

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into Victoria's Criminal Justice System

Melbourne—Monday, 6 September 2021

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WITNESSES (*via videoconference*)

Mr Stan Winford, Associate Director, Research, Innovation and Reform, and

Ms Elena Campbell, Associate Director, Research, Advocacy and Policy, Centre for Innovative Justice, RMIT University.

The CHAIR: Good afternoon, everyone. Welcome back. As I am sure you are aware, this is a public hearing for the Legislative Council Legal and Social Issues Committee's Inquiry into Victoria's Criminal Justice System. We are very pleased to be joined by the Centre for Innovative Justice, based at RMIT, and joining us from there are Stan Winford, who is the Associate Director of Research, Innovation and Reform, and Elena Campbell, who is the Associate Director of Research, Advocacy and Policy.

Joining me today—I am Fiona Patten, the Chair—we have Ms Tania Maxwell, Ms Sheena Watt and Ms Kaushaliya Vaghela.

If I could just let the witnesses know that all evidence taken is protected by parliamentary privilege, and that is provided under our *Constitution Act* but also under the standing orders of the Legislative Council. This means that anything that you say today is protected by law; if you were to repeat those comments outside this hearing, they would not have the same protection. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

Everything is being recorded today by our wonderful Hansard team. You will receive a transcript of today's hearing, and I would encourage you to have a look at it and make sure that we did not mishear you or misrepresent you in any way.

We have got your submission—thank you very much for that—and we welcome some short opening statements before we open it up for committee discussion.

Mr WINFORD: Thanks very much, Fiona. I would like to acknowledge the traditional owners of the land I respectfully live and work on, the Wurundjeri people of the Kulin nation, and pay my respects to their elders past, present and emerging and any Aboriginal people participating in or watching this hearing. I would also like to acknowledge the ongoing impact of colonisation in the justice system for Aboriginal people.

Also, just to mention, both of us will be speaking, but Elena will be speaking to the submission which has been forwarded to the committee and I will speak in relation to the impact of disability on people's over-representation in the justice system, which is another area of our work.

The CHAIR: Terrific.

Mr WINFORD: Thanks. We are really grateful for this opportunity to provide input. It is an important inquiry. In fact our focus at the centre is very much in line with what this committee is probably looking at in the sense that our aim is to make the justice system a positive intervention in people's lives and our focus is on working with people who are most often affected by the failures of this system—people who have been involved in the justice system—and we like to work closely with them to develop solutions to the challenges that they face.

Our work is quite diverse. We are working with victims of crime, with prosecutors and defence lawyers, with courts, with government and with community organisations on many issues, but particularly with people who have experienced imprisonment or contact with the justice system. As I said, we want to highlight two areas of our work today relevant to your terms of reference. One is the over-representation of women in the system and the over-representation of people with disability. I will speak about disability, in particular cognitive impairment.

One of the problems that our system faces is that people with disability and mental impairment are terribly over-represented in the system and I think the statistics are really quite shocking. Amongst Victorian prisoners about 40 per cent have a mental health condition. Amongst those who are remanded in custody more than half have had previous contact with the mental health system and about half of the people remanded in police cells were not receiving appropriate treatment in the community at the time of their arrest. People with disability

aged between 18 and 34 are incarcerated at about three times the rate of people without disability, and in the next sort of age bracket about twice the rate of people without disability—so people aged 35 to 54.

But probably the most shocking statistic that I have encountered in my time working with the centre is that, according to Corrections Victoria research from 2011, 42 per cent of male prisoners and 33 per cent of female prisoners have an acquired brain injury compared with less than 3 per cent in the general population. Now, of course a very significant proportion of prisoners have some other form of cognitive impairment such as fetal alcohol syndrome disorder, intellectual disability or spectrum disorders. I understand you may have already heard a bit about this project, but we have worked with Jesuit Social Services to establish a project to address this, and what was important about this project was that it involved working with people with ABI who had been in prison to learn how they experienced the system and how it could be improved. We have continued that work in various forms since then. Among other things, we now have Dorothy Armstrong, who I want to acknowledge, on our staff, who is a woman who has got a brain injury and has been in the justice system, and her work with us has been really crucial to understanding the issues in this area.

In our work people with disability told us that they wanted recognition, respect and support, and those themes—recognition, respect and support—encompass several important messages about how the system needs to change to better respond to the needs of people with disability.

The need for recognition reflects that many people told us that they had travelled through the justice system without their disability being identified. Police were not equipped with the knowledge and skills to recognise and interact with people with disability who are drawn into the system with their disability attracting the attention of police. Behavioural manifestations of disability had been interpreted as wilful, difficult or antisocial conduct leading to criminalisation, and many police were not able to identify the need for safeguards that actually exist, although there are not many of them in the system, such as independent third persons who can attend interviews that people with disability have in relation to offending. Too often it was left to people with disability themselves to advocate for support. They frequently were not asked about what supports or adjustments they might need, and many of them were not aware of supports available.

Of course, if you are someone with a disability, disclosing your disability in the justice system is not necessarily the first thing you would do, because in many people's experience it had led to exploitation of their vulnerability.

The need for respect had to do with the way in which people with disability experience their engagement with the justice system, whether police, courts, prisons or corrections. People who were treated with dignity and respect and as participants in decisions that affected them were more likely to disclose their needs and in turn to have those needs met. For people with disability, that meant that they were more likely to engage with the demands of the system, including in relation to compliance with orders. I think this is really important because one of the growth areas in the rates of imprisoning people has to do with non-compliance with orders, which have become more strictly enforced due to many of the reforms that I am sure you have been hearing about. For people with disability, compliance with orders rather than necessarily reoffending can relate to whether or not the system itself is reasonably adjusted or adapted to meet their needs. If you, for example, have challenges retaining information or difficulties with literacy or reading and writing, how is it that you can understand and comply with an order which may result in you being locked up if the system does not recognise or respond to your specific needs? The other thing that I think the need for respect identified was the need for disability and trauma awareness training and a precautionary approach amongst people working with people in the system. Given the very high rates and prevalence of disability in the system, it seems strange that it is almost by exception that people are treated differently if they themselves can bring it to the attention of the authorities that they have particular needs.

But the most critical thing was the need for support appropriate to individual needs early on. In many cases we did a lot of work mapping people's interactions with the justice system. One of the clearest things that came out of our work was that it was not until people were deeply entrenched in the system that they were offered any access to support. But really what you would want to see would be support from first contact, early intervention, right through to the point of exit through completion of orders or parole. Many people travelled through the system repeatedly before their need for support was identified, and many people did not get basic communication support, such as Easy Read documents, which meant that they could not access programs necessary for their rehabilitation or release.

Some of the key issues that we have also identified include the lack of justice plans for people with disability, in particular acquired brain injury, and the need for a strengthened independent third-person program to help identify non-custodial options, options for bail, referral to solution-focused court lists and so on, which is the case in Sydney or in New South Wales. There is a very successful system there that follows people right through their journey through the system. A very significant reason people return to the system is their lack of suitable housing, and that is a common theme. People with disability are disadvantaged across all housing indicators. So those are some of the things we found and some of the recommendations that were made. I will pass on to Elena now, if you would like, for her comments.

The CHAIR: Thanks, Stan. Thanks, Elena.

Ms CAMPBELL: Thanks very much for allowing us to join you. And of course I want to acknowledge the traditional owners of the lands from which I join you today, the Boon Wurrung people down on the south coast of Victoria. We acknowledge their elders past, present and emerging and any Aboriginal people joining the call today.

Well, as Stan said, a lot of our work—all of our work—across the CIJ is about people's experience of the criminal justice system and whether they experience it as a positive intervention in the way that perhaps the rest of the community might expect. And I think one of the things that is increasingly obvious across our work is a bit of a disconnect between how the majority of the population might expect that our system functions in terms of a deterrent and/or punishment and/or serving a rehabilitative focus, which means that people come out the other end and they do not return. And the reality that we see increasingly is the criminal justice system essentially just compounding trauma and disadvantage, which is the common experience for the vast majority of people who come into contact with it.

On this basis we have been doing a program of work around women's contact with the criminal justice system in particular. And as the committee would know and, I am sure, have heard throughout this, that is partly because in Victoria specifically women are a particularly rapidly growing cohort in the criminal justice system. They still make up a relatively small proportion, but the rate at which numbers are increasing in custody outstrips the rate of men. And we outstrip the rate at which women are increasing in the criminal justice system across other jurisdictions around Australia.

Now, the reasons for women's contact with the criminal justice system and the damage that that contact can have is not just something that has been recognised in Australia or in Victoria; it is recognised by the international community. And 10 years ago the United Nations passed something called the Bangkok Rules, which recognises the damaging impacts of custody on women's experiences and the need for prioritising non-custodial options whenever that is possible.

Something that we just want to highlight really is perhaps some of the pathways that bring women into contact with the criminal justice system and then their experiences are often quite similar to other people who are experiencing particular vulnerabilities and disadvantage. The vast majority of women in contact with the criminal justice system are themselves victims of crime, and I am not sure that that is something that the wider community would necessarily understand or expect. But in any women's prison population between 70 and 90 per cent will have experienced gendered violence as children with child sexual abuse or exposure to family violence or exposure to family violence and sexual assault as adults, and the trajectory that that then sets off into poverty, substance dependence and mental health issues often brings people into contact with the criminal justice system as a result. Women in custody experience particularly high rates of mental ill health and their offending is particularly related to substance dependence in many cases, but that is one step on a pathway from victimisation and trauma to offending that we just continue to ignore. Then of course the experience of custody or contact with the criminal justice system, instead of functioning as a positive intervention, can often compound that harm. It is an interesting thing that we are having this conversation in a week when as a nation we are supposed to be grappling with our response to gendered violence and sexual harassment and the issue of a criminal justice system that essentially steps in and takes away further control from people who had often never experienced any control over their lives in the first place.

The nature of women's offending in particular is often quite different. Women are charged with less serious offending. They are usually property offences or drug-related offences, but a commonality with what Stan was describing is the increasing likelihood or the increasing rate at which women are often charged with what we

might call in the legal system ‘administrative offences’—so compliance with orders or what are kind of known in shorthand as breach-bail offences. So one of the things you will have heard quite a lot about is the damaging effect of the current restrictive bail laws in Victoria. Something that our research has shown is that women are being particularly impacted by the first tranche of reforms in 2013, which made it an offence to breach conditions of bail. And so what that does is then ratchet women up into the next category, where they have to prove exceptional circumstances or show cause, and up they go, up the sentencing hierarchy.

So one of the things that we have done is put together a paper called *Leaving Custody Behind*, which attempts to do several things—attempts to bring together the evidence in relation to women’s pathways into contact with the criminal justice system and seeks to highlight the particular systemic drivers in Victoria which have made that trajectory or that increase in that particularly acute. But because we are very solutions focused at the CIJ we have put together—identified—five foundations for reform, because we see that there is a way, a different path, that we can take and a way out of the corner that we have perhaps boxed ourselves into. But it involves a systemic recognition and understanding that reforms that we need to make to the criminal justice system cannot just assume that everybody is going to experience those interventions in the same way. So just as we cannot wait until people have gotten well into the system before they are offered support for their disability, we also cannot wait until people are well entrenched into the system before we understand their experiences of harm and trauma. And a person that would represent this need particularly well, as Stan has referenced, is our peer support worker Dorothy Armstrong, who explains powerfully that her own experience of gendered violence was something that she was never asked about until she was well entrenched into the criminal justice system but that shaped all of her interactions and the way she experienced contact with police.

So there is an opportunity for us to think about not only ‘Are we taking a more therapeutic approach? Are we offering better support?’ but also ‘Is the support that we’re offering right for the needs of the people who receive it?’. And that is what we have tried to do in our paper that hopefully I will have the opportunity to take you through in a bit more detail.

The CHAIR: Thanks, Elena. Thanks, Stan. Thank you. There is so much to get through in such a short period of time, so we will see what we can get through.

Stan, if I could just start with disability, it seems remarkable that we have got an NDIS and we know that nearly half of our prison population have ABIs, intellectual disabilities and other disabilities and yet we still seem to not have an intervention. If I could just ask on one small point, when someone is arrested or when someone is going through sentencing or when they are about to go into incarceration, what interventions could we put in place so that that time in corrections could actually be a correction for them, so that from the day that someone does go into incarceration or into prison we can be working to start addressing those issues?

Mr WINFORD: I think there are many things that we could do, and one of the challenges seems to be that the system is very fragmented and inconsistent. It seems to occur on several levels. I mentioned before that people would cycle through the system regularly without having their disability recognised, but they would also have their disability recognised at some point and then subsequently have it unrecognised again and then have to go through the process of obtaining forensic neuropsychological reports and so on to identify what their needs were. So there is something to do with, among other things, at least the coordination and information sharing across the system that needs to be improved as a threshold issue.

If and when that is addressed, then what can we do? I think, as others have probably said, prisons and custodial environments are not the best places for addressing people’s needs, and in many cases they are environments which do not facilitate support for people. One of the issues that people that we are working with have identified for us—and it is a really big issue—is the way in which people’s access to support is interrupted when they enter the system and they are unable to plan for their release, particularly through the national disability insurance scheme. So there is a lot of confusion, and part of it is to do with the relationship between the states and the commonwealth over who is responsible for what—what is in effect something that the justice system should provide as a support versus what the NDIS should provide as a support. I think in the battle between our systems and layers of government and the way the system operates, the people are lost, constantly falling through the cracks. So it means that someone cannot start planning for their release with access to support early, and it means that often people who have come into the system because they are homeless are released into homelessness, and it is just not the way it should work.

I think the big problem is information consistency and transfer. But, I mean, it is the usual things to help people reintegrate and transition: it is access to housing, it is education, it is supports, whether they are personal or other supports that are needed. It is just very hard to identify and arrange those for people in custody.

The CHAIR: We have seen that the Sentencing Advisory Council has the statistics. I mean, it is not unknown. And I completely get that incarceration is not the answer, but when someone is being incarcerated, surely we could have some sort of checklist that went through this to ensure that people with ABIs—

You know, quite often there is knowledge of that mental health issue or of that disability, including ABIs, prior to sentencing. It would even have been probably argued in the courts during sentencing. How could we make that information travel with that person as they get through? It seems to me that would not even require legislation.

Mr WINFORD: No, I am not sure that it would. I think it might be possible to do that without legislation. I think we just have very somewhat overloaded systems. And when thinking about that point about whether or not someone's disability is actually recognised, if our courts face backlogs and 90 per cent, 95 per cent of people are travelling through the Magistrates Court, which is a high-volume court that deals with 175 000 cases a year compared to 2000 in the higher courts, how is it that in the 3 minutes or so that the person, who may or may not be represented, who may or may not know themselves that they have got some form of disability—how in that environment is this going to be identified, let alone be documented and travel with them through the system? I think we have got some big issues in terms of properly resourcing the system so that it can identify those people who need more attention, more support, and focus in on what their needs are and give them an opportunity to be heard about those needs.

I think a lot of it has to do with expanding access to our specialist responses. I think some of the people we worked with had been in the assessment and referral court, for example. They all spoke quite glowingly about their experience in terms of them being listened to, that they were in an alliance with the person and the people around them who were working to help them address the challenges that they faced. Those are the sorts of approaches that I think we need more of. Some of them can be mainstream, but if we are still sort of really crushed in terms of processing people through a system as quickly as we can because, you know, we have just got to make that wheel spin faster and faster, then many of these issues are not going to be dealt with. The fact is that in the long term it just means people are coming back again and again and again. I would just advocate for more access to a sort of problem-solving type of response from the courts and probably also better engagement early on with a service or support system that travels with people, because if the system itself cannot maintain continuity, then perhaps we need something else that performs that function by travelling with that person when they first come into contact with the system and right through their journey.

In New South Wales the IDRS effectively does that. It is a bit like a turbocharged independent third person—so as well as sitting in on an interview and making sure that someone's rights are safeguarded, they also identify referrals and support options, and they travel with that person through court and they keep in touch with them through the process. So I think something like that would be well worth considering and adopting, and that is something that we recommended in the enabling justice report.

The CHAIR: Yes. Thanks, Stan. Just with the IDRS, has that actually eventuated in a reduction of people with disabilities being incarcerated or just improved the service?

Mr WINFORD: Well, look, I think it has, and I think that service has been evaluated. And like many of the really great options apart from prison that are out there, it has been struggling for funding and it has been a pilot for many years, and despite other jurisdictions pointing to it as a great success story, it has only just been saved from the frying pan a few times because it is not seen as integral to the system, whereas it absolutely should be, given the numbers. But I think, just on that question of whether people's experience or the outcomes are important, I think their experience is critically important, because if people are not treated with dignity and respect through the justice system, then we know—and there is empirical evidence of this—that they will not treat that system as legitimate and they will be less likely to comply with what it is the system is trying to do to them because they will not feel as though it is there for them. And that is why we have got Koori Courts and that is why we have got the assessment referral court—it is about working with people in a constructive way to address the issues that are bringing them before the court, and that is much better for the whole community in the long run.

The CHAIR: Yes. Thanks, Stan. I think it is a really good point. Elena, if I had time, I would go to you, but I do not. So Kaushaliya.

Ms VAGHELA: Thanks, Chair. Thanks, Stan and Elena, for your submission and also for your time today. I would like to know: what has your work with people who have lived experience of disability taught you about factors that bring people with disability into contact with the justice system? And on that basis, what can we learn or what could we do to reduce that engagement?

Mr WINFORD: Well, I think many factors bring people with disability into the system. Much of it is very overarching issues like stigma and discrimination, early childhood development, poverty—those sorts of issues that we all know coexist with people's contact with the system. One of the things in relation to people with ABI, for example, was that use of drugs or alcohol over an extended period of time could give people a brain injury, and that was a factor in their contact with the system. There is a really clear link between young people in out-of-home care, contact with police and disability. So like many others have probably identified, we really need to look at the pipeline that comes into our adult system and whether there can be more done. But yes, I think family violence is a really common feature of people's lives that contributed to or was part of their journey into the system. I mean, the answers are all, as you would expect, about early intervention and development and support for people that need help rather than waiting until they are in the system before offering anything helpful.

Ms VAGHELA: You mentioned family violence. What has your work on perpetrator interventions taught you about effective programs to prevent family violence, then?

Mr WINFORD: I will hand over to Elena for that one, because she is the real expert on that.

Ms VAGHELA: Yes, sure.

Ms CAMPBELL: Yes, we have certainly done a lot of work on perpetrator interventions and court responses to family violence. In terms of 'perpetrator', is your question directed at preventing contact with the criminal justice system for people who experience family violence?

Ms VAGHELA: Your experience overall—your work on perpetrator interventions.

Ms CAMPBELL: Yes. Well, certainly, we have seen the space of perpetrator interventions and the understanding of the need to intervene more effectively with people who use family violence evolve quite significantly over the last five or six years. It has been a contentious area and is still something that our governments and policymakers struggle with, because, as we know, we are still coming to terms with the need to invest properly in both resources and attention in terms of people's experiences of family violence and we are nervous about then deflecting attention away from that anywhere else. But until we intervene at the source of the violence the risk to people experiencing it is not going to shift and change. So certainly what we need to understand is that we cannot fund a few behaviour change programs or other kinds of similarly change-focused interventions and assume that the job is done. Similarly we cannot operate a system in terms of the churn that Stan has described. Really that is a factor across all of our work that we see, that often we equate system activity with system effectiveness. We think, if we are doing lots of things to people and we are stepping in and removing people from the home and then we are taking them to court and we are imposing an order on them, that an order equates with safety. We know that that is incredibly important, but that is only the first part of the process and that a lot of additional support and scrutiny, risk assessment and management and essentially functioning together as a system are the only things that make a difference to the safety of women and children and other people experiencing family violence. So a lot of our work is working with government departments or courts to increase an understanding of what that operation as a system might look like.

We talk a lot about perpetrator accountability across the system without necessarily interrogating what we think that actually means. We might think that doing something—you know, slapping an order on someone or referring them to a program—means that they have been held accountable. Really all we have done is that the system has done something to them; they have experienced a consequence. But that is not necessarily going to change anyone's behaviour. We have to do a lot more as a system for our own accountability to victim-survivors: for how we track the outcomes of our intervention, how we follow up to see if we referred a perpetrator to a program, what the results have actually been—

The CHAIR: That is right—whether it actually worked.

Ms CAMPBELL: Yes—whether the information comes back to say, ‘Yes, this has made a difference’ or ‘No, it hasn’t changed the risk. Let’s follow that through. Let’s talk to police, let’s talk to the other services working with the victim-survivor about how she’s feeling’. There is a whole lot more, and we are only just beginning to grapple with it. We are five or six years down the road from the royal commission, but we are still actually working out what working together as a system actually looks like.

Ms VAGHELA: Thank you, Elena.

The CHAIR: Thank you. Tania.

Ms MAXWELL: Thank you, Chair. Elena and Stan, thank you very much for joining us today, and I think we need to rebook you two for an entire day; I have so many questions to ask you. Look, I just wanted to briefly touch on how you speak about policing in your submission, and we know that a significant number of those who have been incarcerated have had that prior interaction with law enforcement, with the justice system. What are different ways? What suggestions would you have on when somebody is given a caution? How can we then prevent that offending from escalating? What can we do? You have got to draw a line as well under how many cautions somebody has. On that point, do you think that that should trigger a referral to a service that can support that young person or adult or whoever it is, once a caution is given?

Ms CAMPBELL: I think it is an interesting question and sort of a reflection again about our assumption that the system has done something, an activity, we have given a caution and then our job there is done—and then we get surprised when people kind of come back around to the system. Certainly what we need to be doing is taking more time to understand people’s needs—why they are coming into contact with police. Specifically to your question, there needs to be capacity within Victoria Police systems to enable referrals to a whole range of different services, because at the moment there is not that capacity. It is very sort of system driven, so if a police member is called to X type of incident, the referral options are this way, and if a police officer is dealing with a victim of crime, the referral options are that way. They are not very diverse, and there is not time within police operational demands to actually follow up to see what happened if a referral was made. So it is not actually just about them making a referral as well. It is about understanding and tracking the difference that that might have made, which sort of tends to be the theme that we return to all of the time—that is not just about us doing more, it is about us understanding whether what we did had any meaningful effect.

But certainly the issue is also the extent to which police are equipped with knowledge and understanding to issue cautions in appropriate circumstances, because we know often people who are most disadvantaged and most vulnerable are not the likely ones to be given cautions. The evidence shows us that, for example, Aboriginal people and Aboriginal women in particular are far less likely to be given cautions than non-Indigenous people. So there is a range of kind of layers of complexity there within that simple practice that we need a lot more attention on.

So in our paper we have recommended gender-informed policing practices and a lead within that to increase understanding about what the experiences of women, specifically in our submission, are that mean that they are likely to present often as what services and police alike will say is ‘very complex’. That is because they have multiple needs created by their experiences, but that often presents as more challenging to deal with, so services will say, ‘Too difficult to engage’, and police will say, ‘Oh, you’re being difficult. I’m not going to give you a caution; I’m going to charge you’. So there is a whole kind of range. There are layers beneath the simple decision of giving a caution or not.

Ms MAXWELL: When you are talking about people with disability—and there are such high numbers of people who are incarcerated with disability—surely it is incumbent upon our education providers to provide that testing. I know that schools are very hesitant themselves because of the cost of actually having someone tested, but how does somebody, as an adult, get to that stage where they may have an ABI or some form of disability and it is not recognised until they are actually incarcerated? There is an entire gap there, from being born right through our education system and to being an adult, that is clearly missing in all of this.

The CHAIR: Stan.

Mr WINFORD: Yes. I think that is true, although sometimes people are screened and tested and we just do not provide a response. So it has got to be more than just identifying the disability; there has got to be something provided in response to it. I think many of the people with disability that we worked with were actually a bit cynical about not only disclosing because of their vulnerability but because it did not seem to make any difference to them in terms of the responses that they received. So I think that is reasonable, but until there is a kind of concomitant response, then we really need to resource that as well.

Another factor that is just worth noting is that there is a reluctance in the youth system to label people too early on. Brain injury and so on that can occur later is regularly not formally identified because people are reluctant to do so early on in a child's life. But I think, having said that, there are also really significant challenges in access to having testing and assessment conducted. In WA, for example, an independent organisation funded ABI testing for kids in custody in youth detention and found that really high rates of them had fetal alcohol syndrome disorder, and that was important because until that assessment had been conducted none of them could get access to the NDIS. The system itself was not actually providing that as a matter of course.

Ms CAMPBELL: And I would add to that, in the context of my research in relation to young people and family violence, often young people who have experienced family violence and who then may be using violence at home themselves will have the school identify that there are some issues. Sometimes trauma does not manifest in that way. Sometimes you get this differentiation between the kid who is troubled and therefore very quiet and withdrawn and just does not come to the attention of the school system, so they scrape through to a very surprising level before any issues are actually identified and then the kids who for the school are presenting all sorts of behavioural concerns, so they might be identified at an earlier point. But then that is given to the family, who themselves have a whole range of issues to deal with. Parents might have their own disabilities or language delays or cognitive impairments or their own experiences of trauma or five other kids to deal with or whatever it is that means, 'Well, what do I do with this?'. They are not supported then to access the services that actually might make a difference to the lives of the young people or the families. Schools will do one part of the process, but again it is about the follow-through—what happens then. A theme across the work that I do where people have experienced child removal is that families will say, 'Well, they took the kids', and then child protection drives them around to access all the services and supports that were going to help them, and they say, 'Why didn't they just do that for us in the first place?'.

The CHAIR: Yes, of course.

Ms CAMPBELL: It is sort of at that point where, as Stan was saying at the outset, someone gets right well entrenched into the system before something is identified. And again, we function on a crisis response. We wait till the need is so acute that we feel like we have to do something rather than getting in earlier and preventing that trajectory of harm.

The CHAIR: Yes. Thank you. Sheena.

Ms WATT: Thanks, Chair. Thanks, Elena and Stan, for being with us today and for your very substantial submission and also the issues paper that you included with that as well on the gender-informed criminal justice system. I, like Tania, probably have many, many questions that could take many, many hours just off the back of that issues paper alone. I did find it enormously helpful for our work, so can I just express to you my thanks. I of course know the work of the Centre for Innovative Justice through your work with the criminal records project, and I wanted to go to that, if we could, and your work at looking at employers and jobseekers and how we can really work with employers around educating employers around employing people that may have previously held a criminal record. What is your work in this criminal records project turning up, and what really are the continued barriers now that we are going to see a spent convictions scheme in Victoria? What will be some of the continued barriers that we need to look out for when it comes to people with a criminal record seeking employment? And then I have got some questions about particular cohorts within that group. I am not sure who that one is best for, but I will leave—

Mr WINFORD: Yes. I can respond to that one. Thanks, Sheena, and thanks for your interest in supporting that work. We really appreciate it—and of course Fiona's as well. I think there is quite a lot going on here, and our work in this space, particularly in relation to researching the attitudes of employers, is really early days, so we have not yet undertaken or at least concluded that research in a way that will help us establish really what employers are thinking about when they are considering whether to employ people with a criminal history. But

what we know anecdotally is that employers do not have a really clear sense of what people's criminal history means in terms of risk and suitability for employment. So as you would know, the way that criminal history is described and made available to people is really, really high level. So what is theft? Theft could mean anything. Theft could mean pinching some lollies from the milk bar or it could mean a really substantial fraud, so if an employer sees something like that without much context, they do not really know how to assess it. I think too often, as others have probably told you, we have a very risk-averse approach to thinking about engaging people in the community in work and other opportunities. So I think there is a really important piece that goes to understanding and recognising what a person's old and usually irrelevant criminal history means for them as an employee.

The other important thing I think is also just recognising that people who have been in the system may well require more than just jobs. They might need a bit of support in engaging with employment. I think there are some good examples of that that we are aware of where people like Toll Holdings through First Step and Second Step actually recognise that someone who might be in the community serving a community-based order does have lots of things they need to attend to in terms of appointments and so on, whether it is for counselling or treatment. That needs to be recognised and accommodated to some extent, but generally I think the other big issue is that we as a community need to stop stigmatising people with criminal history because our system is intended, at least on paper, to enable people to serve a sentence and then to re-enter the community. So if someone goes to court and they get a fine or if they get a six-month sentence or whatever it is, it is not supposed to be a life sentence. It is supposed to be a sentence that promotes, obviously to some degree, some form of punishment and accountability for what they have done but also then enables them to become contributors to our community. I think there is a bit of work we as a community need to do in terms of recognising that someone has had that experience—and many of us do not know why people have come into contact with the system, and we have just heard about women and we have just heard about people with a disability—and we need to recognise that we have a role in contributing to their return and reintegration.

Ms WATT: Are there any gendered considerations when it comes to employment opportunities post release for people with criminal records? Are we seeing any differences in the approaches of employers with respect to gender or consideration of risks or other things that are worth thinking about?

Mr WINFORD: Again, it is probably a bit early in our research to answer that question. I do not know if Elena has any insights into that.

Ms CAMPBELL: Well, not necessarily in relation to employment, but one of the things is that there are certain trends that are emerging about women's contact with the criminal justice system that are interesting and may turn out to be quite relevant, because we know that women's rates of offending are not increasing but the rates of them being in contact with the criminal justice system and incarceration are, and that is because of the nature of the system drivers, the offences with which they are charged. I mentioned that breach-bail offence, so those sorts of administrative offences.

Something else that is coming up as a really significant issue in women's contact with the criminal justice system, and therefore their potential for criminal records, is where they are in contact with the criminal justice system as a result of being misidentified as the predominant aggressor in family violence. There was a question earlier about perpetrator interventions, but this is a bit of the flip side. A lot of the challenges we are facing at the moment are about essentially inadvertent consequences of a very kind of significant piece of reform that was designed to respond to a serious issue, but we have not thought about what the consequences might be for other people. So the bail reforms, you will have heard, were designed to respond to very significant episodes of male violence, and yet women are among the cohorts that are being disproportionately harmed by those reforms.

One of the interesting and even more tricky issues that we are seeing at the moment is that our very proactive response to family violence is leading to an increase in the number of women who are being misidentified as predominant aggressors. So police will attend a call-out and essentially not read the room, not read the dynamics because they are incredibly complicated. He might have called the police himself. He is the one who is appearing very calm. She is incredibly traumatised. Or there may well have been an incident where she has resisted the violence, and so again that kind of intervention is imposed where she is identified as the perpetrator; and from that simple act—the trajectory of harm that flows from that—she loses the kids, and if she breaches

the order, she is in contact with the criminal justice system. It is a very, very profound impact from that simple act of misidentification.

We are seeing a lot more women now in our criminal justice system as a result of that, and so that is, again, something to watch, because we do not have many figures on it but anecdotally it is something we know is occurring and there have been a few studies about it. So that may well have a significant effect on an even broader reach of women than you might necessarily anticipate.

The CHAIR: Thank you so much to both of you. We have unfortunately really, really run out of time. Again, I concur with Tania and Sheena and Kaushaliya in saying that this could last all day, and we might think about some interesting panels, when we can have panels, around restorative justice and around innovative justice schemes. It might be a nice way to round off this inquiry. We will see.

Thank you again. The transcript is on its way. Please have a look. Make sure that we have not misheard you. I think we were all listening very intently to everything you did have to say today. Thank you for the work you do. The committee will take a short break just to bring in the next witness. Thank you.

Witnesses withdrew.