated perceptions of young people as hardened criminals. This is an issue that requires bipartisan support and consistency so we can make lasting systemic change that will protect both this generation and future generations. I welcome questions.

CHAIR: I point out that we have members with us on the phone. Jim, do you have any questions?

Mr McDONALD: No, I do not.

CHAIR: Steve?

Mr ANDREW: At this stage, I do not.

CHAIR: Corinne?

Ms McMILLAN: Thank you very much for coming in today. Can you tell us about the likely impact on children and young people in the out-of-home care system of the proposed amendments for the granting of bail?

Ms Donovan: I also support the changing of the wording of that amendment to 'must' rather than 'may'. It is really important to recognise that children in the out-of-home care system have experienced a great deal of trauma and systemic abuse. It is important to realise that they are often in contact with the criminal justice system because of these reasons. I think those amendments can go further. to ensure that the welfare issues—such as housing and ensuring that they have appropriate bail conditions—are addressed before they make contact with the justice system.

Mrs McMAHON: I want to talk about two intersecting parts of your submission. One is the information-sharing framework and the other is when we are dealing with children who are in out-of-home care. I am talking from the watch house perspective, because that is where the first opportunity for a child to be released from custody occurs. When we are dealing with children who are in out-of-home care, as you have indicated in your submission, there is usually an increased percentage of disability and mental health issues and a lot of trauma. The ability for those children in custody to share relevant information to a watch house manager who can then assess needs and get additional assistance is quite problematic. It could be two o'clock in the morning and you have a child in care who is non-communicative. That is where information-sharing provisions might come in handy. Do you have any comments about the type of information that should be available to a watch house keeper in order to assess the needs of a child who is in their custody so that that officer may make the best decision about what to do with that child then and there?

Ms Clayton: I definitely think Queensland Health needs to be in on sharing information with the police. The police are not equipped to make decisions on young people's mental health or their health in general, so information sharing from Health and Child Safety would give a good general idea of the needs of that young person. They would not then have to do a full comprehensive assessment in the watch house with the young person because they have access to information. It does not necessarily have to be their entire reason as to why they are in care or anything, but it can be a general overview of a health assessment or a mental health assessment. It would just be general key information that a person would need if a young person has no ability to communicate what their needs are.

Mrs McMAHON: From my point of view as someone who has been a former watch house keeper, it is about trying to make those decisions in the best interests of the child. If a hospital or a mental health unit is a better and safer place for that child to be, believe me, a watch house keeper would much prefer that that child is there. However, at key times the information is problematic to obtain. We have heard differing submissions on the information-sharing provisions. It is a great thing to have an information-sharing provision framework, but it is about the practicalities of applying it at two o'clock on a Saturday or Sunday morning. To get that information is quite difficult in a practical sense. Do you have any comments? You have acknowledged that the police are not the people to be making mental health assessments. There is a need for other government departments to be involved, Health being the primary one. Can you think of any other government departments or information holders that it would be vital for the police to be able to access, to make those decisions?

Ms Donovan: Certainly, as Naraja has acknowledged, it is Health and Child Safety. It is definitely important to have consistency in information across all points of contact that a child may face within the system, acknowledging, of course, that there are privacy and confidentiality concerns around that. We do have to take care in how that is implemented in a procedural way. However, I think it definitely is important to ensure that that child gets the best support in the most timely fashion. As you acknowledge, we do not want to be waiting for business hours for that to occur and for you to obtain that kind of information.

Ms Clay: Can I ask: as the watch house managers are generally Child Safety staff, how come they do not in general have access to that kind of information?

Mrs McMAHON: No, a watch house officer is a police officer.

Ms Clay: The manager of the watch house response team is Child Safety, so how do they not have access to that information in general?

Mrs McMAHON: At your suburban watch house there are only police officers and civilians, not Child Safety staff.

Ms Clay: For the Brisbane one, as an example—

Mrs McMAHON: And that might be fine, but obviously we have watch houses around the state. That is why I am saying, from a practical point of view, that not every watch house is going to have access to a staff member from another department. Therefore, it is about making sure that when we have an information-sharing framework it is practical to get that information.

Ms Donovan: And a consistent approach across the state is important.

Mrs McMAHON: Where no-one is disadvantaged for being in a smaller watch house in regional Queensland.

CHAIR: I understand that there has been an announcement that there are no children in the Brisbane City watch house. However, it would appear that there are some children in watch houses in the regions. Does your organisation work in the regions?

Ms Donovan: Yes, absolutely. Create is a national organisation, but the Queensland team is based in Brisbane. We also have a Townsville office and we work with children and young people in care across the whole state.

CHAIR: From Create's knowledge, which spots in the regions would you say are more problematic in relation to looking after the welfare of young children who come into contact with the justice system?

Ms Donovan: I think that is a difficult question to answer, because all children are inherently vulnerable by nature of their age. Yes, there are high instances, of course, in different areas for various reasons. However, I think we need to have a consistent and coordinated approach across the state.

CHAIR: Is there any particular regional area that could benefit from an injection of, say, more support to prevent children from having to be held in custody?

Ms Donovan: Off the top of my head it would be difficult to answer. I would have to look at the data.

CHAIR: That is okay. One of your recommendations is that a maximum of four hours should apply for detaining young people in watch houses or police cells. Would you like to tell us more about why you are suggesting four hours?

Ms Donovan: The evidence shows—and it is acknowledged from many different sectors and jurisdictions—that a watch house is an inappropriate place for a child. It is a facility that is designed to hold adult offenders who are often violent, have had substance abuse issues or whatever. It is really inappropriate to have children held in watch houses at all but understanding that they may need to be in there for processing. If they need to be there for a longer period, there need to be really clear and strict procedures about that. That is how it used to be in Queensland. Children never used to be in watch houses for extended periods without higher authority or very clear reasons why that needed to occur.

Ms Clay: We do not hold children in hospitals for extended periods when they are having mental health assessments. If they need to be inpatient, they get put in as inpatient. We cannot have a solution of putting a child in a watch house, as other people have said, because there is no accommodation. Through the contact I have had with young people, it has been a common experience that their bail conditions include being put into emergency accommodation places. If those beds are already filled by the time five o'clock comes around, that young person may be sleeping out on the street or on the footpath of the accommodation, just so that they do not breach bail. It is about diverting funding into more appropriate accommodation for young people that is not a watch house, so maybe it is facilitating more residential type facilities with security and all that type of thing. I agree that children should not be held in the watch house under any circumstance.

CHAIR: That brings to a conclusion this part of the hearing. Thank you for your attendance and for your written submission.

WEGENER, Mr Lindsay, Executive Director, PeakCare Queensland Inc.

CHAIR: Welcome, Mr Wegener. I invite you to make a brief opening statement, after which the committee members will have some questions for you.

Mr Wegener: My name is Lindsay Wegener. I am the executive director of PeakCare Queensland, which is a Queensland child protection peak body. I should also declare that I have an extensive background in youth justice and have previously been the manager of a youth detention centre. At one point I was the director of youth detention centres for a state government owned authority at that time called Queensland Corrections. Therefore, I bring to the hearing both experience in my role as the executive director of a peak body for child protection and some strong personal and professional interest in youth justice and certainly an experience about what impact detention has on children.

In preference to preparing a written statement beyond what we wrote in our submission, with your permission I would like to tell a story. I think this story actually demonstrates some of the points we would like to highlight within our submission. It is a fairly personal story.

A couple of years ago, a close relative of my mine, a niece—a beautiful young woman—succumbed after a long and very courageous battle with cancer. In the days leading up to her death, family and friends gathered around her bedside. Some of her friends were sensational, remarkable young people. There was one young woman in particular whom I noticed and observed quite a lot. She was incredibly attentive to everyone who was in the room, not only my niece but also her family, other friends and so on. We were always incredibly well fed. She was attending to everyone else.

In getting to know her over those few days, my concern was that she was not really attending to herself at a time when she needed to be as well. When my niece died, I noticed that this young woman froze. After a few minutes, she disappeared from the room and I was concerned about her. I walked down the corridor outside the room. Before I got to the end of the corridor I could hear screaming and someone singing out for help. When I got there—I will not go into the details—she was engaged in behaviours that were very harmful to herself. She was hurting herself. A woman there was trying to stop her from doing that.

Because of my own background, something clicked into place and I ran down and I restrained her. Having said that I 'restrained' her, I do not think for one second that young woman thought she was being restrained and no-one who witnessed that would have known that I was restraining her. What they would have seen was someone comforting her and holding her and soothing her, but most definitely I was restraining her. I was assisting her to regulate her breathing, I was saying things to her that were reassuring and I was helping her not to depart from the kind of grief that she was in but simply to ensure that that grief was not going to do her further harm.

I wondered afterwards about how everyone in that room and in that hospital saw what was going on and viewed it in a way that was compassionate and understanding. They did not see in any kind of way that she was mad or bad or demonstrating behaviours that were outside of the norm. What they had an appreciation for, even if they did not know what had occurred but because of the setting and where we were, was that she had experienced profound trauma and was reacting to that profound trauma. I did wonder afterwards what would have happened if that behaviour was not demonstrated in an ICU but in public in the street and other people were observing it. How would they react to her kind of behaviours? As it was, people reacted compassionately to her.

However, young people who encounter the youth justice system have invariably experienced trauma as well. Their reactions to that trauma in many ways are the same. It is about fight or flight. It is about hypervigilance. It is about being untrusting of adults and the kind of maltreatment that adults have often perpetrated against those children. Because what that trauma has been, why it has occurred and why they are behaving that way is not as visible to people, we tend to be much less compassionate and much less understanding and accommodating of what is going on. I think there are lessons in that for how we look at children who encounter the youth justice system. Invariably, most children who are experiencing the youth justice system have been victims of offences committed against them far greater than any offence that they themselves have committed. That is not always the case, but in most instances that is the case.

We similarly need to ensure that our society as a whole reacts compassionately and with understanding. Sometimes that does mean we have to step in when that trauma is doing things to them that is harmful for them. We do need to step in. When we step in, we must do so with compassion and understanding and we always must be stepping in with confidence. The people who must step in must have the knowledge and skills to be able to do that appropriately and well, in the least intrusive manner

possible and in ways that assist them to regulate their own behaviours. It is not to take away their grief but to manage the kind of trauma they have that will not lead them into further encounters with the criminal justice system.

I think that really is at the heart of our submission. It is why we certainly support any kinds of measures that are taken to reduce the likelihood of young people encountering a criminal justice system and, if they do, then to ensure that that is done speedily, done with competence and done well, sensitively and with compassion. That is the thrust of the story. I think that is really at the heart of our submission.

Mrs McMAHON: Part of your submission addresses the issue of ensuring appropriate conditions are attached to the granting of bail. You state that you support the amendments to ensure bail conditions are fair and proportionate. You specifically cite issues where, in some cases, bail conditions have been onerous, acknowledging that young people do not have access to financial freedom and accessibility even to attend for reporting conditions. Do you have examples where a young person has breached bail because the bail conditions set on them were somewhat onerous and, because of their age and/or vulnerability and other factors, they were manifestly unable to comply with the bail conditions and, therefore, set in train a cycle of reappearing?

Mr Wegener: I have numerous ones. I think in some ways it is because young people in particular are not often in control of where they are living. Often the decision about where they live is made by other parties. Sometimes that means also people being unable to leave. Recently we have come out of a royal commission that showed that young people who are in the care of organisations have sometimes been incredibly vulnerable to abuses by their carers. We have to always be wary of the messages of royal commissions that have highlighted those things, that young people sometimes are escaping from situations that are not tenable for them. We have to sometimes give them the benefit of the doubt. If they do not feel safe, sometimes it is because they have good reason not to feel safe.

Often it is also simply that, because of the trauma they have experienced and their awareness and knowledge about adults, adults are not people to be trusted. Any kind of indication that an adult cannot be trusted can sometimes trigger a response of fight or flight, which is something what happens when people are traumatised. Sometimes the most innocuous gesture by a carer or someone else can trigger a young person into a response. They do not want to be there because they do not feel safe; it is not because the person is necessarily not safe to be with but simply because of their history of trauma and that adults generally are not to be trusted.

May I comment on the question about information sharing? I think there are a lot of layers to this. What happens as a result of this will be about unpacking all of that. It is not simply about what information is given to whom. It is about in what form it is given and it is about who they can then relay that information to, who it is passed on to and how it is used. All of those things must be unpacked.

Mrs McMAHON: The devil is in the detail in the practicalities of the information sharing.

Mr Wegener: It is a process, rather than simply 'here's the information'. The other big challenge is that some young people are not known to any agency at all. Their first encounter with the system will be their first encounter with the system. There is no information available to tell the watch house keeper, who has that very onerous responsibility of trying to make some kind of judgement. Often there is no information available from anyone.

In many ways, those are the children we should be most concerned about, because often they are the children who have been hidden from the kinds of safe structures that we have in our society. They are the children who are hidden from schools, who are hidden from doctors, who are hidden from the kinds of systems that we have in place that most children at some point will encounter and that behave in some ways as watchdogs on the safety of children. Those children who are hidden from view are the ones we should be most concerned about.

Ms McMILLAN: In your submission you talk about the use of CCTV cameras. Can you talk us through the appropriate safeguards that you would see as relevant to put in place for our young people? How would they be used to ensure our young people's rights?

Mr Wegener: I would defer to other organisations, because we are aware that this issue has been looked at elsewhere. In an overall sense, we have grave reservations about it because of those kinds of issues you are talking about. Children's sense of surveillance on them can also be triggering of trauma and the impact of trauma in the past. It needs to be incredibly carefully managed. I think some children may perceive it as a safeguard themselves, that they are being filmed. Again, it is important to make some individualised assessment as some children may actually feel that it is beneficial to them to have that kind of surveillance. However, for others it certainly will be very harmful, I think. There is no one answer to that, apart from ensuring that it is well informed by their own history

and by their own consent, where it is possible to obtain that consent, and that it is being done with good intention. That really is about ensuring safety and ensuring it is being done in a manner that is not punitive but rather is a safety oriented mechanism.

Ms McMILLAN: Mr Wegener, are you suggesting that there be some negotiation of use? If so, what implications does that have for our staff in dealing with these children?

Mr Wegener: When you say 'negotiation'—

Mr MILLAR: Negotiated by the children with the staff.

Mr Wegener: I think about where that is possible. I look at the example of the young woman whom I held. She was not really able to negotiate anything at that immediate point. However, very quickly, once she was able to regain that kind of composure, she could. It became a graduated thing where she resumed that kind of control. For some young people it will be like that. It is at what point we can start to always keep the door open to them having a say and ensuring they can eventually resume that control over themselves so they can have some say. However, I am certainly realistic: there will be some young people at times who are so impacted by what is going on that they will struggle to make an informed decision about a lot of things, including that. I think there are levels of participation in decision-making as well. At the least, young people should be informed about what is happening and the reasons for that. Rather than it being something that is done to them, at the least they are told what is going on and the reasons.

Mrs McMAHON: Mr Wegener, in your submission in relation to supporting the exclusion of electronic tracking devices you provide three examples of why it is detrimental to kids. It ranged over everything from 'it would humiliate them' to 'they would actually take it as a sign of status', thereby compelling them to create further offences so that they may attain a certain status amongst their peers. Have you had any experience of that? I understand that this issue has been raised because some magistrates have considered electronic tracking. Have you had any experience at all, in any of your background, with youths and electronic tracking?

Mr Wegener: One of the things to bear in mind always with young people is that bravado is an enormous thing. Often young people will enter a detention centre and be full of bravado that 'this is okay and nothing is wrong with this'. They will be in some ways getting their rewards from peers who are seeing this as a hero status kind of thing. It is not until you walk around at night and you hear them crying and sobbing in their rooms that you realise that it is bravado and it is not really true at all. Often those who demonstrate the most bravado are the ones who are the most frightened, the most humiliated and the most at risk in many ways. Tracking devices, in some ways, have the same impact as if you are engaged in a criminal justice system for some time and, because of bravado, they will assume that it provides them with some kind of hero status. However, the truth is that underneath that there is something else going on.

Certainly my own experience of children in detention is that those who are more feisty, who do not want to be there, who will be challenging authority, sometimes are the kids I was least worried about because they still have some fight left in them. Those who were the most compliant, the most subdued, accepting of their lot, were the ones who always caused me the most worry, because it indicated that they were pretty institutionalised and wanted to continue on into a career in institutionalisation, whether that was through criminal justice, mental health systems or whatever. Certainly they were resigned and quite suicidal. Therefore, I prefer kids who are a bit feisty because they still have that spunk left in them. They want to fight and they want to continue to live. They want to make sure that adults treat them a bit better in the future. It is the ones who are more submissive who certainly worry me the most.

Ms McMILLAN: Have you had any experience with juveniles who have had electronic tracking?

Mr Wegener: No, I have not, but I equate it with that. Certainly there is research. I guess at different times when young people have been placed on various community service orders and they have been made to wear T-shirts that obviously demonstrate they are on a community service order or something like that, it really is not a good thing for them because it further marginalises them from a community that is not terribly accepting of them in the first place. When workers are trying to re-engage them constructively in a community, within their culture or with their family, to have something that blatantly marginalises them even further makes their job much more difficult.

CHAIR: That brings to a conclusion this part of the hearing. Thank you, Mr Wegener, for your assistance, your written submission and your testimony today.

LLOYD, Ms Tammy, Group Manager, Children and Families, Anglicare Southern Queensland

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Ms Lloyd: Thank you very much for the opportunity to appear today. As outlined in our submission, a huge impact on young people at this time is going through the court proceedings, the time it takes for the court proceedings to be had and the delays. We see that children may commit an offence and then during the time it has taken to go through they may commit further offences, which creates further delays. It is not addressing the issue of what the young people did so they can connect the behaviour to a consequence and look at how they could move on to do better things. We need to be asking what is happening to the young person as well as the family, not what is wrong with them as often the young person is acting due to what is happening at home. We need to look at other ways we can address offences, rather than having young people go through the court system, and make sure it is in a timely manner.

A story that I would like to share with you is about a young person, 13½ years, who was caught shoplifting at Myer on a Saturday. The police were called, as were the parents. The young person was given a notice to appear the following Friday and the parents were also advised to attend. They were asked to bring the child's last two school report cards. The young person and the parents attended Roma Street police station the following Friday. This meeting was held in a small room with a police liaison officer. The officer reviewed the child's report cards. The officer could see that a decline had occurred in the child's grades and also comments from the teacher. The officer asked both the child and the parents, 'What's changed?' They were able to advise that two years ago the sibling of this child had passed away, the parents had separated, the father was about to remarry and the mother was struggling with grief and loss of the child. The mother had left school herself at 15 years of age to start a family. She had never worked and had only cared for her children. The child spoke of seeing her father on the weekends, that it was always with his new partner. The child spoke of feeling estranged from her friends at school and how that made her feel. They looked at her differently due to the death of her sister. The child disengaged with netball outside of school—another positive peer group.

The officer provided the following advice to the family. Although the offence the young person had committed was not okay, he could clearly see that it was not just about what had happened that day; the whole family was in disarray. The officer gave the following advice: the mother to look at grief and loss counselling for herself; the mother to look at returning to school and getting an education, which could assist her in finding employment and also open up some social networks; and the father to plan some quality time with the child. He suggested to the parents to talk to the school. To the young person the officer said, 'You are at a crossroad. This way is not going to be pretty'—and explained the law—and said, 'This way, you could have a brighter future.'

The outcome of this scenario is that the mother did go back to school to complete her year 12 certificate and then went on to do an administration course that led to full-time employment. The mother and the child both attended grief and loss counselling. The father and the daughter had special time every fortnight. The young person made the decision to get back into netball and reconnect with old friends. The young person did not commit any further offences. This story occurred 35 years ago, when it appears that the system took time to address what was happening. We would call that now early intervention—where we get in early with the parents, the children and the community and look at what is happening, not blame people.

Youth Justice has recently funded a lot of bail support services across Queensland which are providing outreach support to our children and families. The outcome we have seen in the services that we have provided has been extremely positive, but what we see as working best is working with the family—asking them what is happening and then working with the child. We need more outreach services. I suggest linking them with the police stations—you asked the question before, 'Where are these places?'—and having someone who has training in trauma and attachment and an understanding of the vulnerabilities that these children and families are going through to help address the issues. Thank you.

Mr LISTER: Ms Lloyd, thanks for coming to talk to us today. Anglicare has a supported community accommodation program. Am I to take it that that is one place that children who have been charged with an offence can go as an alternative to being on remand? If so, can you tell me how it works, how it is funded and what the future for that might be?

Ms Lloyd: Certainly. We have two supported community accommodation services. They both cater for up to four children from the ages of 14 to 17. The purpose of it is for children who are either in detention or in watch houses on remand, which means that they have not gone through the court

hearing to be charged, convicted or released. Often the children who are sitting on remand are children about whom at this point the parents are saying, 'I can't do it anymore,' or there is no parent willing or able—they have parent fatigue, community fatigue. It is a voluntary program.

The young people are told what the program can offer and they have to agree to it. It is a joint partnership between Anglicare and Youth Justice. The two that we have—and there are two in Townsville—are the first four that have been rolled out. Youth Justice is onsite with Anglicare. Anglicare provides the daily care needs for the child and Youth Justice provides the enforcement of bail conditions. They are there Monday to Friday from nine to five, and Anglicare is there for the rest of the time.

Prior to the kids coming there we ask them, 'What are your goals? What do you want to achieve? Where do you want to go post here and how can we help you get there?' We talk to the family. Often the family has said, 'I just can't do it anymore.' We ask, 'What would it look like if you could do it?' We will go in and support the family while the child is in our placement. We will do some work with the family and ask them, 'What do you need?' We take the child over there and do some of that supervised contact—look at what is going well and look at what is not going well. Often there are younger siblings whom the parents are trying to protect. We ask, 'What can we engage the child with in their community that is going to be more positive?' When it was funded initially it was for up to six weeks. It has now been extended up to six months, depending on the level of need of the child.

Mr LISTER: Good stuff. Thank you.

Ms Lloyd: We are getting a lot of good outcomes.

Mrs McMAHON: The story that you started with—I am hoping—has some good outcomes, because it fits within that pillar that we have looked at within Youth Justice, which is avoiding court in the first place.

Ms Lloyd: Yes, that is right.

Mrs McMAHON: Notwithstanding that the story comes from some time ago—and it has been a while since I was a cautioning officer—we still have cautioning and community conferencing as preferred options for a youth's first contact with the justice system. I know that is something that was driven quite strongly some 20 years ago. Is it your experience that cautioning and community conferencing, or whatever it is called now, are still having a positive effect, or is it starting to lose the ability to keep kids out of the court system? Are we seeing more notices to appear and being bailed to appear at court rather than the cautioning as a first response?

Ms Lloyd: The cautioning is still occurring and the conferencing is still occurring but, again, it is the time delay. If it is immediate—within one week—you and your parents are sitting there. The night that you are picked up from the police, there is someone from that outreach at the watch house who can support the police officers. The police officers do an amazing job in protecting the community. They want to make it safe for everyone, but they will say to you, 'We don't have the training, the understanding or the time to be able to sit in with this child going back to their family.' If you have an outreach service in there, or in one week they go there, that will assist in addressing what their needs are and move forward.

Mrs McMAHON: The number of police officers who are authorised to caution is quite a small number. Usually, they would work within the child protection unit—the CPIU—and there are a small number of uniformed officers. Would it be your suggestion that more police officers be able to deliver cautions so that, at the point of that first intercept, when police make that notification to parents, that caution can be arranged as soon as practical rather than it having to be sent in a file to someone else who is qualified?

Ms Lloyd: By giving a caution you are saying, 'If you do this again, you're going to be in trouble,' but we are not addressing the issue. If they could give a caution but recommend that they are referred—

Mrs McMAHON: Along with referrals?

Ms Lloyd: Absolutely: 'You and your family need to go and talk to' whoever has the funding. If it had that attached to it, that would be great.

CHAIR: In one of your attachments you talk about a young lad who had difficulty going to court. From reading it, it would appear that he had anxiety issues that prevented him from engaging with the justice system. Do you have other examples of children or young people who breach their bail not because they do not want to go to court but because they are impacted by some disability?

Ms Lloyd: Definitely. There are many examples. It can be that the child does not have the money to catch a train to get to court. If you look at how many children go through the court system with fare evasion, it is incredible: 'I have to get to court, but I have to break the rules to get to court so I won't. It

is just going to be another ticket, so I'm not going to.' You have children who do not have the means to get there. They do not have a home. They do not have an alarm clock to go off to say, 'Wake up. It's time to get to court.' They are hungry. It is all of those things. Then you have their mental health, and they do not have the support of the worker, a parent or a carer to take them to court. Many children attend court without their parents or guardian being at the courthouse. On Mondays we attend the Beenleigh courthouse. As well as the supervised community services we have the bail support service, which is the outreach. Our staff are present to encourage referrals but also to support our children who we are taking to the courthouse.

CHAIR: Can I just go back a step. I am sorry to interrupt. When you say 'encourage referrals', how does that work?

Ms Lloyd: If there is a family sitting in the courthouse and their child is there, we work with Youth Justice because the court officers are also there. We work with them. They will say, 'So-and-so is appearing. He or the family could benefit from this.' Then we do a warm handover where they introduce us. We introduce ourselves and say, 'Here's a brochure. If you feel that we could support you, we'd really like to help you.' Again, it is a voluntary service where the child has to agree. We are really fortunate in our contract because it says that we can work with the child or the child's family, which includes siblings of the child who could be at risk of youth justice. This child may not want to connect with us, but the other siblings or the parent may want to, which will eventually help that child.

CHAIR: Did you have much to do with the Childrens Court when it was at North Quay? It is in George Street now, but when it was at North Quay that facility was purely for the Childrens Court.

Ms Lloyd: No, I did not. I was in youth justice many years ago and then I went into the child safety sector. I have just come back into the youth justice sector in the last couple of years.

CHAIR: It is a while since I have been to a Childrens Court hearing. Do you go to the one in Brisbane or only Beenleigh?

Ms Lloyd: Ours is related to the Beenleigh courthouse.

CHAIR: Jim, do you have any questions?

Mr McDONALD: No, I am very satisfied.

CHAIR: Steve?

Mr ANDREW: No, I am good, thanks.

CHAIR: Anyone else?

Mrs McMAHON: I am fine, thanks.

CHAIR: In relation to the programs that you offer, do you work solely out of the Beenleigh court?

Ms Lloyd: We work in the Beenleigh and Loganlea region. That is where our funding is. There are other bail support services in other pockets of Queensland.

CHAIR: Are you able to tell us where they are?

Ms Lloyd: I will try really hard.

CHAIR: That is all right. If you do not know—

Ms Lloyd: There is a list. They have them in Inala, Ipswich and Townsville.

CHAIR: Do the welfare people go and work in those particular courts, like in Ipswich and Townsville?

Ms Lloyd: No. Each person who has been funded would work differently. It depends on what is in your funding and how you as an agency connect and partner with the courthouse, the local youth justice team and Child Safety—whoever is in that.

CHAIR: Your group has decided to work at the Beenleigh Childrens Court?

Ms Lloyd: Yes. We have one day that we are there: court day. On Tuesdays there is a person sitting in the youth justice centre working with the people in Youth Justice, and then we have people out working with children and families in surrounding areas. We are also starting a project with the Gold Coast police and CPIU because a lot of our young people end up on the Gold Coast, sitting in their watch house. Anglicare and other NGOs are doing a pilot program where one day a week every agency will have a person there at 8 am. If any children are collected overnight we go down to ask, 'What's happening for you? Where's mum? Where's dad? What are your needs?' If that child has to go to court, we try and at least have a plan for the court around what the child needs and what we as a group of people in the community can do to support those children.

CHAIR: When you talk about the Gold Coast, would welfare workers then go to court with those children or just to the watch house? Are you not sure? I am just trying to understand—

Ms Lloyd: Who is going to support the child?

CHAIR: I am very encouraged by the work you are doing, but I am just trying to ascertain. It obviously falls to the individual organisation as to how they work with the system. At Beenleigh or the surrounding area there was obviously a decision made that you will go to court.

Ms Lloyd: Yes.

CHAIR: It may be different at the Gold Coast, for example. The workers down there may decide they will not go to the court, that they will just go to the watch house.

Ms Lloyd: That is right. It is around the partnership each organisation makes with the people in their funding region and what they see are the needs of the people.

Mrs McMAHON: Perhaps it might be useful for you to explain to the committee the bail supported accommodation service. When they were first announced there was a lot of hysteria generated, particularly in local communities where they were located. Could you outline how bail supported accommodation works in relation to the youth justice system and how that interrelates with court in the local areas?

Ms Lloyd: Yes, you are very correct. The first two were in Townsville. I know that there were issues identified and there was a big community outcry, and ours opened shortly after that. One of our houses is in the Carbrook area. Obviously they did not know this at the time of purchasing the house, but the house they purchased was used for a disability house and a young person who was in there did abduct a child in the street, so of course those neighbours were a bit cautious about us bringing in children who may have a criminal background. The other location was Logan Reserve, and they also had concerns because they felt that it was a nice, quiet area and they did not want those types of people in their area.

Because it is a partnership between Youth Justice and Anglicare and we are both onsite at the same time, we did neighbourhood meetings. We walked around and talked to each neighbour. We explained the program. Some of these kids have had to commit crimes to survive. We gave a guarantee that they would not be children who had committed murder. We talked about the fact that the kids who are coming generally will not have even gone through the court system so they have not been found guilty. They obviously have ended up in detention or the watch house as a result of something, but they have not been found guilty. We unpacked a lot. Then we did a lot of, 'Come and have a look at the house.' We have built quite good relationships with the neighbours. They come and have morning tea or afternoon tea when it is appropriate. If we have functions at the house they are invited. One neighbour helps with the chickens and talks to the kids around how to care for them. It has gone quite well. We have not had any negative feedback from our neighbours. When you look at the difference between Townsville and where we are, Townsville is a really small community and everyone knows everyone, so I think the attraction is higher for them. We are a bigger community and can get lost, but I also think it is around working with the neighbours and the community.

In both of our houses we are building yarning circles. We have connected with Bunnings, who have come and supplied all the workers and materials. We have connected with the elders, who come out weekly and talk to the children and staff. We have people coming in and doing programs, so they have worked quite well. Do young people commit offences while they are there? Sometimes. Do they leave placement while they are there? Sometimes. But you have to look at why they are doing that. When they are committing offences, is it reduced from being with us to being in support previously? What is the need? Often it is that social connection to their peer group because that is where they feel loved and supported. They have to learn to trust us and build that relationship, and that can sometimes take time.

Mrs McMAHON: How long are they staying in the houses now? You said originally it was six weeks.

Ms Lloyd: It used to be six weeks and then you had to leave. They always had to have a transition plan or a place to go. They can stay up to six months. I would not be able to say exactly, but I would say the average length of stay is now about 12 weeks.

CHAIR: That brings this part of the hearing to a conclusion. Thank you for attending and thank you for the value of the information you have provided to the committee.

Proceedings suspended from 2.25 pm to 2.53 pm.

CHAIR: Welcome back to the committee's public hearing for our inquiry into the Youth Justice and Other Legislation Amendment Bill. In case any witnesses were not present when I opened the hearing, I would like to remind witnesses that they should not mention any matters awaiting or under adjudication in a court exercising criminal jurisdiction. Witnesses should only refer to those matters where a verdict and sentence have been announced or judgement given.

McDOUGALL, Mr Scott, Human Rights Commissioner

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which the committee members will have some questions for you. This is the first time you have been here—

Mr McDougall:—as the new commissioner, yes.

CHAIR:—as the new commissioner for human rights.

Ms McMILLAN: Congratulations.

Mr McDougall: Thank you. Good afternoon, and thank you for the invitation to appear this afternoon. I will keep my opening remarks brief to give you the chance to ask some questions. We made the submission. There are a number of points I would make today that reinforce the points we made in the submission.

There is a need to increase the age of criminal responsibility to at least 12 and in the case of detention definitely to at least 14. I am aware of the media reports this week about the drastic reduction in the numbers in watch houses throughout Queensland. This is obviously great news. However, we have to take further steps to ensure this never happens again. Clearly, there is a need for a statutory prohibition on the extended detention of children in watch houses. This legislation is a great opportunity to do that.

In light of the disturbing levels of incarceration of Indigenous children in detention, it is critical that in the continuing review of youth justice laws the Queensland government finds a way to meaningfully engage with Indigenous families and communities to ensure they are properly engaged in coming up with solutions to youth justice issues but also ensure that diversionary programs are properly resourced. It has become quite clear to me in talking to police and also talking to mayors of Indigenous communities that there is a high degree of frustration that inadequate resources are put into diversionary programs so that there are very few options available—in the view of police at least—as alternatives to arrest.

The fourth point I would make is in relation to body cameras. I did hear some of the evidence this afternoon about the benefits of body cameras, and I guess it is fairly clear. However, given the obvious impact that body cameras would have on the right to privacy, I do think it would be very beneficial to include a statutory review provision within the legislation so that we do not leave it to chance. We should build in a review mechanism so that in two to three years time we can have a good look at whether there were any unintended consequences or whether the balance between the right to privacy and the other benefits that flow is out of kilter. They are my opening comments. I am happy to take any questions.

Mr LISTER: Thank you very much for coming in again. It is good to see you. Have you been able to access watch houses and conduct inspections and inquiries in your role?

Mr McDougall: Yes. Earlier this year I did attend the Brisbane watch house with the Public Guardian, the Ombudsman and the president of the Youth Advocacy Centre. I have to say that it was very confronting to see the numbers of children housed for prolonged periods in those conditions, yes.

Mr McDONALD: Thanks for being here. I note that you are seeking introduction of statutory prohibition on prolonged detention in watch houses. What do you consider as an appropriate maximum length of stay in the watch house?

Mr McDougall: I think that is something that should be determined after consultation with police primarily but also other stakeholders. I would have thought that 72 hours would be the outside limit. In terms of the impact on children, it is quite clear that the best practice would be to minimise their involvement in the criminal justice system completely or reduce it as much as possible. The reality is that some children will be charged with serious offences and will need to go into watch houses and they will need to be processed. However, the average time for doing that should not extend beyond 24 hours in most cases. If there was an outside limit of 72 hours, that would certainly protect children who, as we have sadly found out this year, have been subjected to horrendous conditions for weeks on end in some cases.

CHAIR: Historically, children were never kept in watch houses?

Mr McDougall: My understanding is that the police operations manual—I do not have the provision in front of me—was amended in March last year. As I understand, it did not have a strict time limit within it. Having spoken to police, my understanding is that there was a very strong culture within watch houses that children would be released as soon as possible but definitely within 48 hours and if you were coming up to that second night in the watch house they would move heaven and earth to ensure the child was out of the watch house. We have gone from that situation to a situation where children are being housed in watch houses for extended periods. In this day and age, that should not be happening.

CHAIR: My understanding was that, historically, the way the system worked was that, for example, if a juvenile were picked up at two o'clock in the morning and had to be remanded or held overnight they would be taken by a police crew from the watch house or the charging point to the youth detention centre and then there would be a separate crew that would go out and pick them up in the morning to bring them back to appear in court. What you are saying is that, because of that amendment in March, that protocol just stopped?

Mr McDougall: Yes. I would defer to the experience of other people.

CHAIR: That is okay.

Mr McDougall: And your next presenter.

CHAIR: The next presenters will be well across all of that.

Mrs McMAHON: In your submission you look at taking into account Aboriginal and Torres Strait Islander cultural considerations. You have the two recommendations from the Pathways to Justice report about the inclusion of consideration of cultural background when looking at bail and bail conditions. From a practical application point of view, when someone is making the decision about bail, what things would they need to be taking into consideration to be culturally inclusive?

Mr McDougall: Again, there are people who are much better placed than me to respond to that question—obviously Indigenous representatives—

Mrs McMAHON: To comply with our human rights obligations.

Mr McDougall: Yes. In the Human Rights Act there are cultural rights specifically recognised now. I have heard of stories of Aboriginal children from remote communities being moved long distances—to Cleveland in Townsville and then long distances to Brisbane—with very little or no access to their families. Obviously, that has a huge impact on them and their ability to maintain cultural and kinship connections. Moreover, police should be able to take into account cultural considerations when they are considering bail. One of the recommendations we made is that that should not be limited to community justice groups. In reality, community justice groups are very poorly resourced and are just not in a position to respond to those sorts of urgent requests. I would strongly endorse the recommendations made by the ALRC in that report.

Mr LISTER: Mr McDougall, you referred to the case of detaining children in the Barwon adult prison and how this constituted a breach of their human rights. Could you tell me a bit about the implications of the Human Rights Act in this instance?

Mr McDougall: The Human Rights Act takes effect on 1 January next year. The right that most obviously is engaged by detaining children for extended periods in watch houses is section 30, which is the right to humane treatment when deprived of liberty, which is sourced from article 10 in the ICCPR. In the Victorian case of certain children, two Supreme Court judges found that the conditions in Barwon adult prison would constitute a violation of article 10.

Another relevant article is article 7, which is protection against cruel, inhuman or degrading treatment. It has a higher threshold than humane treatment. The important thing about section 30 is that it creates positive obligations for the government to ensure that children are treated humanely when they are deprived of their liberties. That goes to the conditions they are detained in. Obviously in the watch house, as I pointed out in the submission and as the Youth Advocacy Centre has pointed out, that includes limited access to fresh air, proximity to adult offenders, limited access to family visits, limited access to physical exercise, limited access to health services and education.

Having visited the Brisbane Youth Detention Centre a couple of weeks ago and having visited the watch house, I can tell you that the conditions are starkly different. As I said in the *Four Corners* report, if we find on 1 January that we still have children detained for extended periods in watch houses, it is going to become a question of: can that be reasonably and justifiably justified? To do that you require a proportionality assessment, so you have to go to section 13 and look at the factors. The

factors in section 13 include 'what were the reasonably available alternatives?' That is where we are going to look at what work has been done to ensure children are kept out of detention, kept out of the watch houses.

As I said earlier, it is great news that we have been able to drastically reduce the numbers in the watch houses. It is important that all efforts are maintained to ensure those numbers stay at zero if we are going to be in compliance with the act.

Ms McMILLAN: In relation to making sure that children are not kept in the watch house, when we have young people who are proposed bail and their family circumstances are complex, what is the alternative? How do we manage that?

Mr McDougall: Yes. I would not pretend for a moment that this is not a complex issue that has plagued state governments throughout Australia, if not the world, for decades. There has been a significant investment by this government in youth justice. I think there might be some dispute as to where that investment should be allocated. Obviously, there is a difficulty in ensuring that the children who are detained are detained in settings where their human rights are met. There is also a tension in ensuring that there is significant investment in non-custodial initiatives—investments in families and communities, investments in ensuring that children do not become disengaged from education. People like Mick Gooda will tell you that the No. 1 determinant of youth offending is disengagement from education.

To give credit to the government where it is due, there is a lot of good work being done by a lot of good people within the department, within the police and within the community. I think it could be coordinated in a better way. There probably needs to be a further injection of resources. These things are expensive. Building new detention facilities is incredibly expensive. I think the Productivity Commission has already pointed out that it is a much better investment to invest in the community than in detention facilities.

Yes, it is a complex issue. We have become inured to statistics like 70 per cent of children detained in custody are Indigenous. We should never accept that. There is ample justification for significant investments by governments in addressing this issue and investing in communities and investing in crime prevention.

CHAIR: That brings to a conclusion this part of the hearing. I thank you for your attendance and thank you for your written submissions.

BARTHOLOMEW, Mr Damian, Solicitor, Youth Advocacy Centre Inc.

WIGHT, Ms Janet, Director, Youth Advocacy Centre Inc.

CHAIR: I now welcome representatives from the Youth Advocacy Centre. I invite you to make a brief opening statement, after which the committee members will have some questions for you.

Ms Wight: Thank you for the opportunity to be here today. Our submission, as you would have seen, is directed towards the bill itself and the provisions that are there. We understand and have read that other people have raised a number of other issues around the youth justice system and many of those we would endorse. We would see what is in the bill today as extremely useful in terms of the bail provisions, but we would not see this as, therefore, a complete answer to how we should work with young people who find themselves breaching the law.

We would be looking forward to the review of the Youth Justice Act, which we believe will be happening in the near future, where there will be a more comprehensive investigation into how the system works and how it works for some of our most vulnerable and disadvantaged people. As I said, whilst we would support the bail provisions, because we feel that they assist in facilitating bail, we need to be clear that holding young people in custody is a last resort—both on remand and on sentence—and that there are very good reasons for that. Mainly, we know that being in detention can be criminogenic in itself.

If the aim of our system is to have young people back into society in a way that integrates them and helps them to become good and contributing members of that society, we need to focus more on assisting them to do that. Detention does not provide an environment for that to happen. You heard Mr McDougall speak about the detention centre being a much better environment than the watch house. Obviously, we would agree with that—the watch house is absolutely no place for children and young people—but the reality is that neither is a detention centre. Young people need guidance, care and support, particularly those young people who come from backgrounds of significant dysfunction and challenges in their lives.

We do not say that from a do-gooding or a bleeding heart perspective, which is sometimes what we are labelled as. It is actually quite evidence based and research based. Whichever way you look at it, economically or socially, it is better for our community that we put in place those responses that we know will be best able to assist, rehabilitate and support our young people to get their lives in order, and certainly we would be asking that any review of the youth justice system would take that into account.

In particular, we consider that raising the age of criminal responsibility is fundamental to that review. Certainly for children aged 10, 11, 12 and 13, we have to ask the question: why are we criminalising them? Yes, they might understand their actions are wrong, that they are being naughty or however they might describe it. That does not mean that they understand the law, the legal system and the implications of that. We do not teach our children about the law and the legal system and what that all means. I find it quite interesting that we have no formal way of properly educating our children about either the law or indeed our parliamentary system—the things that fundamentally underpin our society and civil society.

Particularly for that younger cohort, we would say there absolutely needs to be an alternative way of working with those young people. We do not say, of course, that if they commit an offence, or what would be regarded as an offence, that should not be addressed. Obviously it has to be addressed. The question is: what would be a more appropriate way to address those younger children?

What we also know is that the younger a child becomes involved in the legal system the more likely they are to remain in it, so addressing those issues and those questions of why and how they are coming into the system are really critically important. Also critically important is support of the family, and I think that is sometimes overlooked. At the Youth Advocacy Centre we have not only a worker who supports the young people themselves in terms of turning their lives around but also a worker who is supporting families, particularly for that younger cohort. If you can get the family and the young person working together, if you can rebuild those relationships and if you can work with the family to better support their young person, that can also have significant positives for the community and therefore an impact of reducing youth offending.

CHAIR: Damian, do you want to address the committee?

Mr Bartholomew: Not particularly, but only perhaps to endorse what you have heard many times today and most recently from the commissioner—that is, we also would support there being some insertion of a statutory prohibition around young people being detained in the watch house.

CHAIR: To go back to the question that I asked the Human Rights Commissioner, is it correct that children were simply not kept in watch houses in the past?

Mr Bartholomew: Essentially that is true. Generally if it was after midnight, young people probably did stay in the watch house until the next morning. If they were going to court the following morning, usually the practice seemed to be that they would keep them rather than take them out to detention in the very wee hours of the morning. Certainly if a young person was arrested before eight o'clock at night, the practice was that, yes, they would go to the detention centre and then be brought back to court the following day. Twenty-four hours was really the watch house protocol which Janet was fundamental in implementing in early inceptions. Then it was reviewed in 2006 and we then adopted that provision. There was some understanding in relation to some rural areas that that was not always going to be possible and so they were held there for longer in those particular circumstances where transport was not viable.

CHAIR: The commissioner mentioned that something occurred in, I think, March which then meant that juveniles were being housed in watch houses. Sorry, but that was an amendment to the police operations manual. Are you able to expand on that?

Mr Bartholomew: I cannot expand on how that process happened. We were not consulted and certainly it was not something that was put to the stakeholders in the youth justice sector prior to that occurring as to the exact reasons that needed to occur. Certainly what we observed was that previously there had been significantly larger numbers of young people being held at the detention centres and then what they called the capacity number, so that they could no longer be accepted to the detention centre, seemed to be reduced. I have been working in this area for 25 years and have been in the detention centre many times. The numbers certainly have been significantly higher than they were in April of this year, but suddenly they were saying the detention centre was full and could not accept any more and consequently they were now being held at the watch house.

Mr LISTER: Thanks, Mr Bartholomew and Ms Wight, for coming in. In your submission you express your concerns about the treatment of children in watch houses. When did you first bring your concerns to government?

Ms Wight: I think as soon as we were aware of it. We have certainly been talking to the department over a significant period of time—as soon as we became aware that watch houses were being used on an ongoing basis. I honestly could not give you a date, but as an advocacy agency obviously that is something that we would be aware of and raised—

Mr LISTER: Do you mean years or months?

Ms Wight: No. This has only been a matter of months. In the 1990s we did run a campaign around the use of the watch house to detain children. At that point our concern was that children were being held for maybe 48 hours and our concern was that police who should have just been taking a child from Brisbane down the road were choosing to not do that. We find ourselves in a very different situation here, where it is actually days and days rather than a couple of days. This present situation has been a matter of months rather than years. This is something that, as Damian explained, has happened most recently as a result of apparent capacity not being available at the detention centres. We believe that that has something to do with some security upgrades as well with beds being offline that might otherwise be available.

CHAIR: My question goes probably to the workability of funding in relation to when a person is taken into custody. My understanding is that a person is taken into custody and then every effort has to be made to find a lawyer and a parent or guardian or carer. My understanding is that there are limitations in the act or in the regulations that would enable, for example, a watch house keeper to contact anyone outside of Legal Aid—that is, it would be limited to Legal Aid unless the regulations are changed. Am I drilling too much into the detail?

Mr Bartholomew: I understand that it is the definition of the legal aid organisation in the Police Powers and Responsibilities Act, which would include a legal aid organisation. We have some concerns in relation to that definition, and obviously our organisation and others would like some clarity to ensure that would include other legal service providers that are able to provide legal services to young people.

CHAIR: Right, because that is something that has been identified as something that, to make it workable, would need to be amended.

Mr Bartholomew: I think it is the intention perhaps that it might include organisations such as ours. There is also some concern as to that definition of what a legal aid organisation is and the definition section within the act in how it is defined. There would certainly seem to be some benefit in enhancing that and clarifying that it is to include—

CHAIR: Organisations such as yourselves?

Mr Bartholomew: Exactly.

CHAIR: My understanding is that trying to get hold of a Legal Aid lawyer after a certain time at night is near impossible. Is that something that you do not want to comment on?

Mr Bartholomew: Legal Aid has in the last two years provided the Legal Aid hotline, which is a new introduction provided by funding, as I understand it, from this government as part of the packages at the time that 17-year-olds came into the youth justice system. They do provide a legal advice service by telephone until 9 pm during the week, and I understand their hours over the weekend have recently been extended. However, there is no service provision after 9 pm and that service provision from Legal Aid is by telephone. The Aboriginal and Torres Strait Islander Legal Service also provide a telephone service and have a greater capacity to provide field officers and, as I understand it in some situations, solicitors to attend at police stations as required.

Ms McMILLAN: If we cannot access parents or a significant other, what should happen? We cannot release them on bail—or should not—unless we are able to ensure their safety. Can you talk us through how that might look?

Mr Bartholomew: I think what is important is to ensure that in fact parents are being contacted, and there is a difficulty of course for those situations where parents are not contactable and nobody else is able to be identified. Certainly, Child Safety after-hours services need to be available and need to ensure there is some capacity to accommodate young people where, for whatever reason, their parents are not able to be contacted but they would not otherwise be held in the watch house or be denied bail. There should be some availability that is provided through Child Safety Services or through Youth Justice to ensure there is an accommodation facility that is available. It is also reasonable that Youth Justice would be following up in relation to those parents who were not able to be contacted when their child was being apprehended and was in custody at a subsequent time, so it should not just be left unresolved.

Mrs McMAHON: In your submission you address the issue of information sharing. As always, it is best practice that you get the consent of the person whose information you are seeking. This obviously becomes problematic when the person consenting is a child, because ordinarily a child's consent might not stand up to the rigours of releasing information. In the context of a child in a watch house where the person deciding bail may need to contact Child Safety Services or Queensland Health to be able to do a full assessment, is the consent of a child sufficient, because ordinarily a child's consent needs a parent co-sign?

Ms Wight: To be honest, there is absolutely no problem whatsoever in getting the consent of the child. If we can put a child into a youth justice system, prosecute them and hold them accountable before a court at the age of 10, then we cannot then say that they are not able to provide a consent to something else that is happening to them. We cannot have it both ways. This is one of the fundamental problems that we have within our community. There is a real tension between regarding children as children and not competent, therefore, to do things and then giving them responsibility for their actions pretty much to the same extent that we do to adults.

Our view as an organisation is that we take direct instructions from young people. We assess whether they are Gillick competent. That means that we talk to a child, we find out whether they understand what we are saying to them and we provide them with the information and the choices they have in a way which is meaningful and understandable by them. If they are able to do that, we are able to take their instructions. They are able to give us consent. If our analysis is that that child—and this happens from time to time—is not able to understand what we are saying, there appears to be an intellectual impairment or they are not comprehending what is going on, then obviously we would need to refer them to an organisation or support that would be better able to assist or make those decisions on their behalf. Essentially, our argument would be that if the child is in the system we have already made a decision, most likely, that they are able to make choices so they should be able to make a choice around consent as well.

Mr McDONALD: Janet and Damian, thanks for your attendance today. In your submission you said that the current situation was a crisis. Have you been able to visit the watch houses and see for yourself the children being held on remand?

Mr Bartholomew: I have obviously seen them in my role as a solicitor taking instruction from the young people. Yes, I have been able to see them in the visits area, where all legal practitioners access their clients. Yes, I have seen them there and I have spoken to them about their conditions. Our chairperson, as the Human Rights Commissioner indicated, was given the opportunity of an overall view of the entire watch house, or where young people were being held.

Ms Wight: I have also visited. I was invited by the manager of the watch house to attend. He showed me through the entire facility and explained to me what their general procedures were and those sorts of things. Yes, I have seen them as well.

CHAIR: That brings to a close this part of the hearing. I would like to thank you for attending. I also thank you for your written and oral submissions to the committee.

VARDON, Ms Cheryl, Principal Commissioner, Queensland Family and Child Commission

CHAIR: Good afternoon. I invite you to make a brief opening statement, after which the committee members will have some questions for you.

Ms Vardon: Thank you, Mr Russo. Thank you, committee members, for inviting the Queensland Family and Child Commission to the hearing today. I would like to start by acknowledging the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. I would like, in my brief opening statement, to speak to two main areas. I will speak to some of the issues raised in our brief submission to the bill and I will speak to the committee in detail about the role of the Queensland Family and Child Commission in terms of youth justice more broadly. I think that is important information. We have listened to the comments of other agencies today and commend the work that each of them is doing.

Just briefly in terms of our submission, in general we support the policy objectives and intent of the bill and the consideration of further safeguards for children and young people. We have mentioned a couple of those. One is the timeliness of decision-making and a reduction of barriers to bail, and I think others have canvassed that as well. The second is the oversight of watch houses through the Youth Detention Inspectorate. We adamantly maintain that no child should be detained within a watch house. The third point that we made in our submission was to do with the minimum age of criminal responsibility. I am more than happy to speak at further length to those particular issues raised in our submission.

To speak more broadly about the role of the QFCC in relation to youth justice, we are a systems oversight agency and we work in partnership with stakeholders and other agencies that have specific responsibilities in terms of individual children or individual issues. We have that broad oversight of systems and it is always a multiagency approach to systems. In terms of youth justice, I think we see a great focus on the youth justice department, quite rightly, and on previously the child safety department—currently the child safety department too for a large number of children. In fact, the work of keeping kids out of detention, if they have to be in detention, and to keep them as safe and as well as we can demands a multiagency response. It demands input from Health, Education and a number of other agencies including Housing. Our oversight responsibility is broad, and that oversight of systems is in our legislation. There are a number of responsibilities in that that I can come back to.

Recently, in recognition of the QFCC's oversight responsibilities, Bob Gee, the director-general of the Department of Youth Justice, wrote to me asking for the QFCC to be involved in continuing oversight of the development of the department as it got underway and to monitor the reforms underway. I have responded to him and I have said that we would be very pleased to be involved in that. The QFCC, as part of our legislative responsibility, will be embedded with the youth justice department and will work closely with them to monitor, guide and support the reforms as they are underway and report back at regular intervals. That is part of our role. In doing that we would certainly consult with, as I said, all other agencies, including those with responsibility for individual children and individual issues.

To quote one thing from the director-general's letter to me, he wishes to focus with us on continuous improvement to support the best outcomes for children, young people and the community who have brushed up against the youth justice system. I have written back to him saying that we are very pleased to be able to pursue and participate in that work, that we would take a multiagency approach and that in all of our oversight work we would want to focus on the child or the young person right at the centre and their wellbeing, with a particular emphasis—I cannot overstate this—on the over-representation of Aboriginal and Torres Strait Islander children in the system.

In working towards the successful implementation of various aspects of the strategy and the legislation as it is enacted, we want to hear the voices of children and young people and we also do that through our work. I am very happy to expand on that. We at the QFCC are well known for our oversight work and we have been very effective in bringing about systems change and systems responsibility with other agencies, working collaboratively. I will not point you to that body of work, but we intend to continue that. Doing that work with Youth Justice I think is going to really point to the way in which the return on investment, if you like, in terms of outcomes for children and young people is really at the forefront of our minds. It is not just a business putting money in; it has to be evaluated and measured in terms of better outcomes for children and young people. That is what we are aiming to do.

We have a particular interest—I certainly have—in the education needs of children and young people who have come into detention or are part of the youth justice system, and their health as well. I think other agencies have touched on that. We have well-established connections with stakeholders across the youth justice sector and we will capture a very broad perspective in carrying out that work. I will pause there—I think I have had my five minutes—and answer questions.

Mr LISTER: Welcome back, Commissioner. It is good to see you again. You were consulted in the drafting of this bill?

Ms Vardon: Yes, we were certainly consulted. There is a regular meeting of stakeholders to consider issues around youth justice, and one part of that was for a small group to be hived off, if you like, to go through the bill in detail and we were certainly part of that. I was not but the team was.

Mr LISTER: The QFCC?

Ms Vardon: Yes.

Mr LISTER: In your submission you recommend that the youth justice inspectorate be given the power to conduct inspections at watch houses as well. I was surprised to see that that is not the case now. Did you make that recommendation during the consultation process?

Ms Vardon: Yes, we would have. I think that has always been our position. I am sure it has always been our position that we think highly of the work of the inspectorate and would like to see that extended. That may or may not roll out, but certainly as we are working closely with the department in this area to ensure success that is one of the issues that will come up and we will continue to pursue.

Just getting to the watch houses for a moment, I visited the watch houses last week and I was struck by one of the young people saying to me, 'Here's another one visiting.' They feel constantly oversighted and looked at. I think we have to be very careful of oversighting but not kind of invading the privacy of the kids sometimes. There are a lot of oversight agencies involved in this area, each with clear and distinct roles. Ours is a systems role. We just have to be careful of maintaining those roles and sticking to our briefs, I think.

CHAIR: Your recommendation is that there be an amendment to allow you to inspect watch houses. Are you currently allowed to visit youth detention centres?

Ms Vardon: Yes, I visit whenever I wish to. In terms of good manners, though, I always set up a time. I visited Brisbane quite recently, in fact, and was very impressed with the education offerings there. I have certainly been to Cleveland a couple of times and the watch house over the past year or so, probably three or four times.

CHAIR: I was alluding to the accommodation facilities that are being provided to juveniles who are granted bail who will hopefully no longer be in the watch house. They may not be in detention but may be in some community facility. Would the amendment to the regulation allow you by invitation to visit those places?

Ms Vardon: Yes, we can certainly visit. As I said, I do that by arrangement with, in this case, the youth justice department. We have never been denied access or denied information.

CHAIR: Anglicare may be running a bail program where youth are housed for periods of time. Are you able to visit those facilities?

Ms Vardon: Yes.

CHAIR: You do not need an amendment to the regulation to allow you to do that?

Ms Vardon: No. There are different levels of visiting. If you are visiting to inspect and report back then that might be different, but the way in which we visit and talk to children and young people and the staff is more about a two-way process of gathering and sharing information and hearing what the kids have to say and supporting the staff in particular.

CHAIR: These would be non-government organisations?

Ms Vardon: To be honest, I cannot imagine being denied access, but we would always go through the proper channels.

CHAIR: Yes, but it will hopefully become more commonplace that whilst juveniles are on bail they are in these types of facilities?

Ms Vardon: Yes, I agree. I visit many facilities that are run by non-government organisations. Just last week I visited a therapeutic residential care centre with some thoughts about children in community facilities attached to Youth Justice. In fact, we are very welcome.

Mrs McMAHON: Going further with the recommendation that you have made about the Youth Detention Inspectorate, I must admit that prior to today the committee had not heard too much about the Youth Detention Inspectorate. For the benefit of the committee, could you elaborate on how this organisation is run, who it comprises, what it generally does and what powers it has, if any?

Ms Vardon: I wish I could recite the powers for you, but I would probably need to swat on that a bit. We have received regular reports from the Youth Detention Inspectorate, which is attached to the department. It is simply a body that is required to visit and provide reports back to the department and other organisations on the status of children's health and wellbeing in the centres. I think it perhaps has its light under a bushel—I agree—but it is something that we would encourage. It may not be in exactly the same structure as it is now. It is certainly a valuable part of the process. We look at their reports carefully.

Mrs McMAHON: I am cognisant that this is a body that I have not heard too much about before and theoretically it has been out there doing its job for the last couple of years whilst this issue has built up. I wonder whether it had the power to address or raise these issues earlier.

Ms Vardon: It may have, yes. Which issues are you referring to in particular?

Mrs McMAHON: In relation to the increase in the number of children in watch houses but also the overcrowding in the youth detention centres that has necessitated or caused this.

Ms Vardon: I think all oversight bodies, agencies and entities have monitored the increased demand and the issues that have arisen. The inspectorate is not the only one that would have been keeping an eye on that and monitoring that.

CHAIR: Jim, do you have a question?

Mr McDONALD: No, Mr Chairman, I am satisfied.

CHAIR: Steve, do you have a question?

Mr ANDREW: No, Mr Chairman. I am good.

CHAIR: Mr Lister, do you have any questions?

Mr LISTER: Nothing more, thank you.

Ms McMILLAN: In your submission you mention a reduction in the number and types of offences that children aged 10 and 11 could be charged with. Would you like to expand on those?

Ms Vardon: On the nature of the offences?

Ms McMILLAN: Yes, and the scope.

Ms Vardon: That is certainly tied with the age of criminal responsibility and the need to understand that children as young as 10 may be, as one of the previous speakers mentioned, extraordinarily naughty from time to time. We must be careful to really assess what they have done and take into account not just their family circumstances and their peer group but also their brain development.

We know that 10-year-olds can take risks. We know that 10-year-olds need to have boundaries set for them. They need a good parenting background, as has been said previously. We know that some of the offences—I could think of a couple; damaging property would be a fairly common one, I would think—may not be readily understood by children as young as 10 as something that is a crime. It is that definition of what is a crime. I think the age of criminal responsibility is an interesting issue and something that we are certainly keen to pursue.

I go back to my education background and think about when children in secondary school suddenly—bingo—become responsible for their actions and there is a bit of a breakthrough. It is usually around the end of year 9—when they are 13½ or 14 or so—that an emerging sense of responsibility starts to happen in young people. I am told that for men that kind of brain development does not fully happen until 30 and for women around 24. This is serious research. A 10-year-old, for heaven's sake, needs boundaries. They need looking after and they need not rehabilitation but some firm messages and training about what is acceptable and what is not acceptable to become a functioning, independent member of society. In terms of 12-year-olds, it really depends on the 12-year-old and we would, at this current time, expect courts to take into account the whole range of circumstances in relation to that child.

CHAIR: Thank you for your attendance today and thank you for your written submission and submissions to the committee. That brings to an end this part of the hearing.

SANDERSON, Dr Wayne, Team Leader, Justice Reinvestment Project, Australians for Native Title and Reconciliation Queensland Association Inc.

CHAIR: I now welcome Dr Wayne Sanderson. I invite you to make a brief opening statement, after which committee members will have some questions for you.

Dr Sanderson: Thank you, Chair and committee, for the opportunity to meet with you. I acknowledge the traditional owners of the land on which we meet. I pay my respects to the elders past, present and emerging, and especially those who we in ANTaR know—many of them—whose lives are flourishing and want to give to our society.

I am just tiding up my bureaucracy and I am wanting to check that an attachment that I sent—I named it as an attachment to my submission—was in fact taken note of.

CHAIR: We have seen that.

Dr Sanderson: That is seminal in ANTaR's recent interactions and engagement with many of the members of the Legislative Assembly of Queensland. After the 2015 election we had only just got together our initial evidence base of best practice in working with young offenders and running a youth justice system in a First World country committed to liberal democratic values, with social equity being very important, and a prosperous country. Yes, I am talking about Australia and of course I am talking about Queensland in particular.

We did a lot of domestic and international research on that, working with the balanced justice campaign—that loosely knit alliance of professionals of various kinds. We were able to put together those 12 objectives—they are on the back of this document—the call to parties, and go out and have respectful conversations with newly elected members of state parliament. I do not know who here might have been in those conversations. I hope that some of you were. We set out to visit everybody and to in fact call on our allies and our members around the state to go and knock on the door of their local member. We resourced them, informed them and assisted them to do that. We got some astonishing responses out of that—frank responses in the local context—and in many cases party considerations and partisan concerns seemed to be to one side. We learned a lot from that. We appreciated it very much.

Having said that, I want to specify a couple of things here which developed some matters that I included in the submission and hope that they will be of assistance to the committee and others. There has been some reference to the minimum age of criminal responsibility and various people's considered opinion on what that should be. Our group formed a view on this just before the 2015 election. That group included two paediatricians, a couple of adolescent mental health specialists—and I am one of those, but we had a psychiatrist as well—and several criminologists who have given close attention to these things, including one who is in fact managing the Pathways to Prevention database at the Griffith Criminology Institute. You are probably aware of that. If you are not, I hope you will be soon. Ross Homel and his colleagues there were friends and contributors to our work.

We are not talking about Scandinavia and we are not talking about progressive parts of Western Europe; we are talking about good old Queensland. We were asking the question all the time: is there anywhere that is really like Queensland demographically, culturally, politically, economically and geographically maybe? There is. It is British Columbia. Forget the climate; the climate has nothing to do with this. It is totally different of course. Consider the Province of British Columbia in Canada today: its demographic make-up; its economic endeavours—there is a lot of mining there and so on; the fact that its only metropolis is right down in one corner of a vast expanse of province, as is the case here, and that there are several significant regional centres; the cultural values; the social values; and the very significant Indigenous presence—in fact, the over-represented Indigenous people in British Columbia and not just the native American, who are main Indigenous group, but also the Inuit right up in far north. They are in many ways very comparable demographically, socially and culturally and in some ways politically with the state of Queensland today.

The good news about that is that they have tried and tested several of the types of youth justice interventions and processes that we have been hearing about here today. I will not go on any further about that, except to point you to two pieces of substantial research that are really worth looking at, because it is applied research. It is not people sitting in libraries and at desktops. They build productive coalitions, demonstration projects in the community, with government and also with the John Howard Society. It is Canadian. It is named after a Quaker prison reformer from England a long time ago. That society is a civil society organisation—sort of like ANTaR—run largely by volunteers. They are quite assertive in working with government and others in bringing about restoration and rehabilitation projects

for people who have been with the law. My concluding opening remark is to reference the Youth Criminal Justice Act handbook for the province of British Columbia. I have web references for that. It is a very rewarding—

CHAIR: Does the committee give leave for that document or flyer to be tabled?

Dr Sanderson: This is just a web reference for the title I just mentioned. Are you happy to do whatever with that?

CHAIR: Yes.

Dr Sanderson: The clincher for us on determining our view that we would take in ANTaR for the minimum age of criminal responsibility is 14. We were persuaded in the end by the national college of paediatricians. They have a lot to offer on this. A fair bit of it comes out of public health paediatricians in Queensland Health, in particular a cohort of them based at the Gold Coast doing very progressive and valuable work. I will leave it there, thank you.

CHAIR: In your submission you noted that 70 per cent of young people in detention are Aboriginal or Torres Strait Islanders. Can you expand on the sorts of problems facing young Indigenous people that can lead to their higher representation in the youth justice system?

Dr Sanderson: Of course, there are several categories and cohorts in there, but the big umbrella term is being outsiders, being disadvantaged to a very large extent—we would never want to minimise that—in our society. In the educational system there are difficulties and challenges. Yes, there are examples—strong ones—of good practice and success. The first Aboriginal District Court judge in Queensland was appointed last year. I know him quite well. He and others in his station in life who have had advantages and were able to take them tend to come from very loving and supportive families who are very responsible and every other thing, but there are so many who are outside all of that. A lot of them are in rural and remote areas.

I want to note here how that tide can be turned of being left out of things and living on the outskirts of nowhere, such as up on the cape, and the work of the Family Responsibilities Commission, which ran for about 10 years and was headed by retired magistrate David Glasgow, and the empowerment that happened in those five communities—four in particular and one was struggling. The thing is that they taught people through a peer group, encouragement, support and intelligent cooperative process. That is how it happened. There was nobody with a hammer, a big stick or something like that. It was done through relationships that had integrity and trust.

With kids in trouble with the youth justice system falling out of chaotic families, through my professional life I have been able to visit about four of the old DOGIT communities, which used to be reserves, and mainly Woorabinda, Cherbourg and Palm Island. It troubles me that people are left out of economic opportunity, that they have to just turn their lives inside out to get a kid through secondary school—and it will not be in the local community; it is going to be a big bus ride or a boarding school exercise. We still have not addressed those issues very well. I say 'we'. I am not the sort of person who pokes a finger at the government all the time and says, 'You have to do better.' I think that I and others have to be in this, too.

Mr LISTER: Thanks very much for your appearance today. In ANTaR's submission you state—

> … the government is urged to take the opportunity to review carefully all legislation which inhibits timely and efficacious joint actions and strategies.

This is in relation to information sharing. Can you suggest any low-hanging fruit?

Dr Sanderson: Yes. I think it has been grasped in Townsville. I think it is in progress. I am expecting there is going to be powerful learning coming out of this—probably already, but it will be progressive. Somehow it seems as though there were skilled and appropriate personnel representing all the major state agencies that were involved with broken families. As far as I know—if this is still the case—they chose their team leader and he is a police inspector. I think that is astonishing in a lot of ways, because in Townsville of all places the whole idea of Queensland police officers trying to work cooperatively with Murris for progress in community is a very contentious sort of idea going back, but it might be that I am just a bit too old. To be serious, I am encouraged by those sorts of opportunities for the relevant agencies and departments seconding with a good strong mandate for cooperative early intervention type of work and highly skilled resourcing and working in close cooperation—real teamwork, not bureaucratic stand-off and 'wait until I talk to my manager' and so on. I hope that more of it can be done.

Mrs McMAHON: Dr Sanderson, in your submission you weighed in on the use of body worn cameras. We have heard quite a few submissions today. You indicate that there are some positives in it but, overall, do you see that it is necessary? If not, what might be some alternatives?

Dr Sanderson: I confess to my own limitations on this one, because I personally have very little experience in that. I have asked around our circle professionally and I have not heard a lot back. Basically, I have said it and that is about all I have to say. In principle, I think it is worth doing, if only for evidence base and for keeping everybody honest. That could be a very naive view in some circumstances, but I am out of my depth there. I cannot go there.

CHAIR: Thank you for coming along. Thank you for your written submission. That brings the hearing to a conclusion. I thank all of the witnesses who appeared today. I thank all of our secretariat staff and Hansard. I thank the committee members. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public hearing for the committee's inquiry into the Youth Justice and Other Legislation Amendment Bill 2019 closed.

The committee adjourned at 4.09 pm.