

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Wangaratta—Wednesday, 30 June 2021

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WITNESS

Ms Kerry Burns, Chief Executive Officer, Centre Against Violence.

The CHAIR: I declare back open the Legislative Council Legal and Social and Social Committee's public hearing into the Inquiry into Victoria's Criminal Justice System.

Again, Kerry, thank you so much for joining us. This is Kerry Burns, from the Centre Against Violence. She is the CEO. Today I am joined by Kaushaliya Vaghela, Sheena Watt and Tania Maxwell, who I know you know.

Just part of our process is that all of the evidence taken here today is protected by parliamentary privilege, and that is provided 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 being taken against you. However, if you were to repeat the same comments outside this hearing, you would not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

As you can see, we have got Hansard here, recording. You will receive a proof version of the transcript of today, and I encourage you just to have a look at it, make sure we did not misunderstand or misinterpret anything that you have said.

Today is our first day of this inquiry, so we are very appreciative of you coming in today, and I think today really has been a bit of a scene-setter for us, for want of a better term. So we would love to hear from you, if you would like to open up with a few minutes' comments, and then we will open it up to the committee discussion.

Ms BURNS: Okay. Thank you, everyone.

The CHAIR: Thanks, Kerry.

Ms BURNS: It is a privilege to be here today on the land of the Pangerang people and in the constituency of Tania. I work at the Centre Against Violence in the Ovens Murray district, which is a specialist service closely linked with Vic police, the department of justice, Magistrates Courts and community services organisations. We provide services of work across a continuum of care for victim-survivors from crisis responses to recovery, including therapeutic when we are funded to do so. We provide services for sexual assault; family violence, including RAMP and refuge; children accompanying their mothers and carers into refuge; children with harmful sexual behaviours up to the age of 18; and young men using family violence as perpetrators, for whom we offer an early intervention. The models of care we provide are to stay safe at home; to leave locally; to enter refuge in our district, statewide or interstate; SRM, which is strengthening risk management, including RAMP; advocacy; and case management therapy. I am just giving you that background so that you are well aware I have no legal expertise. I am a social worker and have worked in this field for 18 years.

I wanted to start by talking about IVOs. Can I do this now?

The CHAIR: Yes, please do.

Ms BURNS: So we think there is a problem with identifying predominant aggressors at times and that the victim-survivor can be wrongfully identified as a respondent. We think that we ought to have remedies for that, because it can be incredibly harmful to that victim-survivor's reputation but also to their ability to seek help and have regard from the systems around them. We think we have got tools to do that. Though they may not be evident in our system yet, they could definitely be developed and should be discussed.

We think that there needs to be a great deal more education within Victoria Police and the department of justice about the language used when discussing family violence. We do not like to see language such as 'altercations', 'fights', 'setting him off'—all of that language—which does not accurately portray the situation. It needs to be specific to family violence, so it does not neutralise what has just happened and the reason for Victoria Police to be there.

We also think that there needs to be a much stronger understanding of coercive control. Look, since RAMP developed we are getting that, because we have got an opportunity to sit, and I co-chair with Victoria Police and we educate each other along the way. Coercive control is the form of family violence that frequently leads

to murder-suicide, and yet there may be no history of a physical assault, so we have really got to understand it, identify it and categorise its risks much more accurately.

As an example of a recent issue in understanding family violence in the small town of Mansfield, a perpetrator was chasing a victim-survivor down a street, who had packed her bags. She had told him she needed a break and she had a bus ticket to Adelaide. He said, 'No, you're not going anywhere', in front of our police members, and they wrote on the L17 that she was willing to remain with him and felt safe, despite not speaking with her alone. We have good relationships with police, and I do not want to present that as a standard problem, but we should never do it. It is just too dangerous. They are the concerns we have. Sometimes also in the media you can hear family violence being minimised in discussions held by police—less so these days—but also courts. It does so much harm to the victim-survivor concerned but to all the others who have not sought help yet. It also, again, contributes to the feeling of power that the perpetrator might hold.

Community corrections orders—we think that we need to better equip the department of justice to manage breaches of community corrections orders, because we have seen them wait months for a matter to return to court, and in those months that person is running amok, sometimes committing more crimes, but there are no tools to deal with it. So they need also a contingency plan, as we have all had to develop during COVID-19. There are some services that have to be people facing, and I would say ours is one and so is the department of justice.

The men's behaviour change services—they are not doing that well, and we know this. There has been evidence about it for a long time. Many are referred and either do not attend, do not engage or participate by presence only. We need stronger directions and mechanisms to address their participation so that it is clear they will see stronger interventions and stronger remedies if they do not do something about their behaviour, and consideration of poor outcomes from the program should contribute to an analysis of the cost benefits of that work and an exploration—with the services of some great minds in Victoria—about what else could we do. And I think there are those people sitting around waiting for opportunities.

I have read the inquiry's remit and I know our goal is less people in prison, but I think when I move to the back end we are still addressing that goal, but we need to strengthen prevention and early intervention. We are running a program called Ready Baby, which is targeting young men expecting their first baby. Our evaluations, tests and trials need to be strengthened so that we get to the point where we have identified and assessed the person using violence, this is the remedy that will most likely work, and let us apply it and test again, backed up by this stronger DOJ that we are talking about.

Family violence evidence is a problem. And given that this is a crime that can go on behind closed doors for a long time and because it is a problem victim-survivors do not often report for a long time, we are really worried that the history of the family violence cannot be presented at a case and nor can the history of the perpetrator, when actually we have got history for both—mostly, not always. But we cannot have justice served if we do not know about the family violence and how long it has existed and what it looks like. I just saw Lee Little leave, and I know you have heard from her, but that is a case that exemplifies the problem.

Sexual assault—consent is still a barrier to conviction, and mostly it is a crime that can be committed without accountability. The bar of beyond reasonable doubt is not going to work. I cannot see it working, and I think it is time we found alternatives. I have wondered about restorative justice. Over 10 years we have read and thought about it and I have trained in it, but in this case I think admissions made in a restorative justice process ought to be admissible, and the person using restorative justice ought to be aware of that of course, but I just do not think we are going to get anywhere with holding perpetrators of sexual assault to account, which continues to harm our people.

No straight release from prison is something I would like to see. We just need to get a lot more strength of service and accountability around the person when they leave prison so that we can prevent recidivism, otherwise we do have problems with them going back in. Maybe it will not work, but straight release is a problem.

I do worry about people going to prison who are not using violent crimes and whether we could actually do something differently there and—two things—stop them being influenced by people that do use violence and also reduce the prison population and have them held to account in a strong community-based model.

Judiciary training has strengthened over the years, remembering I started a long time ago. But I do think that there is not much time spent gathering information from experts. I believe my staff and others like them are experts, and it is tiring to see psychology as the only recognised form of expertise when reports are gathered. And I think that, given the state government fund so many fantastic community services, they should be making a lot more use of them.

I think that is all I have noted on my wish list, because I know this is a wish that probably cannot be seen through in this inquiry, but I think there is a problem with the way family law is federally based and is not connected very strongly to the state-based system.

The CHAIR: Yes. Fix the justice system—that is kind of our remit. You have highlighted just a few of those areas—really, really good stuff. I will just start on the idea of the IVO. Certainly we have heard this in Lee Little’s case, but also we hear it time and time again where someone is issued with an IVO and then the perpetrator then issues one back. You were saying that there are probably ways for us to address that or to further investigate when that is happening. Have you got any thoughts about how that could work?

Ms BURNS: I have talked to police about this, and they have got some obligations when someone rings to report family violence. They are identified as a victim-survivor through that report. I think they should be able to arrive on site and investigate and to use history. It is difficult because they are busy. But I know specifically of a case where the victim-survivor had been subject to many hours of harm and when she was trying to escape that she did use some aggressive techniques—she threw a pot plant through a window and she scabbled at the perpetrator and scratched him. She was identified as the respondent because it was the perpetrator that made the report. So how can we do differently? We perhaps do not have the resources to do differently, but it would require an investigation—even a 10-minute investigation.

The CHAIR: Yes, it certainly does seem just extraordinary sometimes how that plays out. I know it is a heightened situation and the police are there just at that moment in time, and I think certainly at that point in time that can happen, but it seems to me there are other circumstances where—

You know, even in Alicia Little’s case, she got an IVO and her partner then got an IVO—and then they were both withdrawn. But that seems to be something that is proving to be incredibly difficult to deal with. There must be a simpler way. Maybe it is just extra time. Maybe there needs to be a review—

Ms BURNS: A little time.

The CHAIR: when there is two and there needs to be—

Ms BURNS: And a review mechanism.

The CHAIR: Yes, and a swift review mechanism.

Ms BURNS: Yes.

The CHAIR: I just wanted to follow up on that. Again, in thinking about Alicia Little, she had been in and out of hospital.

Ms BURNS: Yes—problem.

The CHAIR: There is no reporting mechanism.

Ms BURNS: No. And I know in her case she would describe the injuries without attributing them to the perpetrator. But given that I have some protections here, I can use them. We knew that she would call it a horse kick or something, and this goes back to where you draw your evidence from. But I think—this is where I am no legal expert—if we are called, we are like a hearsay; we are not a direct. But our records ought to be consulted and regarded as a primary form of evidence.

The CHAIR: Absolutely. I just feel like there should be some obligation with the medics in this area as well. Maybe that is difficult, but we have mandatory reporting in other circumstances. You know, ‘I ran into a door’—

Ms MAXWELL: That is difficult, though, because that intervention can actually create more harm if that—

The CHAIR: Yes.

Ms BURNS: A hesitance.

Ms MAXWELL: You know, where it is a child—and you are obligated to report that—a child cannot protect themselves and make those decisions, but I think in this case where it plays—

Ms BURNS: No, you are right.

Ms MAXWELL: I think that is why they often do not put their hand up to do that, because it can endanger—

Ms BURNS: But if the hospital had a mechanism to record suspicious injuries, we could go back to it, at least.

The CHAIR: There is a record of it.

Ms BURNS: Yes. Like, for example, with Alicia I think most medical staff would have recognised they were committed by a person. It could have been recorded somehow. We are centralising a lot of our systems. I would have to give it some thought. But you do not want anything that stops the victim-survivors seeking—

The CHAIR: From actually going to the hospital. That is right. Yes, of course.

Ms MAXWELL: Thank you, Chair. And Kerry, thank you. And just before we go on, can I say—and I hope Kerry does not mind me saying this—that I would to personally congratulate Kerry for all the work that she has done, and knowing that she just has retired from the Centre Against Violence.

Ms BURNS: Semi, yes. I am leaving my role next Friday.

Ms MAXWELL: So I just wanted everyone to congratulate you.

The CHAIR: Well, we are very lucky that we came here this week, then.

Ms BURNS: I am lucky.

Ms MAXWELL: Kerry, there are so many things that you have listed here that are so important to this committee hearing, but I just wanted you to go back to the Ready Baby. And as you know, I am an absolute fan of the early intervention and primary prevention. And you are right, it does go into: how do we decrease the numbers of people in our prisons? How do we prevent that recidivism? And I think that starting at that level has so much benefit about it. Have you worked with families where you have actually identified that change, that change in their trajectory, participating in Ready Baby, where perhaps they could have gone down a very different road into the justice system, but—

Ms BURNS: I wish I could say we have, but we have only been open since November. I think that any program like Ready Baby ought to have an academic partner for research so that you can get that data you are looking for. We also feel a bit hamstrung by the way we are funded, because our funding insists that it is for identified perpetrators, whereas we think it would be a better program if it just targeted first-time dads. Because not all men will identify that, nor will the professionals around them. But if they can be in a Ready Baby program, we will soon identify them, and then we will start steering differently. We had just discussed that, a moment before I came in, with one of my senior managers about how we could reconstruct it. Because even by the time a young man recognises his own behaviour or another professional recognises their behaviour, we are down the track; they are visible, they are having an impact. And we are really interested in engaging with them, because what we find is there is a great deal of hope when you are expecting a baby, and that motivation is there to do better than was done for them. We are learning that a lot of the young men we have assessed in the last year have been harmed as children and have had incredibly poor male role models—male—

Ms MAXWELL: Male role models?

Ms BURNS: Male role models. ‘Role models’ is a joke we have used over the years, too many times now; I can never say it. So they are young men looking to do better, and we just think we need to broaden the program so they do not need to identify that before they arrive.

Ms MAXWELL: So investment in that area you would consider.

Ms BURNS: Yes, I think so—statewide. Well, talking about what men are offered during antenatal clinic time and those preparatory months, they are not offered much at all. It is just another way that we shift all the responsibility to the women too. We talk about gender equity, and then we go, ‘You’re having the baby; we’re going to talk to you solidly for nine months’, and we have not yet spoken to the baby’s father.

The CHAIR: Yes, absolutely. Kaushaliya?

Ms VAGHELA: Thanks, Chair. Thank you, Kerry, for your submission and for your time. You saw we had Lee Little here, and you are aware of Alicia’s legal case as well. In this instance Lee Little has not given up the fight for her daughter who passed away. How many other women who have passed away have fallen through these cracks that exist? There are so many gaps. How many Alicia Littles have died in the past?

Ms BURNS: I cannot tell you in our district. One of the reasons I cannot be explicit is most of the victim-survivors we care for do not die, thankfully, and we can never claim that it is our intervention that has achieved that, but I watch every case reported, and there are a shocking number of deaths where the victim-survivors had no access to service. So, in other words, we are worried about people we do not know.

I have reviewed Alicia’s case dozens of times, trying to look for how we could have done better, and I do not have any big recommendations to make there. It seems that our influence was not as strong as his, because we were definitely calling Alicia in to safety planning and options. But you know, it is the nature of an intimate relationship that there is a lot of power in it, negative and positive. I think that we have just got to do better at recognising that coercive control and having a number of options. We are still relying a lot on victim-survivors to make moves. Last year when the police conducted White Ribbon, that was great. That is the first time I have ever seen it flip the other way, where they go and knock on the door of the household where they are concerned. I think we could keep that kind of approach—like police could be watching the perpetrator instead of us looking to hold the victim. If they had been visible in his life, would it have made a difference—if they had had the right to go out there and knock on his door? I think it would have. I mean, I cannot be sure, but—

The CHAIR: It would not have hurt.

Ms BURNS: It would not hurt, no. Because of the RAMP we have had a couple of high-risk cases where police have done a lot of proactive policing, and I do believe it has made a difference.

Ms VAGHELA: So regarding the national database for the domestic violence disclosure scheme, what are your thoughts on that? If that had existed at the time for what was happening to Alicia and her case, do you think that would have made a difference? The perpetrator had done some sorts of crimes, but not in this state—in other states. So if we had a national database, do you think that would work?

Ms BURNS: It would help someone. It would help women who recognise a red flag. It is not going to help all women because perpetrators are powerfully influential, and they can often convince a victim that actually they have done no wrong and they are terribly victimised. It is a very common position that they take—that they have been the victim of a malicious woman or a corrupt system—and they can be convincing. That is one of the dynamics of family violence—that coercive control. Certainly, though, I think as a woman I would be looking up that system if my daughter was dating, and intervening if I could. You know, we can all use it, not just the woman who is about to go on a date.

Ms MAXWELL: I think too Lee spoke of it in terms of if there was a database, the courts could have drawn on that evidence—because there was no family evidence presented in her case.

Ms BURNS: At trial?

Ms MAXWELL: Yes.

Ms BURNS: I think that is part of it, but there is a bigger point there, isn’t there? There was the kind of material perhaps we could have put in that that did not get there.

The CHAIR: Because the plea changed and because the offence changed.

Ms WATT: Thanks so much, Kerry. I had just one point that I was wanting to seek clarification on before asking a question. In your submission, for the 2019–20 financial year, it says here that the service opened

653 support periods for victim-survivors. Can you explain to me what a support period is in your service? Is that a single episode of contact or is that a singular person with multiple contacts? How does that system work? I am trying to work out—

Ms BURNS: Support periods are an episode of care.

Ms WATT: They are an episode of care, so similar to a health system appointment?

Ms BURNS: Yes, 'I've come in, I've got some help. Three weeks later I'm off. I've said I'm fine, but I might come back again in six months'. But a lot of our work does not get counted, and that is the discussions we have with women who we receive an L17 for. We will call and invite them to have some support; they may or may not, but sometimes we will touch base with them several times. We cannot actually put them into a database because they are not a registered client. But episodes of care are formally people that would have a client record.

The CHAIR: L17.

Ms MAXWELL: Can we just, for Hansard, get that on record—what an L17 is?

Ms BURNS: An L17 is a referral from Vic Police. They arrive in our system 24/7, and we respond each day to them. That function will move to the Orange Door, but it will still be our team that monitor them.

Ms WATT: The other question I have is just around child protection. Can you just tell us a little bit about your work with child protection, if that is something you do your work with, and what connections have you found between child protection involvement and reoffending?

Ms BURNS: That is a big question.

Ms WATT: It is a big one, and I know I have dropped that in at the end of the day.

Ms BURNS: Child protection—I have got to be careful how I answer, because we are all different today than we were last year and the year before. And I think the reform period since the royal commission has ensured that, which is fantastic. Historically child protection were not very good at casting their eyes to the perpetrator. I still think they have some limits on what they can do, because that Act could do with a serious review. And just like the department of justice, I think it would be great to equip them with more tools, because our tools are sitting in criminal law mainly. And that is what I was talking about with all these other programs around them, through which there is no accountability—MBC. Like, they might talk to a perpetrator, CP, but their actions are protective applications and other orders, which do not always help them to make sure that it is the perpetrator who is held to account; often it is the parent of the child who is the safe parent who is trying to live up to the expectations of that order.

Ms WATT: Child protection order?

Ms BURNS: Yes, often by not having an engagement with the person posing the threat to them and their children. But it is a responsibility we are putting here, where I would like it to be put there. Even last night, at 9 o'clock we had moved a woman and two children out of their home because of the risks posed by the children's father. It is written already that we would ideally move the perpetrator, but not all the systemic tools back that up, so we have still got a mile to go in terms of making sure child protection have got the remedies they need and some powers to use them. I think when the police got the safety notice power that was a fantastic development. I do not know if we could do anything similar for CP, but there needs to be work, because quite often the working parent is the safe parent.

Ms WATT: Okay. That is all. Thank you.

The CHAIR: Can I just ask about the men's behaviour change programs? I think we talk about them as—I did not really think of them as a tick and flick. But are there men's behaviour programs out there that you would recommend that we have a look at or some innovative approaches that you would recommend that we have a look at, or is it just fundamentally that there should be greater assessment of someone's involvement and the outcomes from undertaking the program?

Ms BURNS: All of that. There was a project in the UK called Project Mirabal, which I read. It was some years ago now. But what they found was that interventions that targeted behaviour worked better than those that

targeted values and aspirations. In Victoria we are using the Duluth model. It is largely influential in MBC, but I do not think it is going to talk to them. Even the young men we assessed in Ready Baby—you know, we take our education and position for granted—gender equity and all of the accompanying ideas are really foreign to many people. The Duluth model assumes that that can be an educational tool through which they will see themselves, and that is a flawed assumption. I think we should be looking at who in the world has got some interventions up that have proven to be effective and use them. I recall there were two interventions that were teaching men, which were recognising their own step-up into using aggressive behaviours, having a strategy right there and then to get themselves out and only returning home when they knew that they had gone past that explosive and potentially harmful mood and behaviour, and that intervention was working. There was nothing about it that was philosophical; it was behavioural.

The CHAIR: Yes, really practical. Do you know the name of that one?

Ms BURNS: I only know you can look at it in Project Mirabal.

The CHAIR: Okay. Great. Well, we will.

Ms BURNS: Which I think was about 2015.

The CHAIR: Yes. Fantastic. We will. Tania.

Ms MAXWELL: I could go on for hours.

The CHAIR: I know. We could talk all day.

Ms MAXWELL: We could, Kerry, but no, because one will go to the next and to the next and to the next. I think, Kerry, just a little bit of feedback on where you see sentencing currently. Do you believe that it meets the expectations of the victims that you are working with? So knowing that not all offenders are actually sentenced or incarcerated, do you think that there is a—

Ms BURNS: I do not think so. I do not think so, because I think it is really hard for the system itself to understand the depth of the harm and the depth of the fear. When people are fearful and language is hard to find for what they have been through, and then they go to court and they hear terms like—it does not matter; it is never going to feel like it acknowledges what they went through. Some victim-survivors will say they felt better served by justice that the perpetrator was found guilty, but a heck of a lot of perpetrators are not found guilty, so they do not have that experience. I think sometimes the outcome of the system can feel like it minimises what the victim went through and their family. I think we have got to do better, but it might not be a longer sentence. One of the things that people look for is for the perpetrator to recognise to the victim what they did was wrong.

The CHAIR: It is that combination of restorative justice with the criminal system.

Ms MAXWELL: I guess what drove that question is we are looking at Alicia's case and seeing that he lost his licence for a longer period than he was actually incarcerated for taking the life of that woman.

Ms BURNS: It is a bit disgusting.

Ms MAXWELL: How do you ever—

Ms BURNS: That is terribly hard. And I think that the judgement has to account for harm to the rest of the people that live—like, how harmful is that for her mother? I think it is terrible.

The CHAIR: Her sons.

Ms BURNS: Her sons, exactly, so some remedies that reach to people's hearts, not just the judicial rulings.

The CHAIR: It is a hybrid of that kind of restorative justice, and I know that the victim impact statements in theory are part of that, but—

Ms MAXWELL: But if they can be redacted

The CHAIR: But if they can be redacted or they are not even read out in the court so that, you know, the victim never feels part of that process.

Ms BURNS: Well, the victim is voiceless in the courtroom. I mean, we keep playing with the Westminster system. Do we really want to? We could write another one.

The CHAIR: I was just saying this one is based on kind of 16th century and 15th century—

Ms BURNS: English.

The CHAIR: Yes, that is right. Maybe we can find a better process. I just have one question. Given that we have just finished our homelessness inquiry and report—and certainly family violence was front and centre throughout that report—just thinking about that case last night at 9 o'clock when the family had to be taken out of the house, what would have changed that? What would have made it possible for the perpetrator to leave and the family to stay safe in that home?

Ms BURNS: CP would have needed to feel confident they could take him somewhere, and he needed to stay there. I think that is the reason they opt for moving the victim and the children, because they are more confident that will work. That is why there just need to be stronger tools, connections between the powers they have and the policing powers that could be connected to that. They should be able to say, 'You're going to stay in this motel tonight. We've just sent an email. The local police know; they will be checking. And if you leave that motel and go anywhere near the home tonight, there will be a consequence to that'.

The CHAIR: Yes, there will be consequences.

Ms MAXWELL: Tasmania have just completed a trial—

Ms BURNS: Like that.

Ms MAXWELL: Like that—and they have actually monitored them with bracelets so that they could remove the offender as opposed to having to pack up and move the whole family, which is so disruptive, and they have seen pretty significant positive outcomes in doing that.

Ms BURNS: Yes, I think we could do it. You have just got to have a bit around it. Like, we have proven the IVO, which originally people said does not work, does work. It has just got to be backed up.

The CHAIR: Yes. Kerry, we could spend all afternoon doing this, but we probably should get in our cars and go back to our homes and families. Thank you so much, and congratulations on your next life move and for all your work. I am expecting that we will get a submission probably from your organisation and some of the other centres against violence as well.

Ms BURNS: Thank you.

The CHAIR: Thank you. All right. Thanks, everyone, and that brings this hearing to a close. Thank you, Wangaratta. Thank you, team. Thank you, everyone in the committee.

Committee adjourned.