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—Thursday, 21 October 2021

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WITNESSES *(via videoconference)*

Ms Louise Glanville, Chief Executive Officer, and

Mr Dan Nicholson, Executive Director, Criminal Law, Victoria Legal Aid.

The CHAIR: Good morning, everyone, and welcome back to the Legislative Council's Legal and Social Issues Committee's public hearing for our Inquiry into Victoria's Criminal Justice System. We are very pleased to be joined by Victoria Legal Aid. Representing them today are Louise Glanville, the CEO, and Dan Nicholson, the Executive Director of criminal law. Welcome.

I introduce Sheena Watt and Tania Maxwell, my committee colleagues, and I am Fiona Patten.

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

Today, as I am sure you are aware, we have the Hansard team recording the hearing. You will receive a transcript of this session. I would encourage you to have a look at it and make sure that we have not misheard you or misrepresented what you have said in any way. Ultimately that transcript will form part of our report and will go up onto the parliamentary website.

We are grateful for a lot of things from Victoria Legal Aid, but today we are grateful for the submission that you have provided to us and also the time that you are giving us today. If you would like to make some opening remarks, then we will open it up to committee discussion. Thank you.

Ms GLANVILLE: Thank you, Chair, for that welcome and introduction. I would like to start by acknowledging the traditional owners of the different lands on which we are all meeting. I am down in Wathaurong lands near Geelong, and I pay my respects to elders past, present and emerging and note that their lands were never ceded.

I am sure you probably know that VLA is a statutory agency, and we employ about 900 staff, give or take a few. We are like a big law practice in some way. We provide information, advice and assistance to Victorians across the state. We have 15 locations, and it is from those locations that we do a lot of our work as well as working within every court every day across the state and in places like hospitals, where we do our mental health work and advocacy, and other domains. So that gives you a bit of a sense and a feel of the size of legal aid.

Just to give you an example, in 2021—and this is slightly down because of COVID—we assisted over 71 000 unique clients. Importantly, not only do we do legal advocacy but we combine that with non-legal advocacy in recognition that people's legal issues are often linked very clearly to social issues that impact on their lives. Some good examples of that in legal aid are our independent mental health advocacy and also our independent family advice and support service that works in the child protection field, which may be particularly relevant to this inquiry given we often find that people involved in child protection do find their way from time to time into the criminal justice system.

We clearly cover federal and state matters, and that is an important point: family law, family violence; NDIS, clearly very large; criminal law practice, which Dan Nicholson leads with me in his work at legal aid; mental health; child protection; discrimination; immigration; tenancy; and social security. That sort of gives you a sense of how wide our evidence base is. Essentially, any work that legal aid does uses its evidence base and uses with appropriate consent client stories to actually give a feel for the nature and type of work that we do and how people experience various parts of various systems that they are involved in. We do use that client work appropriately to inform law reform generally, and we are very appreciative of the way in which government engages with us on these issues of law reform, but also to do strategic advocacy and strategic litigation. Probably the best and probably the most potent example I can give you of our strategic litigation is robodebt,

which we ran in the Federal Court for the past two years, and I probably do not need to describe the details of that. But I would have to say that we were very careful to select case studies for our submission to you that we felt really highlighted what people were actually experiencing in the criminal justice system. They come from a range of lenses—people who perhaps have a disability, people who perhaps are involved in the child protection system and people who are obviously core to our work in summary and indictable crime as well.

So today we want to talk a little bit to you about the importance of investing in and improving other systems that are links or often pathways into the criminal justice system. We would like to talk a bit about prevention and early intervention, particularly focusing on those child protection areas, like the IFAS, that I have just mentioned. Also we want to talk about the way in which legal aid is part of the legal assistance sector, and with our partners—very strongly private practitioners, community legal centres across Victoria, and I know you have heard from some of these in your evidence, but also Djirra and VALS, Victorian Aboriginal Legal Service, the Aboriginal-controlled organisations that were most clearly in our space—wanting to give you a sense of how our board, the VLA board, is committed to our work with that legal assistance sector but also the importance of self-determination, particularly for First Nations people, in this discussion around criminal justice reform. Our board particularly is cognisant of the high rates of imprisonment and also the over-representation of Aboriginal and First Nations people in the criminal justice system. So perhaps with those few words I will hand over quickly to Dan Nicholson, who will give a little bit more colour and movement on what we are interested in in terms of the criminal justice system specifically.

Mr NICHOLSON: Thanks, Louise; and thanks for the opportunity to speak with the committee. As Louise said, I am the Executive Director of Criminal Law at Victoria Legal Aid. I just in the opening wanted to touch on two themes about the criminal justice system. The first of those is the importance of better targeted responses at every stage of the journey into and through the criminal justice system, which will mean that criminal justice responses are used where they are really needed and effective, rather than casting the net too wide and dragging people into the system unnecessarily.

There are three key examples of areas for reform here that we have recommended. The first is in relation to cautions and diversions, and that is really with the idea that people responsible for low-harm offending should be diverted away from the criminal justice system as quickly as possible. We recognise and support recent changes made by Victoria Police to improve access to cautions, but we also recommend changes to police charging, cautioning and diversion processes and also the establishment of a legislated cautioning scheme and changes to diversion to bring closer court oversight and improve consistency. We think, importantly, this can play a significant role in reducing contact of marginalised Victorians with the criminal justice system. Another area where we think reform would help ensure we are not casting the net too wide is in bail and summary offences or minor offences reform and then, lastly, raising the age of criminal responsibility from 10 to 14.

The second key theme that we wanted to touch on in opening is that where people do enter the criminal justice system we think there is an opportunity to keep building a better, youth-centred problem-solving system to use that moment as a time of positive intervention in a person's life for the accused to address the underlying causes of offending and begin the process of reintegration and for victims to assist in recovery. The reforms that we propose under this theme would also reduce churn in the system and make it more efficient and effective, and that is crucial given the COVID backlogs that we are seeing in the justice system at the moment. We think there are particular opportunities in the summary crime system, which is where most people experience the criminal justice system, particularly around creating more time and space and doing more work earlier and outside court.

So just briefly on three key areas of reform here: firstly, to increase access to therapeutic or problem-solving courts and programs; secondly, to focus on effective community sentencing and supervision rather than short sentences of imprisonment—in our experience those short sentences are particularly detrimental, kind of long enough to disrupt existing supports but not long enough to provide access to services in custody or programs while in custody, and so we support a presumption against short sentences of imprisonment and more focus on community supervision; and then, lastly, restorative justice processes in appropriate cases. If done well, restorative justice can provide more choice for victims and improve their experience of the criminal justice system but also reduce the rate of reoffending, and we recommend a legislated restorative justice process be established, available for all cases across the system where parties agree and at a range of times during a case's process or progress through the system. They are the main issues we wanted to touch on in our opening, and we are happy to take any questions or elaborate further on anything. Thank you.

The CHAIR: Thanks to both of you. That was quite a great whistlestop tour of your submission. Well done getting it down to just such a concise period of time. We greatly appreciate it. I wanted to start with the NDIS. Certainly looking at one of your case studies, of Jim, who was on an NDIS package, we have heard and we all know the level of intellectual disability, the level of mental health, amongst people who are in our justice system. I am curious as to what role the NDIS plays and whether many of your clients have NDIS packages when they first come across the justice system or when you first come into contact.

Ms GLANVILLE: I am happy to start—and, Dan, butt in if you need to. Certainly a lot of our clients have a disability, and numbers of them would have NDIS packages and, importantly, others have mental health issues as well, and so we cover that whole gamut. Legal aid is very, very supportive of the national disability insurance scheme. It does not mean that we do not think it can improve and be better. Like any major reform—and it is a very major reform—it takes time to embed and settle in, and I am reminded we are only in about the seventh year, including the trial period of that scheme, so I think we need to be mindful of that. That said, it is a scheme that reflects users at the centre most thoroughly—inclusion, participation—and recognises the economic value of people who have a disability in being able to participate fully.

So in our experience I think in order to ensure that people are not diverted unnecessarily into the criminal justice system there is a need to look particularly strongly at the sorts of supports that they have for their lives and whether there are in fact needs that they have that perhaps are not met by other systems, and therefore sometimes this means that people do enter into the criminal justice system because, for example, there might not be anywhere else for them to go. Now, that said, I understand completely the complexity between federal and state governments around who is responsible for what within the NDIS. I think, you know, what I can say is that some of the very sort of sad and detailed matters that we have had to become involved in which have required strong advocacy have probably been in some large part because the service systems that need to be in place to support people when you are moving to this very big and new way of working are not there. Sometimes that is because markets are thin, but sometimes that is because there is significant change in service delivery that is available. But I do think that this is a really key point in terms of ensuring that people are not in the criminal justice system unless they actually need to be for some particular reason.

Mr NICHOLSON: Just to add to that, I think a key problem that we see is the thin market or lack of providers. The NDIS aspirations around choice and control are difficult if there is no provider. I think one of the things that we have talked about is the need for providers of last resort, or to make sure there are providers, particularly for people who have criminal justice involvement and may find themselves in custody, because it is that lack of provider in many cases that has meant that people have been stuck in custody and unable to get out and be properly supported in the community.

The CHAIR: It seems to me that the NDIS does not support prisoners when they are in prison. I wonder: when you have a client that is on an NDIS package and they go into prison, is there still an NDIA connection with that person throughout their incarceration? And when they come out the other end, is the package there waiting for them, or do they go back to square one as a result of being incarcerated?

Mr NICHOLSON: In many cases the package is there but the providers are not there. So they will have funding for certain supports, but they will lose their providers in custody.

The CHAIR: Okay.

Mr NICHOLSON: Under the original scheme there was discussion around, where there are thin markets, having providers of last resort to make sure that those gaps do not exist, but we still see that those gaps are there. The other thing to note is with the transitions—and there have been a number of Ombudsman reports around this, some of which related to our clients—there is a lack of oversight to make sure that people are not falling through those gaps. That is a very important part of the scheme. We think we have encountered a gap, and the Ombudsman has also reported on that.

The CHAIR: Yes, okay. I will move on to another set of questions, but I will wait my turn. I shall move to Tania, then Sheena, then Matthew. Tania.

Ms MAXWELL: Thank you very much, Chair, and thank you so much for joining us today and for your submission. We have spoken a lot about restorative practice, restorative justice, through these committee

hearings, and I am wondering whether you as an organisation work with victims of crime in collaboration with those who you represent.

Ms GLANVILLE: I think probably the first thing to say is that we are very supportive of restorative justice. We see that it can often really assist in ways that more traditional methods cannot, and that it is something which I think sometimes appears a bit scary to people but is bringing closure in lots of instances to people with particularly difficult experiences that they are trying to deal with. In terms of restorative justice generally, our advocacy has really been around thinking about a victims service and what that would look like and perhaps the place of restorative justice within that. That said, in terms of restoration, legal aid does do quite a lot of work in the mediation and dispute resolution space in different ways, particularly in family law environments. And in that way there is a sense of restoration sometimes in those processes as well. That is probably some good introductory material. Dan.

Mr NICHOLSON: Sorry, just to add to that, we are involved in the youth justice group conferencing. We do support our clients in our youth justice program through that, and we have seen the benefit of that. It is by no means a soft way out. It is a very difficult and involved process for young people, but we are seeing the effectiveness of it. And we support it being made more widely available, not just to children but to adults as well. I think if you look at comparable jurisdictions, restorative justice is generally more widely available. We think it has the potential—in the right cases and when well done—to provide significant benefits to the whole system, both to the victims and to perpetrators of crimes.

Ms MAXWELL: Thank you, Dan and Louise. Do I have time for one more quick question, Chair? Thank you. Just in relation to the terms of reference in regard to judges and magistrates and training, I am interested to get your feedback on probably two sectors. One is the tenure of magistrates and judges—do you think that should be automatically renewed? The second part of that question is: do you see a necessity for judges and magistrates to be specifically trained in the courts that they preside over, for example, our family violence courts, our Koori Courts and drug and alcohol courts?

Ms GLANVILLE: Thank you for that question. Firstly, I think the most important thing about the judiciary in Victoria is to make sure that as far as possible it represents the community. So VLA's position is that it supports diverse appointments and it supports governments and Attorneys-General looking widely to see who are the best and most diverse and appropriate candidates for the judiciary or for the magistracy. I think that is a really important point—that diversity. It is particularly important because when people come to court it is great if they can sort of visually see a representation of the Victorian community before them and not feel that it is something very alien to them. I think that is wonderful. I would have to say I noted in the last couple of years the state government has been very good at supporting public sector appointments as well as, very importantly, private sector appointments to the judiciary. That is something to be, I think, continued and congratulated—for governments to have done that.

In terms of the question of tenure, leaving aside the concept of acting judges and some more limited tenures in some jurisdictions, judges are usually appointed for the term, and there is an age limit to how long that term is. I think that is done for reasons that are supportive of the rule of law and the nature of independence more generally. For me what is more important is getting the right people in those roles, and that is the diversity theme that I identified early on. Dan, have you got any suggestions there?

Mr NICHOLSON: No, I agree. I think the judicial college provides a lot of very good training, and it is very beneficial, particularly in those specialist courts and jurisdictions that we have.

The CHAIR: Sheena.

Ms WATT: Thank you to you both for appearing before us today. I had a question that is a little bit linked to what my colleague Tania just asked, which is around judicial officers, because a number of former Victoria Legal Aid lawyers have been appointed as judicial officers in Victoria. I was going to ask you for your reflections on what it is that makes those that have come through as lawyers from Vic Legal Aid particularly well suited to that, but I think you spoke to that a little bit. But if you have any additional commentary on that, I would certainly welcome it, and then I have another question on something completely different.

Ms GLANVILLE: Well, very simply, we have great staff. We have a lot of lawyers, and very helpfully the last Attorneys-General have been looking very broadly across both the public and the private sectors. I think

having judicial officers from both the public and the private sectors is a terrific thing that Victoria does, and I feel very proud when legal aid lawyers are chosen for roles. I think it also reflects that diversity piece that we were talking about. I note that it is also for roles such as judicial registrars and those sorts of areas. This is I think assisting courts in being places that people can recognise and—if you can ever feel comfortable—feel more comfortable within these processes. I would also like to say I think it is particularly important for us to see people of colour and First Nations people as part of our judiciary and magistracy and really in all those decision-making roles. But overall, I think it is just because Victoria Legal Aid has very great and talented staff.

Ms WATT: Okay. I like that answer. Thank you very much. I wanted to ask about specialist courts. In fact that was my follow-up question—the view of Victoria Legal Aid when it comes to the benefits or otherwise of the specialist courts that we have here in this state. Does the specialist knowledge required to be in these courts affect whether the outcomes are appropriate for accused persons, victims, their community or the community as a whole? What are you seeing being the difference in outcomes of having the specialist courts here in our state?

Mr NICHOLSON: I can go with that if you like, Louise.

Ms GLANVILLE: Thank you.

Mr NICHOLSON: Look, I think we have had heavy involvement in the specialist courts, so the Drug Court and ARC, the Assessment and Referral Court. We have been there since the very start, supporting clients right through them. Obviously in the Koori Court our colleagues at VALS do a lot of work as well, but we are involved as well. I think what we see is pretty well reflected in Edwin's story, which is in our set of case studies that we have given you. But it is really the opportunity to have more time and space and to really deal with the underlying causes of offending rather than churning through quickly.

I often say this, but if you ever want to have a great day in a Victorian court I highly recommend that you go to a Drug Court graduation. I have often seen tears in courts, but not very often tears of joy like you do in Drug Courts. It just shows how people who have been through decades of trauma and addiction and being caught up in the criminal justice system can, if we put the right time and space and effort into them, turn their lives around and become really meaningful contributors, reconnect with their families and do all the things that we want. So if you have not ever been to a Drug Court graduation, I would strongly recommend it.

But that is true of the other specialist courts and programs that are there too. I think for us the challenge is that although they are expanding and there are obviously plans following the mental health royal commission to expand ARC across the state, there is still limited availability. That means if you are a magistrate dealing with a person who is very close to going to prison because of a significant ice addiction or drug addiction, if that person is in West Melbourne you can get them into Drug Court, where there is a really good chance that they will have a shot at dealing with the causes of offending. But if that same person presents in Warrnambool, there is a very good chance they will go to prison and the cycle is not broken. So if we talk about things that have been assessed to have benefit and that we certainly see, I think continuing that expansion across the state of all those key therapeutic courts and programs is a real priority.

Ms GLANVILLE: And just in support of that, Victoria really has been on a journey for about 20 years now in this space, and I think the most important part of problem-solving courts or specialist courts is that they really do attend to the causes of crime as well as crime itself, for example. I know that is a generic catchphrase, but it is very real. If you look, for example, at the Neighbourhood Justice Centre, you will see still that their breach rates of bail are far lower than other courts. This partly reflects the wraparound nature of services and the fact that people's offending can be very much influenced by the conditions in which they themselves have grown up. It also helps to deal with things like the intersections between things like child protection, family violence and the experiences that people have in that domain. We know that if we can deal earlier on or in a more problem-solving way with these issues, whether around and in a court or outside a court, then that is going to have cost benefits for society and community generally. So there is a real dollar benefit here in these sorts of innovations. They are part of the normal systems now, really, because it really does make a massive difference to people's lives and particularly in areas where people's social issues have led to them being part of the justice system—and child protection is a good example of that, in my view.

The CHAIR: Thank you. Matthew.

Dr BACH: Thanks, Chair, and thanks to you both for coming along. I am interested to talk to you a little bit more about your views on short sentences, and I say at the outset that I do not necessarily disagree with what you have put forward here briefly before us in verbal testimony and elsewhere of course. Through the ages proponents of short sentences have in particular relied upon two arguments: the notion that a short, sharp shock can be a good thing for some offenders and also some, albeit potentially small, deterrent impact or potential deterrent impact of the knowledge that prison may be coming for you. Obviously you have strong views to the contrary, and I hear that. Would you mind—potentially Dan, you first, as you were the one who raised it initially with us—talking in a little bit more detail about why you feel as strongly as you do about short sentences and the other options that can be far more suitable?

Mr NICHOLSON: Yes, sure. I am happy to do that. I think the overarching thing is, as I said earlier, that those short periods of imprisonment are long enough to disrupt things that you may have going on, that are helping you in your life—housing, jobs, social supports—but really not long enough for you to get into programs in corrections or youth justice and to start to deal with the underlying causes of offending there. So that is the individual impact, and we see that particularly there has been research by the Sentencing Advisory Council about the increase in time-served sentences in Victoria—so you get remanded for a short period of time and then when your matter gets on you get released with a time-served sentence, a relatively short one. Again, what happens there is that means you are released from custody, you know, that day, but you are not really released with community supports or with a requirement to go and access programs that could deal with the underlying causes of offending.

It also has a system impact, because if you have a very large number of people churning in and out of the corrections system and indeed the youth justice system, it is very hard for those systems to deal with underlying causes of offending, to run the criminogenic programs, to give people the kind of support they need, because people are churning in and out all the time. So it does have a big system impact, and if you look at some of the research from the UK, from Scotland, they talk about where they have introduced a presumption against short sentences. They talk about it helping to address the chaos in the correctional system that is caused by the churn in and out. So I accept there is a range of views, and I think there is also probably a risk that some people expressed, that if you had a ban on short sentences, people would just tend to sentence longer, but I think if you look at the experience from overseas, particularly Scotland, they introduced at first a presumption against three-month sentences and then extended it. So you still can sentence to short periods, but there is a presumption against it.

Just the other thing I would note about it is it is pretty important that it is accompanied by a very significant investment in community supervision, and that is also what gives judicial decision-makers the confidence that they can sentence to a period of intensive supervision rather than prison. I mean, I think ultimately the data tells us that prison is criminogenic, that people who go into custody are more likely to reoffend when they come out, and that for people who successfully get through community supervision, not only is it much cheaper at the time but also they are far less likely to reoffend. So I think that probably answers some of the perceptions people have about short, sharp shocks or that general deterrent factor. I mean, I think the data tells us that it is more effective.

Dr BACH: Yes. Thank you, Dan. And before you finished in the way that you did I was going to ask you some further questions potentially about what had seemed to be your faith in the corrections system, especially the custodial system, to ultimately have some sort of positive impact on future offending behaviours, given that my view is similar to yours about the fact of the matter when you look at the data that even with good programs, and we should of course be investing in good programs in our prisons in our youth justice facilities, sadly what we see is as you describe. So thank you for that.

Mr NICHOLSON: But also, just to add to that, it is almost impossible to invest in good programs if you have a very large proportion of your population coming in and out every couple of months.

The CHAIR: Could I also ask: I was also particularly interested in this question and in the outcomes in Scotland, and given that this presumption against short sentencing has been around now for 10 years, is there any analysis or evaluation? I think you did mention it; I just wonder if there are any references that you might be able to send to us around any evaluation of the Scottish—what has happened since that presumption?

Mr NICHOLSON: Yes, I am happy to provide some more information rather than trying to kind of cover it all on the fly here, but I think there has been a reduction in short sentences. There is probably a number of factors that have led to that, so I think some of the evidence is kind of less conclusive than I would like that I was looking at. Just the other thing I should note is there is a very significant gender impact in presumptions against short sentences because of the proportion of women who are sentenced for short sentences. If we can get this right, it would have a particular impact on female incarceration. That is one of the things that is discussed in the evidence from overseas, but I am happy to take it on notice and give the committee some more information.

The CHAIR: Thank you. I would just like to turn to cautioning and the cautioning schemes that we have. We heard from Westjustice earlier that some people just do not get cautioned. They are arrested, and we see that seems to be race related in many circumstances. You are recommending a legislated cautioning system, and I wonder if you could please expand on that.

Mr NICHOLSON: Do you want to go first, Louise?

Ms GLANVILLE: Just generally, Chair, we note, importantly, that Victoria Police have made some changes recently in relation to cautioning, and we are very pleased about that and we congratulate them for that. I think the issue for us is probably more around consistency and thinking of cautioning and diversion as a really effective way for those who commit crimes to understand the issues without them necessarily going off more solidly onto the path of the criminal justice system. We can see a few ways in which it could be done, and perhaps Dan could describe them.

The CHAIR: Thank you.

Mr NICHOLSON: I think there are probably two elements to it. One is the kind of legislative part of it. We think one of the key legislative things can be a presumption in favour of cautions for certain categories of offences, so you are kind of turning around the presumption in favour of charging towards cautioning. In New South Wales the Children's Court can also caution, and what that does is probably gives a bit more oversight and ensures a bit more consistency in police decision-making about cautioning—if you know that the court could also make that decision. In terms of diversions, for us the legislative issue is around police consent to diversion. We think it would be of benefit if that were removed.

But I think there are also kind of practical issues for police that could be addressed to make it easier for police, and I think recent qualitative research sort of indicates that heavy workloads and lack of time can be some of the factors that cause police to be less likely to caution, and also I think the police are probably more likely to invest the extra time if they think the person shows remorse and has good prospects of rehabilitation. So I think it is important for us, as in every part of the justice system, to look at whether there are issues around implicit bias or other things in the way that decisions are made.

I heard some of Anoushka's and Melissa's evidence from Westjustice before, about the importance of having a really good sense of programs in the community and easy referrals. I think in a practical sense for police if they are confident that a young person, for example, can be referred to a good program, they are obviously much more likely to caution or divert out of the system easily, whereas if they are not confident that a good program exists in their local area, because it does not or they do not know about it, then they are more likely to go down the charging path.

The CHAIR: And in fact we heard in the use of cannabis, particularly around diversion, it was even just the paperwork. There was more paperwork for diversion than there was for charging. It was even just the time spent.

Just to quickly finish off on a legislated cautioning system, so I suppose if government was to develop the legislation that did do this, that legislated cautioning, it would only be effective and only be possible if at the same time it committed to resources on those community programs.

Mr NICHOLSON: Yes, I think that is right, and I think that is true really of many of the reforms or measures that people talk about—more effective earlier intervention and community supervision. The importance of investing in those community services is a pretty important part of it.

The CHAIR: Thank you.

Ms GLANVILLE: I think that that is the key point—that sometimes if the investment is there early, people do not actually become repeat players in the criminal justice system, which is really I think what in Victoria we want to avoid. We want to have those supports and networks there. I think that is why the mental health royal commission work was excellent, and the recommendations there, because they really do look at this issue of who is a first responder and should it be the health basis for action as distinct from not understanding why someone's behaviour is what it is and then that results in them moving into a more contained, locked-down environment—so really important.

The CHAIR: Thank you. Tania, did you have any further questions?

Ms MAXWELL: I do just have a couple of quick ones. Dan, you talked about magistrates having the opportunity to provide those orders of a diversionary program or cautions, so my question there is: would magistrates have the background of the young person who is presenting before them?

Mr NICHOLSON: Yes. I mean, that is partly what our job is as advocates who are in these courts all the time—to provide magistrates with information about the young people who are there.

Ms MAXWELL: It would concern me having diversionary programs and cautions legislated. I think there perhaps needs to be regulation, because you cannot do a blanket approach on particular crimes. Some are victimless crimes; some are not victimless crimes. I think that we can certainly encourage and do better in what alternatives there are to incarceration and immersing a young person in the criminal justice system, but I think it has to be taken on the merit of individual crimes per se for that person. Can you just make a comment?

Mr NICHOLSON: I certainly agree. There will always be an exercise of discretion. What a legislative scheme does is it tries to make it more consistent and also allows the possibility of court oversight of that decision-making if it does go wrong. That is all—nothing further.

The CHAIR: Thanks, Dan. I did not mean to cut you off.

Mr NICHOLSON: I could talk about it all day.

The CHAIR: Yes, great. Sheena, did you have any final questions? Terrific. Thank you. Thank you both. Dan, while you could speak about it all day, I think we could probably ask you guys questions and seek your thoughts and advice all day as well. We greatly appreciate the time that you have made available to us. As I mentioned at the outset, you will receive a transcript from today. Please check and make sure that we did not misrepresent you in any way. Thank you, everyone.

Witnesses withdrew.