T R A N S C R I P T

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Tuesday, 24 August 2021

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WITNESSES *(via videoconference)*

Ms Tania Wolff, President, and

Ms Mel Walker, Co-chair, Criminal Law Committee, Law Institute of Victoria.

The CHAIR: Welcome back, everyone. This is the Legislative Council Legal and Social Issues Committee's public hearing for our Inquiry into Victoria's Criminal Justice System. I am very pleased to welcome the Law Institute of Victoria's President, Tania Wolff, and Co-chair of the Criminal Law Committee, Ms Mel Walker. Thank you very much for joining us today.

As you know, my name is Fiona Patten, and I am joined today by Kaushaliya Vaghela, Tania Maxwell, Ed O'Donohue, Harriet Shing and Sheena Watt.

If I could just start by letting you know that all evidence taken today is protected by parliamentary privilege, and that is by the *Constitution Act* but also the standing orders of the Legislative Council. Therefore any information that you provide during the hearing is protected by law. You are protected against any action for what you say during this hearing, but of course if you were to go elsewhere and repeat the same comments, you may not have that same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As you are aware, this session and this hearing is being recorded. We have Hansard in the background. They will send you a transcript in the next few days. We would appreciate it if you would have a look at it and make sure we did not misrepresent or mishear you in any way. Ultimately the transcript will form part of the report but also will form the evidence towards this inquiry.

Again, thanks very much for making the time to be with us today. If you would like to make some opening remarks, that would be terrific, and then we will open it up for committee discussion. Thank you.

Ms WOLFF: Thank you, Fiona, and thank you, everyone, for the opportunity to appear today. As President of the Law Institute of Victoria I represent more than 19 000 solicitors, law students and affiliated people in the legal profession. Our appearance today draws on the work of our criminal law section members, who have direct experience of the criminal justice system in Victoria. I am also joined, as was just mentioned, by Melinda Walker, who is the Co-chair of the criminal law sector. We are really grateful for the opportunity to talk to you today. It is an area of significant importance to us and, we believe, equally so for the entire community.

I am here to advocate for change. We need to change the way that Victoria's criminal justice system addresses and responds to crime. Victoria's remand and prison populations are growing and will continue to grow unless significant changes are implemented. Our prison population is increasing at alarming rates—an 80 per cent increase in the past decade—and at a cost of billions. Of this prison population approximately 44 per cent of men and 55 per cent of women are on remand—in other words, people who have not been found guilty or been sentenced by a court for their alleged offending. This should be a concern for us all. And who are we imprisoning? We are imprisoning those most vulnerable in the community and continuing to do so at alarming rates. It effectively results in the criminalisation of poverty.

In 2015 the Victorian Ombudsman published a report on prisons with a summary of who makes up our prison population. It is those with substance abuse issues, the homeless, the unemployed, those with cognitive impairments and mental health issues and a disproportionately high number of our First Nations people. No wonder one of our former attorneys-general referred to prisons as our modern-day asylums. The Ombudsman's report called for a whole-of-government response, understanding, as does everyone who works closely with those who get caught up in the system, that we need to respond holistically to bring about an effective change. That requires a broader commitment that involves investment in education, in health care, in housing, in training and in employment.

Changes to our bail laws are certainly necessary to address a contributing factor to this growing remand population. The reverse onus provisions have resulted in more people spending more time on remand, interrupting opportunities which are essential to address underlying causes of offending and rehabilitation efforts. Detention should be a measure of last resort, whether it be through decriminalising low-level offences;

providing more sentencing options, including pathways to diversion; or treating addiction like the health issue it is. We have made good progress with the recent decriminalisation of public drunkenness, but let us not stop there. There is also bail and sentencing reform. We just need to do more.

Although we might hope that the motivation to reform in part stems from compassion, if that is not part of the equation, then efficiency and effectiveness ought to be. Judging the success of the current system by the data, the fact that almost one in two prisoners will return within two years should incentivise change. That means that prisons are not making us safer, and their spiralling costs may well mean, as we were warned in that report in 2015, that we may have to choose between prison beds and hospital beds. And in the context of COVID-19, reducing the numbers that we are seeing in prison has become an even more urgent matter, not to mention the significant backlog that we have all been reading about in the courts and especially in the Magistrates Court.

Young people and children are not immune from the flaws in our criminal justice system; they are being remanded also at unprecedented levels. We join many in the community in advocating for the age of criminal responsibility to be raised from 10 to 14 years old. A child should not be in prison. And if we keep this up, we will keep seeing them return as adults again and again, creating so much damage along the way. Our sentencing schemes need to preserve and safeguard judicial discretion. This means reviewing Victoria's standard sentence scheme and mandatory sentence scheme.

Other improvements can be made, from continuing the use of de novo appeals to strengthening the use of judicial hearings, to name just a couple. We know what works, and countless reports both here and elsewhere confirm it. We have to divert more people away from the prison system and into programs that will address the issues that are underlying their criminal behaviour. We need to draw on the knowledge base of therapeutic jurisprudence so that our justice system responses can actually be shaped by what people will respond to and to facilitate a healing rather than a harming effect. We recommend further expansion of specialist courts—we know they work—and funding initiatives that mainstream these practices within the court system and expanding pre- and post-offending services. A focus of this inquiry is also on judicial response. Judges and magistrates are drawn from the profession. We advocate for training and education, starting in law school and continuing throughout careers, in areas such as trauma-informed practice, cultural competency and mental health.

To summarise, the criminal justice system must change, but what is required is a holistic change. Albert Einstein's famous quote about the definition of insanity being doing the same thing again and again and expecting to get a different result is particularly apt in this context. If there is any COVID-19 silver lining, it is our preparedness to seriously look at innovative solutions. The time to act is now to reduce those being churned through the criminal justice system and returning again and again. We owe it to ourselves, we owe it to the community and to the generations to come. Thank you for your time. We can now answer some questions.

The CHAIR: Thank you. Thanks very much for that. I think you are echoing many of the submissions that we have already heard. There certainly seems to be some really general recommendations that are coming through. I just wanted to touch on initially the sentencing schemes and the fact that you were saying that we need to revisit these and rethink them. I am wondering if you could expand on that.

Ms WOLFF: In terms of the standard sentencing schemes and the mandatory sentencing, the general proposition is that anything that creates a cookie-cutter solution or a one-size-fits-all solution is problematic. In addition, anything that removes judicial discretion from the equation is problematic. We need to allow judges to use their expertise and their legal knowledge and their experience in being able to evaluate all the factors that are relevant to the offending. Now, that is not just the offending itself. That is not just the issue of the offending and how severe it is. It is all the factors that relate to the individual who comes before you. It is not an either-or proposition. You can have consistent and reliable sentencing, but you can also have a personalised response to the individual. Mel, did you have anything in relation to that?

Ms WALKER: Yes, absolutely. Can I first acknowledge the traditional custodians of the lands upon which we all meet, and particularly during a period of lockdowns throughout the state of Victoria I am appearing here today from that of the Wathaurong and Dja Dja people, and recognise their continuing connection to land and the waterways.

Can I also just take an opportunity as well to acknowledge those who work within the criminal justice system, particularly during the last 18 months and continuing. There has been a significant amount of innovation, adaptation, transition, and all have collaboratively worked together to keep our system going, whether or not that be in the interests of justice. We have all tried very hard to ensure that it is in the interests of justice, but there has been a significant struggle. I think there has also been a significant opportunity for that collaboration to really shine through, because we are all really trying to get the same result. Whether you be on defence or on prosecution, it is the right result, the right justice for the right people and acknowledging everybody who is involved.

In relation to mandatory sentencing I think that probably the most significant change was back in 2018 when there was a removal of circumstances which could be taken into account by decision-makers—compelling circumstances and exceptional circumstances in relation to minimum non-parole periods for certain offences. I will not go into all of the offences, but originally there was the consideration of youth, of whether or not somebody had no prior convictions and also the rehabilitation that they had undertaken. All of that has gone, and it has removed that discretion significantly from the decision-makers to take into account those things that really ought to be taken into account.

I think particularly with some of the more serious offending—and I understand the reasons as to why these amendments were made—the predominant age group in relation to this more serious offending is between 18 and 25. I think that you need to look at that, and also in the context of when the Sentencing Advisory Council who provided a report to you, *Rethinking Sentencing for Young Adult Offenders* in December of 2019, taking into account that the research suggests that a more supportive approach, such as counselling, mentoring and providing coordinated support, is the most effective way to foster young adults and deter them from that more serious, further offending. So I think that with the removal of being able to take into account previous good character and the rehabilitation particularly undertaken during a period of bail since the commission of an offence, you really need to now overlay that with the delays that have been caused by the pandemic.

Before I walked into this parliamentary inquiry I had an appearance in the County Court this morning. My client is in custody and does not have a court date for a trial in the County Court. So people are being remanded now, through no fault of any of us but by the situation that the pandemic has brought to us all, sitting in custody without a date to go to court. It is extraordinary, and it is extraordinary times and I think it is an extraordinary opportunity to have a real look at our criminal justice system.

So I would certainly invite the inquiry to have a really hard look at these circumstances which place a mandatory provision upon decision-makers that goes against all of those considerations of section 5 in the *Sentencing Act* to take into account somebody's plea of guilty, their personal circumstances, their lack of or their prior convictions and particularly the rehabilitation that has been undertaken, because isn't that what we really want to achieve at the end of the day? If it is about protection of the community and safety of the community, should we not then be concentrating or putting all of our efforts into the rehabilitation of an offender so that they no longer offend?

The CHAIR: Yes. Thank you. I think as you say, the crime stats tell us that for chronic reoffending the age of the first offence is one of the strongest indicators, so if we can stop them—get them when they are young. Kaushaliya Vaghela.

Ms VAGHELA: Thanks, Chair. Thanks, Tania and Melinda, for your time today. Tania, you mentioned regarding the 80 per cent increase over the last decade in the remand and prison population. My question is: how do we stop that growth while using the principles of deterrence, rehabilitation and justice? The second part to the question is: if you looked at the criminal justice systems outside of Victoria, is there anything that we can learn from them?

Ms WOLFF: Sorry, the last part of that was if there is anything from—

Ms VAGHELA: Yes, if you looked at the criminal justice systems outside Victoria, are there any lessons to be learned or anything that we could do?

Ms WOLFF: Thank you for the question. In terms of how do we address the increasing or burgeoning prison situation and prison population, I think all of the measures that we have been advocating in terms of reviewing sentencing and taking away things that actually increase the prison population but without dealing

with the underlying issues—you see people who are frequent flyers in our prison system again and again and again, and often you look at who gets caught up in the system. It is those who usually have lots of issues, complex issues, who come back, who have come from situations of deprivation or vulnerability or poverty or abuse or trauma or mental health issues. And as a community, rather than looking at those issues and looking at that individual and trying to support them earlier on, we rely on prison to actually do the trick and it does not. That is what the statistics and the facts have been showing us again and again and again.

What we tend to do as a community is also respond really quickly to incidents which are confronting and horrifying incidents. So, in 2017 when James Gargasoulas went through Bourke Street, we had a response which was that people were feeling desperate, sad, shocked, fearful, and that is a natural and a human reaction to this, and the government felt that they needed to respond, but the response actually created so much more harm. We have to learn not to respond in such a way to dramatic incidents and to actually look at it carefully, to analyse the issues that brought the person to that situation. In Norway in 2011 when you had the horrendous episode with Anders Breivik killing 77 people including 67 children in the most horrific incident, the Norwegian government did not say, 'Let's now change our legal system; let's now change basic presumptions'. Let us not change all of that. They actually recognised that this was an unusual situation. And interestingly, very important people within the government were saying things like, 'We as a society have missed so many opportunities along the way to actually address this issue. We should've come in at the child protection system a lot more carefully to support this man who had no support from his mother, who had a very complex childhood and background'. It was an intergenerational trauma situation. We need to become more sophisticated and nuanced in the way we respond to things.

Increasing specialist supports and their application is one of the ways of doing that, because we actually know that works. Dealing with some of the crimes, the low-level crime, in a different way, in a more intuitive way, in a therapeutic way and in a supportive way will actually stop that person from coming back. They are not arch criminals, and we are not going to be creating a situation of problematic safety in the community by having them dealt with in a more human and a more compassionate way that will actually address their offending. Mel, did you have something to add to that?

Ms WALKER: I think the elephant in the room really is that the changes in the bail laws as a result of Bourke Street in 2017 and 2018 are the single greatest contributor to the increase in our prison population at the moment. I know that Tania has provided some statistics, but the law institute meets with Corrections on a monthly basis. And I can tell you that on 17 August of this year there were 7118 persons in custody—178 more than last year—and 44 per cent of those prisoners were on remand. Our bail laws, as they stand now, are used as a punitive crime prevention tool and neglect the fundamental rights which are enshrined within the Act itself. The development of COVID jurisprudence during COVID has been an extraordinary insight into the rejection of an acceptable delay. It is also a rejection of the inability to provide services and rehabilitative programs to persons whilst they are in custody. The bail laws need to change, and they need to change now.

How best to balance the protection of the community and the presumption of innocence really is the question. And it must be acknowledged that pre-trial detention increases the severity of the circumstances which underlie factors which lead to reoffending, such as a person may lose their income, they may lose their home, there is a breakdown of relationships and family support systems, there is a destabilising effect from somebody going into custody. It creates a toxic recipe for criminalising those who are in poverty, and the refusal of bail increases the criminogenic causes of offending in the first place. The lack of or the inability to provide proper and properly funded bail programs to reduce reoffending is crucial at the moment.

The CISP program—and we have heard that there is an intention to withdraw funding for the youth justice bail support program for young adults. If that happens, from my experience within the criminal justice system for almost 30 years, that will be an absolute tragedy. Those young persons who need that support at the time of offending and during a period on bail—the amount of work that can be undertaken while you have that person under your supervision is extraordinary. The tests for the bail—I am sure you understand them, but I am not sure whether or not you understand the real effects of somebody who has committed a very minor offence being really quickly elevated from a compelling reason into an exceptional circumstance. I invite you to read the decision of Judge Croucher in *Hall v. Pangemanan*, 2018, VSC 533. This is a man who has a mild intellectual disability and other disabilities. He is permanently deemed to be unfit to plead. He is found drunk in a public place. He is on a curfew because he was on bail for being drunk in a public place. He is charged with being drunk in a public place and contravening a conduct condition of bail. He is then accelerated into an

exceptional circumstance just by virtue of section 4AA of the *Bail Act* and he now has to prove exceptional circumstances. He was placed into custody. He had never been placed into custody before. He is placed into custody for four days. He is refused bail by the Magistrates Court and he has to go up to the Supreme Court in order to make that application, and his application is granted.

'Exceptional circumstances' is the highest threshold for granting bail that the law imposes in this state, and it is the same threshold that is applied to persons who are charged with murder, terrorism or other serious offences. So when a person is unable to reach that threshold and their bail is refused we are not looking at the offence that the person has committed, we are looking at whether or not the person has reached that threshold. And even if they have reached the threshold, we then look at risk. A number of people, particularly women, are refused bail because of risk, and it is risk of lower end offending rather than the more higher end offending.

The CHAIR: Mel, I am just getting conscious of time. I know some the other committee members have got questions, but we are hearing you loud and clear. Thank you. Harriet.

Ms SHING: Thank you very much, Chair. Thank you for attending today to provide us with your perspectives. I have to leave at 11.00, so I am going to ask a very quick question about the exercise of judicial and magistrates discretion—I think you referred, Tania, to expertise, legal knowledge and experience coming together to inform the way that discretion is exercised. I am wondering how training and the enhancement of literacy around vulnerable cohorts can actually shape the exercise of discretion working within the system that we currently have and to what end that might be delivered to identify the underlying factors and profiles of specific offenders, offender groups and cohorts. Thank you.

Ms WOLFF: Thanks, Harriet. I will try and be very quick with my answer. It almost follows that if one is going to be educated more broadly and increase an awareness of the unique circumstances of a broad section of the community—which they might not have been aware of in the past because of their own circumstances, upbringing or experience—that can only assist. And I think there is a large role to play in relation to education and training in a number of respects. But as I mentioned earlier, they have to start earlier. It cannot just start upon appointment. It needs to start in law school. It needs to start through continuing education requirements for being a lawyer. Then it continues again in a different way I think once an appointment is made. I think it is essential. I think we cannot expect to know everything or to appreciate everything about everyone's circumstance, so I think it absolutely is something important.

Ms SHING: So through PPE and those sorts of points-based programs that might then be worked in as part of the literacy of the administration of justice within the criminal lists—is it that sort of thing? I mean, again, going back to the universities—

Ms WOLFF: I mean, the specifics of how it is done—I do not understand why we do not have trauma-informed practice in law school as a subject, for example. I think in anything where you are dealing with human conflict or issues you require that, and it is not just understanding someone else's situation, it is actually understanding yourself—understanding what is showing up for you. Therefore you can be a better practitioner—a better lawyer, a better judge, whatever it is. So I think we need to have that awareness and to understand that there is an underlying trauma in so many people who come before the criminal justice system. Unless we have an understanding of that, unless we understand intergenerational trauma and its impact, then we are not going to be able to be good decision-makers.

Ms SHING: Thank you. Very consistent with the work of the mental health royal commission as well, I might add. Thank you very much for the evidence. I am actually going to have to duck off from the hearing now, but I appreciate it.

The CHAIR: Thanks, Harriet. Tania.

Ms MAXWELL: Thank you, Chair. Mel and Tania, thank you so much for joining us today. I am going to put a difficult one to you. Now, we know that with a lot of offenders who are on bail there needs to be certainly other work done and that a lot of these offenders do have trauma in their lives. Something that I want to raise is often we find that those on bail go on to commit serious offences. In fact we had a young 18-year-old man murdered here on Saturday night by another 18-year-old who was on bail. The conundrum that I think we have is: what do we do with particularly young offenders when they are refusing to engage with services to receive that support they need to address the issues—and often it is trauma—that are causing them to offend? What is

the alternative? And the second part of this question is: what are your thoughts on the fact that, I believe, we need to have earlier intervention to prevent them from getting into the justice system in the first place? I do not believe that there is enough investment made in that early intervention and primary prevention, so I am just interested to hear what your thoughts are on that offending if they are refusing to work with organisations that can support them.

Ms WOLFF: Sure. Well, I might just take the second part, Tania, first. Is it Tonya or Tania?

Ms MAXWELL: Yes.

Ms WOLFF: Either way—okay. The second part of your question first, I guess, is that I agree with that proposition that we do not do enough at an earlier stage, and once you have an antisocial sort of presentation of someone later on in life it is usually a much more difficult task to try to re-engage. I do think that is why we sort of look at the whole-of-government investment that is required and a broader commitment to investment to actually alleviate some of those issues.

I do not know the specifics of the example that you mentioned, but I think that we have to not respond with some of the cookie-cutter solutions that are being offered and I think you need to shape the response to the individual who is presenting. Saying to someone who has significant mental health issues that if they speak to a counsellor that is going to make a difference might not work, or if you have a person who has significant complex mental health and addiction issues and tell them to get in a group with a whole lot of people and share their experience, that also might not be the most appropriate. I think you need to have proper triage and assessment of what is required, what the gaps are and how to engage the individual. There are professionals who are very skilled at this. We need to be able to use that, and we have to also use the information we have on what works—what programs and what responses work—and bring that into our system now.

And I understand there is a problem—that we do have to protect the community and we do have to understand that there are situations where people do offend while on bail—but it is how we can prevent, engage and support. Quite frankly a lot of people offend on bail, in my experience, because they cannot access these supports, because they do not have stable and secure housing and because they do not have access to some of the treatment solutions that they really need. When you have to wait six months to get into a drug and alcohol rehabilitation centre or unless you have a lot of money you cannot get into any of them because there is such an issue in terms of private as against publicly available beds, then that is a problem, and we are not creating the solutions. Mel, did you have something to respond to that?

Ms WALKER: It is such a big question, isn't it? It is such a big question. I think that a lot of these young people do not have the skills to be able to navigate the big wide world, and when they are eventually placed on bail for something, sometimes it takes a few goes before that person begins to engage or can acknowledge that they have difficulties that need to be resolved. I think Tania is right that there are professionals out there who are trained to engage the unengageable. You know, we need to continue to put that effort in. I think there was a lot of work that was seen coming out of *Crossover Kids*, and I think that if you really wanted to talk about where this all begins, I think that kids who come out of residential care are a significant cohort of young people who are completely disenfranchised, disconnected, and do not have any sense of belonging. And that eventually transfers or translates into drug and alcohol or some form of substance abuse. Mental health issues ordinarily will follow. I think that the alternative, though, when you look at it, is: if that person is not intending to engage in any services that may be offered during a period of bail, is it then really the only option to place that person into prison in an adult setting where there are no youth-specific programs in there? It may be, if we do concede or if we accept that young people do have to go into some form of detention or confinement or containment, that we ensure that there are youth-specific programs and access to those therapeutic rehabilitation programs as soon as possible.

Ms WOLFF: That is the problem with our residential and out-of-home cares: often they are not therapeutic.

Ms WALKER: They are not even home.

The CHAIR: That is right. Ed.

Mr O'DONOHUE: Thanks, Chair, and thanks, Mel and Tania, for your time today and your preparedness to always come before these committees and provide us as legislators with your feedback about various Bills

that come before the Parliament. Mel, can I just acknowledge your President's Award for Outstanding Service to the LIV that was announced earlier this month. Congratulations on a worthy recognition of all the hundreds of hours you donate to advancing public policy.

Ms WALKER: Thank you.

Mr O'DONOHUE: The conundrum that I think, Mel, you described about protecting the community whilst recognising people on bail have not been convicted of a crime is a really difficult one, and LIV is putting forward a range of solutions it sees as a response to that or to deal with that. The other side of this, I think, flows from your comment about your client this morning, who is in custody without a court date. New technologies have been used, have been deployed, during COVID to try and keep the justice system moving. I think that has been a fantastic innovation and a really great thing to come out of the pandemic. Could you give us your view on how far that can go? What other avenues are yet to be explored that could help the wheels of justice move faster and therefore, for people on remand, get them to their day in court quicker whilst not compromising, I suppose, the benefits of a trial in person? What else can we do in this space to accelerate justice so that you do not have a client in the County Court cells or in custody with a date to be fixed?

Ms WALKER: Thank you so much for your acknowledgement too; I really appreciate that. I think that in the higher courts, particularly given that we are still undertaking jury trials and those jury trials must be in person, there have been some experiments—and I will put them as experiments rather than trials—of having jury trials in different circumstances. But they were really unsuccessful, and I think that unfortunately we have to maintain the jury process in person. However, the judge-alone trials were very successful during the pandemic. I think that there are a lot of trials—there was certainly some resistance from the profession in that, but I think once it started there was a big uptake in relation to judge-alone trials. I would not say get rid of the jury system altogether at all, but I think that we can have some kind of hybrid. I think that we can, with the agreement of both parties, have judge-alone trials, and I think it was really successful and I think it is something that needs to be considered as something a little bit more permanent.

I think the other thing too is, when you are talking about the lower jurisdictions in terms of the Magistrates Court, we did a lot of work in relation to doing pleas on the papers and diversion on the papers as well. The LIV are doing a lot of work in diversion at the moment, trying to extend the diversion program and trying to make the diversion program a little bit more accessible to persons who should be given the opportunity of diversion. I think that also some of the lower end crime—Tania mentioned it in her opening—does not necessarily need to go through the court system. It can be undertaken through either infringements or other diversionary programs that could be offered with those low-level crimes—and get that out of the court system—that really do not need any real judicial intervention. They are just a couple of ideas.

Ms WOLFF: Can I just add to that really quickly? I just want to endorse that whole issue of diversion. One of the big barriers at the moment in relation to diversion—which is really quite a simple legislative amendment—is that sometimes diversions are not being approved because it requires prosecutorial consent in relation to it. There are differing views about that, and personalities and other circumstances that might not be particularly apt are sometimes brought into the fold in relation to that and brought to bear in that decision-making. I think we need to look at the low-hanging fruit and look at the Magistrates Court being the court that has the biggest issue of backlog. It is certainly ripe for revision as to what kind of offending needs to go through the court system and criminal justice process, as Mel mentioned, but also diversion: increasing its scope, being able to triage and reclassify some offences to be able to be dealt with separate to going through a court process.

The CHAIR: And just to clarify, Tania, are you saying that rather than needing prosecutorial approval for a diversion that a court would be able to provide diversion?

Ms WOLFF: Absolutely, the Magistrates. And certainly if you can do it on the papers in relation to that, that is a very helpful way of being able to rectify that.

The CHAIR: Thank you. Sheena.

Mr O'DONOHUE: Fiona, can I just ask a quick follow-up? Just, Mel, on deciding or doing pleas on the papers: was there any resistance from elements of the profession or is there any view that that does not give the accused the opportunity to put their best foot forward?

Ms WALKER: No, because the way that it was negotiated, certainly between us and the prosecution, was that we all agreed that it would be something where you could have the review, you could have a sentencing indication. Where there are things like driving matters where there are mandatory penalties, where there are other things where the penalty is going to be obvious, there is no need for an appearance before the court. You are going to lose your licence for this long, and this is the penalty that you are going to receive. It is really with an assessment of the practitioner and prosecution to say, 'Okay, well, it's kind of like the 10th time that this person has been doing drink driving, and we could be looking at a term of imprisonment', where you would want to then advocate before a magistrate. So it is really an assessment of—again, as Tania deemed it—this low-hanging fruit that we can do that. But in relation to diversion—and I know we have got the Children's Court, and thank God we have got that dual system in Victoria—there is also an opportunity I think to look at that intermediatory as well in terms of youth and really hone in on those issues for those young people who can elevate into more serious offending. The South Australian Youth Court does not require prosecutorial consent; it is the magistrate's decision and the magistrate's decision only.

The CHAIR: Great. This was raised during the use of cannabis inquiry, the last inquiry. Sheena.

Ms WATT: Hi. Thank you, Tania and Mel. It is good to see you again. I am keen to sort of build on what Ed asked earlier, which was about some of the good initiatives and innovations that came during COVID and if there are any others—perhaps this is one to take and think about—that you think should be retained or that we can learn from. If we were to go back to what we had before, what would be a great loss? If you have any innovations apart from what you already mentioned earlier that you think are worth our consideration or thoughts in our inquiry, I would really welcome that, either now or later—conscious of time.

Ms WOLFF: We will be providing a submission subsequently to this. We have not had the opportunity to do that, and I think we will be able to flesh out some of those ideas a little bit more. But certainly there is an opportunity now, when we are only seeing some matters returning to court—there is a lot of backlog—that there could be a process of a review of matters before the date is even provided for the court and in the magistrate's jurisdiction. But we could look at possible avenues for diversion in consultation with the prosecution and the defence practitioner in relation to matters that have not had a date, do not have a date or are pending and could be dealt with in a more efficient and effective way. But all of the measures that Mel and I have been talking about today are aimed to try to be more efficient and effective and get through some of those backlogs, looking at what COVID has provided the opportunity to do. There are some things that are advantageous and better, but what we do not want to also lose is the ability in matters where it counts to have advocacy. That is important, and also for a number of people remote hearings are problematic and not everyone has access to technology. So we have to be mindful of exceptionality, which unfortunately is something that gets lost in a pandemic when you have a rule that is imposed or a broad declaration that is made but it does not see the exceptionality, the difference and the nuance in certain circumstances and for certain individuals, and that needs to be watched.

Ms WALKER: I think not only was the pandemic able to provide that innovation and a re-vision of how we deliver criminal justice services, I think that it also exposed a significant amount of gaps in the systematic rolling over of the justice system. Disclosure is still a problem from a Victoria Police perspective, and we are working on that as much as we can. Getting matters to court where you can negotiate with prosecution—they are really struggling at the moment to get things moving, and that is adding to the delay and it is adding to unnecessary court events. So I think that there is a lot that has been exposed by the pandemic as well even though we have overlaid that with remote hearings and electronic briefs, for example. I think a lot of those things will stay. I do not think that will need legislative change, necessarily. There has been a lot of policy work that has been done.

The CHAIR: Terrific. Thank you. Thank you, both. This was really informative, and no doubt your submission will be as well. Thanks again. As I mentioned, you will receive a transcript in the next few days. Please have a look and make sure that we did not misrepresent you or mishear you. We look forward to seeing you again.

Witnesses withdrew.