



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## SOCIAL POLICY SCRUTINY COMMITTEE

### Public Hearing Transcript

#### Youth Justice and Related Legislation Amendment Bill 2019

8.30 am, Thursday, 30 May 2019

Litchfield Room, Level 3, Parliament House, Darwin

**Members:**

Ms Ngaree Ah Kit MLA, Chair, Member for Karama  
Mrs Lia Finocchiaro MLA, Member for Spillett  
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen  
Ms Sandra Nelson MLA, Member for Katherine  
Mr Chansey Paech MLA, Member for Namatjira

**Witnesses:**

- Peter Shoyer: Information Commissioner of the NT
- Craig Dunlop: Vice President, Darwin Press Club
- Aislinn Hegarty: NT State Coordinator, CREATE Foundation
- Colleen Gwynne: Children's Commissioner of the NT
- David Woodroffe: Principal Legal Officer, North Australian Aboriginal Justice Agency
- John Adams, General Manager NT, Jesuit Social Services  
Elle Jackson, Manager – Darwin, Jesuit Social Services
- Shahleena Musk: Senior Lawyer Aboriginal and Torres Strait Islander Rights Unit, Human Rights Law Centre
- Rodger Williams: Deputy Chief Executive Officer, Danila Dilba Health Service  
Joy McLaughlin: Senior Policy Officer Strategy and Reform, Danila Dilba Health Service  
Tess Kelly: Policy Officer, Danila Dilba Health Service  
Jahmayne Coolwell, Danila Dilba Health Service
- Fiona Kepert: Lawyer, NT Legal Aid Commission  
Russell Goldflam: Lawyer, NT Legal Aid Commission
- Marty Aust: President, Criminal Lawyers Association
- Andrew Walder: Access to Education Manager, Tangentyere Council Aboriginal Corporation
- Adrian Scholtes: Chair, Central Australian Youth Justice
- Ken Davies: Chief Executive Officer  
Brent Warren: General Manager Youth Justice, Territory Families  
Luke Twyford: Executive Director Strategy, Policy and Performance, Territory Families  
Seranie Gamble: Director Law Reform, Territory Families

## YOUTH JUSTICE AND RELATED LEGISLATION AMENDMENT BILL 2019

### Information Commissioner of the NT

**Madam CHAIR:** Good morning, everyone. My name is Ngaree Ah Kit. I am the member for Karama and the Chair of the Social Policy Scrutiny Committee.

On behalf of the committee, I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019. I acknowledge that this public hearing is being held on the land of the Larrakia people and pay respect to Larrakia elders, past and present.

I acknowledge my fellow committee members in attendance today: Robyn Lambley, the Member for Araluen; Chansey Paech, the Member for Namatijra; and Lia Finocchiaro, the Member for Spillett.

I welcome to the table to give evidence to the committee Peter Shoyer, Information Commissioner of the NT.

Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask everyone to make sure their phones are on silent.

For the record, Mr Shoyer, could you please state your name and the capacity in which you are appearing.

**Mr SHOYER:** Peter Shoyer, Information Commissioner of the NT.

**Madam CHAIR:** Mr Shoyer, before you proceed to the committee's questions, would you please make a brief opening statement.

**Mr SHOYER:** Yes. I will make it brief because the written statement covers the issues I seek to address. I am appearing in relation to the provisions relating to proceedings in closed court and in relation to the publication of information. That was what my submission was limited to.

Essentially, in terms of the consideration of those issues, I submit, from the point of view of the committee, that there are three very significant factors that need to be taken into account in the development of those provisions.

The first is in relation to privacy, which is part of the role of the Information Commissioner of the Northern Territory, considering the privacy of the youth involved and the future prospects of those individual youths.

In that case it is clear that a number of the submissions have raised issues relating to protection of privacy now and in the future. One of the major issues that needs to be considered is that youths do stupid things and act badly, but they also grow up and become valuable members of the community.

The age we are living in means that anything that is disclosed or published now is likely to follow someone throughout their life. It will have an impact on them when they are grown up, have children of their own, are seeking employment and trying to get by in the community. It is important to think about what impact disclosure might have now but also in the future.

A second element, one that I firmly acknowledge, is the importance of maintaining public confidence in the youth justice system, in enabling people to be aware of what is going on and to satisfy themselves as to whether the youth justice system is working well.

The third and most important point is to ensure the efficacy of the judicial system when it comes to dealing with youths who are involved in the youth justice system. It is important that the courts are able to be in the best position to deal with particular issues before them in a way that will reduce the prospects of youths reoffending in the future. The courts need to deal with the issues before them in a way that they see fit and where a youth will not be distracted by the presence of too many people in a courtroom or by the prospect that their words or deeds may be published at some stage or become known to friends, relatives and their peer group.

It is the case that the term often used is ‘naming and shaming’. When a youth is first involved in the justice system it is likely that they will take great pride in being involved in what they see as a very exciting adventure in the justice system. That is not something that we want to encourage but it can distract them from recognising what they have done wrong and dealing with that issue. It can also distract the court. That is an important factor to take into account.

What does that mean for the individual provisions? In relation to the publication of identifying information about youths, I strongly submit that it is important that they not be able to be identified at any stage through any means. In terms of access to the court, I also submit that there are very strong arguments for keeping a closed court so that it is not open to the public entirely. It comes down to a question of who is able to access the court.

A matter of some concern here for the committee is whether and to what extent the media could gain access to the court. It is important that people are able to know what is happening in the justice system and they get a fair idea of what is being done. Whether that involves delving into every issue of an individual case—even without identifying an individual youth—is a matter for some question. It is possible that by producing its own reports on individual matters the court could fill that gap in terms of knowledge of what is happening with the system. You could have the court releasing information.

Another possibility is to allow a certain amount of access to individual journalists. Again, it is important to take into consideration that the court can control its proceedings. If that is the approach that is adopted there may be potential for the court to either exclude people entirely, including journalists in particular cases, or it may be that there can be some scheme to limit the numbers, particularly in relation to a case of note or public interest where there are a large number of journalists concerned.

I will leave it at that and am happy to answer any questions.

**Madam CHAIR:** Thank you, Mr Shoyer. I now open to the committee for any questions.

**Ms NELSON:** Thank you, Mr Shoyer. Can you clarify the last statement you just made about the journalists and the concerns you have? What exactly do you mean by that?

**Mr SHOYER:** I was looking at the potential for disruption of court proceedings, not necessarily by anything a journalist does, but by their very presence and the fact that a youth may know they are there. That may influence the way the youth behaves and what they say. Again, some youths might be ashamed of what they have done, but many will glory in what they have done—at the time. They may well regret it into the future.

Having a person outside the individual case involved or merely present may influence them in the way that they behave in the courtroom. To me, it is essential that there be a clear control of the courtroom by the court itself, and that nothing detracts from the justice process that is occurring in the courtroom.

**Ms NELSON:** I understand wanting to mitigate distractions and that sort of thing, but from my understanding people are not easily identifiable—they are not wearing identification in the court. How would anyone really know whether or not I am not a journo if I am sitting there? I want to get some clarification on that. What is stopping—that could be applied to anybody really, could it not?

**Mr SHOYER:** It can. It can be anyone who is present. It can be the victims. It is a question of how many people you allow into the courtroom. If you look at the list in the proposed section 49, it is already very long. The question is, where do you draw the line? Is there a need to limit that? Most people in that list will be identifiable to the individual youth, some will not be. But they may also appreciate that there is the potential for a journalist to be in the room, particularly if it is a case where you might have six journalists in the room. A youth may well fairly easily identify the fact—‘There is something going on here, I am of interest. I am special because I am involved in this process. I will behave in that way.’

Again, that is not something that will occur in every case. That may be something where you have the court involved in the process of determining what is the best approach. Is there a certain situation where we allow journalists in? Is it the general rule that we allow them in, but we can, in particular cases, limit the numbers or exclude their presence altogether?

But you are right. That impact can happen from any one of the number of people there. It is simply if you increase the number of people there, there is more chance of it happening.

**Ms NELSON:** thank you. I have some concerns about this component of the legislation. I understand where your argument is coming from. I also understand the argument that is coming from other people within the sector that are okay with this component of the legislation. I have some real concerns about the lack of transparency that this may raise, and diminishing the scrutiny, as well, of the whole process. I will have to take my time throughout the day today to hear from everybody else. Thank you very much for your opening statement, Mr Shoyer.

**Mrs FINOCCHIARO:** Thank you, Mr Shoyer. Currently, the court has the discretion to close a court. This is, obviously, going significantly further than that. Could it not be something that was addressed through the discretion of the judges to make that assessment at the time? Also—Sandra, correct me if I am wrong—we had some community feedback about extended family then even perhaps being excluded from being allowed into the courtroom and some of the problems that may present as well.

I suppose that is more of a statement than a question—but you have sort of outlined some ways to potentially modify it through accreditation and other mechanisms. I guess your position is that it should be something more than what we have and perhaps something in between what is being proposed.

**Mr SHOYER:** Yes, I am merely raising factors for consideration by the committee and ultimately parliament. As I have indicated, there is an important element there in terms of the public being satisfied that the system is working well and there are various options there that you can consider.

I would suggest that the reasons against a completely open public court are quite strong and that that should be considered. There is certainly a factor which would favour some inclusion of journalists in the process and it is a question, I suppose, for the committee to decide what that involvement may be, whether that is simply through receiving information from the courts, through some being present, through to simply an open access for journalists - in that case subject to a discretion in the court to be able to exclude them at a particular time.

**Mr PAECH:** If I may, I would like to ask you two questions. There are other submissions that have been before the committee which would indicate under this proposed amendments or changes that there would be half a dozen reports that have been covered across the Northern Territory in the last two years which would be restricted or not available to the public on such instances.

You have mentioned favouring—making sure that everyone has the available information—some submissions highlight that with these changes that information would not be able to get out to the public which by many would be deemed important and appropriate public information. How do you see, moving forward, that that particular information is able to be shared, because we have heard reports that this legislation would or has the potential to only allow particular information that people wanted to get out rather than the full story.

You have identified three options around allowing that information but building on that, we know we are in the age of social media and whether or not someone is identifiable information most likely will still get out.

What is the enforceable implication therefore on someone on social media who is not directly talking about it or identifying a person—let us say it is introduced and it is passed—I am trying to look at the practicality in the real world—what would be the process therein someone is deemed to be breaking that enforcement on social media?

**Mr SHOYER:** Again, it comes down to the non-publication, and if you look at the draft provisions there is actually provision there is actually a restriction on publication, so there is an offence provision there that could be relied on for any publication.

You might have some carefully worded arguments about whether publication on social media is actually publication from that point of view, but that would be the approach that would be taken.

As a parliament, all you can do is put measures in place to do your best to limit publication in an inappropriate circumstance, and some people will breach that. The remedy then is to look at prosecution if that is necessary. But yes, there will always be potential for people to disclose information even for the youths themselves to disclose information about what they have been involved in.

This to me seems to be a good way, in general terms, of approaching the idea of restrictions on publication. You will never completely stop publication but you will certainly limit it significantly.

In terms of allowing information to get out through the media or otherwise, there are certainly aspects of these provisions where people have raised issues, for example in relation to identification of the venue and proceedings. Those are matters which you could consider individually about whether the restrictions go too far.

In terms of the venue, I think there is a valid point, particularly in relation to a venue which is a remote Indigenous community where someone is going to be identifiable through the identification of the venue. If the venue is Darwin, it might not be as easy to see that as an identifying feature. That would be something the committee might want to look at.

Similarly with identification of witnesses, in some cases that might lead to identification of the actual youth concerned. In other cases it might not. There may be work that the committee can do in terms of what is identifying information and what is not.

Broadly speaking, I do not share the concerns to the same extent that those restrictions are going to stop the media from reporting on an individual case.

**Mr PAECH:** Looking at this from the practicality of a victim or a perpetrator wanting to be able to share their story or talk to a media outlet, this legislation potentially would have the ability to suppress that person's ability or freedom to talk. Do you think that there should be a provision in there where the victim or the perpetrator would be able to apply, through the judiciary or some form, to have the ability to talk?

**Mr SHOYER:** It is a difficult situation. I will talk about the youth, the perpetrator, to start with. There is a provision already that may allow some publication.

It raises some concerns because if you are talking about a 14-year-old youth, theoretically, yes, they have the right to disclose information about themselves or to authorise publication. It is one thing if they are talking to their peer group, it is another if they are authorising publication in a major national or international media.

That is a really difficult question, to give them the power to do that when they are recognised as only being 14 years old—they are a child. It is a difficult proposition to say that they have the right to disclose that information.

In terms of the victim, there is an allowance for publication in this case. When you are not disclosing the names of witnesses, it can be challenging because that is the case where they are going to almost certainly be a witness, depending on the actual proceedings. There may be some scope to free that up, but without identifying the individual perpetrator.

**Mrs FINOCCHIARO:** Along that same line, you often see people put their CCTV footage on Facebook ...

**Ms NELSON:** I was about to ask that. We do not actually have anything in legislation right now. There are no consequences for people putting that stuff on social media, where people are taking screen shots of their CCTV footage or photos of a kid they have encountered in a parking lot doing something wrong. Why are we not looking at that legislation, changing those things as opposed to introducing something where we are closing the courts? We have completely bypassed that. I am really concerned about this.

I think about the 'let us speak' campaign, where, by law, victims are prevented from speaking out about their particular case. We are working through that type of legislation, making amendments so that allows for victims to be able to tell their story publically, however they choose.

I understand the concerns about having an open court and mitigating those sorts of issues, but I am yet to be convinced that this is a good move.

**Mr SHOYER:** Obviously there are a whole lot of issues out there that need to be dealt with. This is particularly in relation to the court process. There are privacy issues there but at the end of the day what I am most concerned about is having a youth justice proceeding go as well as it can with the ultimate aim of stopping reoffending in the future.

To me, that is the ultimate aim so that these people do not reoffend or at least we minimise the number of people who are reoffending. Preserving the efficacy of that proceeding is essential. That is the driving goal.

Privacy is important. Having public debate and discussion about the way the system is working is important. What I want is to minimise reoffending in the future. The best way to achieve that from my point of view is to allow the court system to work to the best of its capacity.

**Mrs FINOCCHIARO:** You might not be the right person to ask, but have there been complaints out of the court system around the current system impeding the efficacy that you talk about?

**Mr SHOYER:** I have not done research in that area and that is not something that the Information Commissioner's office or the Ombudsman's office deals with.

**Mr PAECH:** Before I hand over to the Chair, on a separate matter, do you feel that the Northern Territory Government needs to review its information laws in relation to social media around the posting of pictures and certain elements around the privacy of people?

**Mr SHOYER:** We have been doing work in that area assisting a number of government agencies in relation to those issues. We have also looked at—as part of the NT Law Reform Committee—the posting of inappropriate images. There is work being done in that area. It is a developing area and there are issues we face both in the public and private sphere.

We have been talking to the Officer of the Australian Information Commissioner about these issues. There is a lot of work to be done. It is an ongoing issue where the technology is developing rapidly. We need to do that work.

**Ms NELSON:** Can you explain to the committee what restrictions there are on what information can be shared by the media currently? Are there restrictions?

**Mr SHOYER:** Currently the restrictions—there is a question defamation law so that is a general restriction. Apart from that there would be specific orders of the court. The court in a particular case can make an order that something not be disclosed or particular information, or that identity be suppressed. There are also restrictions in relation to sexual offences in terms of identifying particular people at particular times. There may be other restrictions but I cannot bring them to mind immediately.

**Ms NELSON:** Specifically relating to youth that are facing court. You cannot mention or publicise their names, ages or those sorts of identifying markers, correct?

**Mr SHOYER:** At the moment there are very limited restrictions in the Northern Territory. I think someone described the Northern Territory as an outlier in terms of these sort of protections. That is an accurate description.

**Ms NELSON:** Would it be best to change that before we ...

**Mr SHOYER:** That is essentially what this is doing. That is the aim of ...

**Ms NELSON:** We are doing that by restricting access to the courts.

**Mr SHOYER:** Sorry, there are two issues here. One is the access to the courts and the other is the non-publication. The non-publication is an essential element of it. The scope of that is something that the committee might want to consider.

Without looking at the detail of it, this is bringing the Territory into line with a lot of other jurisdictions regarding non-publication. I do not think any of the submissions said this was not a good idea. A number of them talked about the ambit and scope of it and suggested it may be narrower. That element is in the proposed section 50. Section 49 is about access to the court. There are those two issues that are related, to some extent.

One submission suggested that restriction of publication was enough. That meant that journalists should have access to the court, but would be restricted in what they could publish. But they are the two elements in sections 49 and 50.

**Mrs LAMBLEY:** I have one question about the comments you made at the beginning about how the court should minimise distractions and that kids will often play to the audience if there are too many people there and, indeed, if they know the media is there. Does it work in the other way, too? We are talking about the behaviour of these kids and how they react to situations. Probably none of us are experts on that. Can it work the other way? The pressure of having people present serves to strike a chord within their conscience that maybe they have done something wrong? I do not know ...

**Mr SHOYER:** Everyone would like to think so. My experience in the Youth Justice Court is virtually nil. But in dealing with children, you would like to think that. The reality is that the children who think that way are the ones who will not necessarily go before the Youth Justice Court to start with. I am not saying that it never has that effect, and I am sure there are children it has that effect on. I suppose I am saying that for a lot of children who find themselves in that position because of their upbringing or their peer groups, that is the way they are likely to approach it.

**Mrs LAMBLEY:** Thank you.

**Madam CHAIR:** Thank you very much, Mr Shoyer. That concludes our segment with you today. It was really interesting to hear your thoughts. The sticking point for me will be the fact that these are children and it would be unfair to have their criminal activity follow them around for the rest of their lives. Thank you for sharing your thoughts with us this morning.

**Mr SHOYER:** Thank you.

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The committee suspended.

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#### **Darwin Press Club**

**Madam CHAIR:** Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019. I also acknowledge my fellow committee members in attendance today, the Members for Araluen, Katherine, Namatjira and Spillett.

I welcome to the table to give evidence to the committee Craig Dunlop, Vice President, Darwin Press Club. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record, I will ask you to state your name and the capacity in which you are appearing before proceeding to the committee's questions.

**Mr DUNLOP:** My name is Craig Dunlop. I am Vice President of the Darwin Press Club.

**Madam CHAIR:** Thank you very much, Mr Dunlop. Would you like to provide a brief opening statement?

**Mr DUNLOP:** Very briefly. Other than relying on our written submission to the committee, the Press Club's concerns, obviously, revolve primarily the proposed sections 49 and 50 of the bill.

In the broadest possible terms these sections are a bit of a dog's breakfast in our view.

They most impact media outlets and journalists, particularly section 50. At no point were any of our members or any of our employers consulted during the drafting of this bill, which really, in my submission is the genesis of all of the many problems contained within not only the underlying premises of the sections but fairly significant issues in terms of the nuts and bolts—in terms of the drafting—and as detailed in our written submissions it is our view that it really just needs to go back to the drawing Board.

These sections in particular really need to be looked at fresh and come back to the committee with an appropriate level of refinement so that what the committee would be looking at is not rebuilding a piece of legislation entirely, which is really not the role of the committee, it should be looking at refining smaller details, but I am prepared to take any questions on anything that any members of the committee have.

**Madam CHAIR:** I will now open up to the committee for questions.

**Mrs FINOCCHIARO:** Thank you, Mr Dunlop. If the Press Club had of been consulted during the early stages of drafting and preparation, what input or what suggestions would the Press Club have given in recognising the concerns, but obviously the press having that very real experience of being in there every day and understanding how that process works.

What types of recommendations would the Press Club have made during a consultation phase had it happened?

**Mr DUNLOP:** The first observation that we would have had is that there are not any practical problems with how the system currently works. When a young person is brought before the Youth Justice Court the court has the discretion to suppress the publication of that young person's name. That happens almost every single time. It is essentially a matter of course. That provides for the appropriate protection of the young person's privacy.

Making that automatic by introducing a piece of legislation does not really change anything in terms of the practical outcome. Our concern is that there needs to be some level of discretion either way. Sometimes young people commit offences so serious that their privacy really becomes subordinate to the public's right to know the full gamut of what has happened.

Sometimes young people commit homicides, sometimes they end up serving very long sentences of imprisonment and sometimes they commit offences days before their 18<sup>th</sup> birthday and are sentenced in a way that is very similar to the way that an adult would be sentenced.

In cases such as that, particularly the Supreme Court has been more willing to overturn non-publication orders made by the Youth Justice Court and allow for the publication of that person's name because the courts, in instances such as that, realise that those kind of young offenders really do not have very good prospects for rehabilitation, or they may pose a real danger to the public upon their release. The public's right to know really does overcome the proper public policy interest that there is in that young person's privacy.

**Mr PAECH:** Do you think that this could also be looked at around the other way given that if these requirements were to be passed by the parliament and become law, this could also restrict a story being covered about the inappropriate behaviour of a judicial official or a Northern Territory Government staff member or so forth? If this were to be adopted, do you think it has the potential to restrict those narratives to be told about the inappropriate use of force against a youth?

**Mr DUNLOP:** It is unclear. When you consider section 50(1)—I do not know whether you have that in front of you—part of the issue with this bill is the inclusion of the words 'or information relating to'. That is not defined and not clear whether, for example, if someone's house is broken into and they have security cameras and they put that information up on social media. At that point in time, they will not know the age of the person. They could be 14, 15, 17 or 18. It might just be an adult who appear to be a child.

It is unclear whether that would be information relating to a court proceeding once that person is charged. It is unclear whether, for example, the *Four Corners* documentary that really got this whole ball rolling would be information relating to court proceedings. Or whether reporting about the frequent riots of fires or disturbances—whatever you want to call them—at Don Dale would be information relating to court proceedings because you can only be in custody because of the court. So, if you give those words a broad reading, it is potential that it would be. That is one of the many minor drafting issues that really need to be clarified. I guess that ...

**Mrs FINOCCHIARO:** Even more narrow than that would then be inside the court if the information was coming out about poor practices, or even worse than that—misconduct et cetera—of Northern Territory Government employees, or whatever it might be. That would not be able to be—or may not be—reported?

**Mr DUNLOP:** Correct. There is a practical issue in the proposed section 49, in that often these things are ventilated in a court and that is how we find out about them. It is very rare that you will find—you will not get a media release from a government department saying, 'A group of youth justice officers started belting up a kid at Don Dale last night', but you might find out about that in court proceedings.

**Mr PAECH:** You would argue that what this legislation is talking about is restricting both parties. Obviously, the victim and the perpetrator, but it also would then not allow what that person has done in committing a crime or being found the verdict, but it would also restrict the public gaining information about the practices that may have occurred while that young person was in custody in remand, or in the lead up with their escalating behaviours.

**Mr DUNLOP:** Yes, there are a number at page 3 of our written submission. There is a list which shows that a lot of the time our interest is not squarely in the offending of a person, but in the operation of the system. If the court was closed in any of these instances, we simply would not be able to find out about those shortcomings.

At this point, I would like to address some of the suggestions made by the Ombudsman in his written submissions. There was the suggestion that there could be provision for a pool reporter, so that there would only be one reporter in court. Realistically, with the size of media outlets in Darwin, there is only ever going to be one or two reporters in the courtroom. The suggestion of a pool reporter is something that would be unacceptable to our members.

We are competitors. The suggestion of someone from the ABC effectively doing work for the *NT News*, Channel 9, or vice versa, is something that is really not acceptable and encroaches on editorial independence.

The suggestion of accreditation is not something that would be acceptable. Individual reporters should not have to be accredited to attend a courtroom. It is a little bizarre, as far as a suggestion. I will leave it at that.

**Mrs FINOCCHIARO:** Are you aware of any processes of accreditation in other jurisdictions?

**Mr DUNLOP:** No, I am not, not as far as courts.

**Madam CHAIR:** I think you mentioned, sometimes when a young person commits a serious offence, their privacy pretty much flies out the window. I guess that is in regard to keeping the community aware? I am a bit worried to the extent of which the report would occur and what sort of information would go out.

I am worried about a lot of young kids who commit serious offences—why? That is not normal behaviour for a young child. I worry about their background, undiagnosed illness or ailments. I wonder what led to that offending in the first place and the balanced representation of that.

I spend a lot of time talking with a lot of kids and it is very hard to find good news stories. I am looking for comments on whether you think we could not only report so that the identity of children are protected in regard to the seriousness, because you want to keep community members safe, but also the need for balanced reporting of good news stories for young people in the Territory. There are amazing young people out there and it is hard to get a run unless you are a criminal.

**Mr DUNLOP:** There are many amazing young people in the Northern Territory. The reality is that media outlets publish what is most read and the stories we pursue are based on what our readerships are looking for. In this day and age, we know how many eyeballs get on the screen. It is about day two of journalism school, where they tell you a bad news story will perform better than a good news story. That is across the Board.

Say what you will about how that reflects on human nature, maybe it could be looked at positively, because most of the world is good and that is not that interesting. People are attracted to 'bad news stories'. That is just how it is.

**Ms NELSON:** I think that is the concern with this legislation. It is a double-edged sword? On one hand I am concerned about closed courts and the level of transparency or lack of transparency that might be introduced if we were to have closed courts. On the other hand, we have media, all media, which has not been exceptionally compassionate in regard to reporting on youth crime and youth offenders.

As a government, we are looking for a ways to mitigate the effects that sort of reporting has on youth, their family and victims. You said that you are competitors so for me on the committee, how do we mitigate the click bait stories so that one media outlet outdoes the other in regard to increasing readership.

**Mr DUNLOP:** I take issue with the premise of your question that reporting around youth crime typically lacks some compassion or nuance. Youth crime is reported on in much the same way that all crime is reported on. As a result of way in which the youth justice court administers itself—for example by not distributing a daily court list—we only find out about the most serious crimes committed by young people.

Therefore we only report on the most serious crimes committed by young people.

**Ms NELSON:** True.

**Mr DUNLOP:** The public are really only interested in the most serious crimes that are committed—full stop. It is just how it works.

Returning to the Member for Karama's question, one example in which we think a young person's privacy should fall away as compared to the public's right to know is in the instance of an escape from custody. This bill partly deals with that however, it gives the authorisation to publish information to the CEO of Territory Families. It is unclear how that provision would operate in practice. That is 50(5) and 50(6).

We have concerns with those subsections. First of all because the Chief Executive Officer of the Department of Territory Families does not have any expertise in ensuring public safety. That is really a role that is taken out by police. We have suggested an alternative that a high-ranking police officer be able to make that determination of whether there is a risk to public safety. We have a broad concern that if someone has escaped from custody that is in and of itself a red flag that they are willing to do some extraordinary things.

Having any form of restriction around that is concerning. I note that what I presume is a drafting error in that the bill only contemplates an escape from a detention centre. If someone has kicked their way out of a police van or jumped the dock at court there is no way that anyone could publish anything about that unless a court authorised it as an emergency. That would presumably take days.

**Mrs FINOCCHIARO:** In terms of time line if you are seeking approval?

**Mr DUNLOP:** To what extent can they approve us, for example, saying that this person a criminal history including X, Y and Z? They might have previous findings of guilt or convictions of armed robbery or have shown themselves willing to use weapons to randomly commit acts of violence on members of the public. It is unclear how making such an authorisation or how the CEO of Territory Families making that kind of authorisation fits squarely with their other statutory obligations about the care and protection of children and acting in the best interests of the child when, really, this is about acting in the best interest of the public, in the case of an escape from a detention centre.

**Mrs FINOCCHIARO:** Practically, would it be difficult to work through? In the instance of an escape, for example, rather than reporting the story quite quickly, as you may do now, if you were on the scene at Don Dale, or something like that, for example? You would then have to seek that approval. There is no time limit to the approval. Also, as you were just saying, there might be restrictions on how much information from before that event would be able to form part of the ...

**Mr DUNLOP:** Yes. It is just unclear what the bill contemplates.

**Mrs FINOCCHIARO:** Yes. It may be that you can only get approval for reporting that specific instance—‘Escapee from Don Dale’.

**Mr DUNLOP:** Physical description, where they think they might be headed, what people should be looking out for.

**Mrs FINOCCHIARO:** Yes, everything from that point onwards, yes.

**Mr PAECH:** Again, thinking about this in a practical sense, to your knowledge, if this legislation was introduced, how would that play—I apologise, I should have asked it of the previous person also. This is basically about the Northern Territory media covering a story. How would that impact an interstate media outlet covering the story, given that they are not in the jurisdiction where the law would apply?

**Mr DUNLOP:** Well, if this passed, they just could not—they could not get into court.

**Mr PAECH:** But regarding the information, if for some reason they were able to obtain that information, then they could publish it because they are not in the jurisdiction where it is enforceable?

**Mr DUNLOP:** That is technical question and I am not a lawyer.

**Mr PAECH:** I will save that for later.

**Mr DUNLOP:** In general, statutory non-publication provisions apply nationwide.

**Mr PAECH:** Yes.

**Mr DUNLOP:** Regarding those statutory non-publication provisions, one thing that is of real concern—I know we are running out of time—is the way the bill is structured in detailing the particulars. Basically, every other non-publication regime deals with it by saying, ‘You cannot publish anything that may tend to identify a person’. That fits its own context. You cannot publish a photo. If you do, it has to be

appropriately blurred so a person walking down the street could not recognise that person. You cannot publish a name. If it is a bikie with tattoos you cannot publish any distinctive tattoos—that kind of thing. You cannot publish someone’s school or workplace or whatever.

Probably the best and most effective example is in the *Sexual Offences (Evidence and Procedure) Act* which deals with non-identification of victims of sexual offences. What is the case in the drafting of this bill is that it actually particularises all of the things you cannot publish and, in doing so, it does both too much and too little at the same time. There might be something on that list which is capable of identifying the person, but we can still publish it because it is not on the list.

How do I put it? On the flip side of that is that some of the things on the list do not objectively tend to identify anyone. It encroaches on the right to fairly and accurately report on the proceedings for no objective benefit. For example, a person’s political, philosophical or religious beliefs does not tend to identify anyone. But the example we gave in our written submission is that a young person might have a lawful interest in recreational shooting and then go on to use a weapon in the committing of an offence. That is something that is legitimately in the public interest to know about, but this bill would prevent the detailing of that.

Similarly, some of those particulars are very unclear as to what they precisely mean when the rubber hits the road. For example, the physical description of item D, the physical description of the style of dress of the person—does style of dress mean if someone is wearing a balaclava or a bandana across their face—that is an item of dress not a style. Does wearing all black—in any case it does not objectively tend to identify the person. It does not seem to fit with the public policy objectives of the legislation in any case, so all of this would be best done by adopting similar language as is in the *Sexual Offences (Evidence and Procedure) Act*, which is anything that would tend to identify a person.

**Madam CHAIR:** Does the committee have any further questions? No further questions. Thank you very much for appearing before the committee this morning, Mr Dunlop.

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The committee suspended.

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### **CREATE Foundation**

**Madam CHAIR:** Good morning, everyone, and thank you for joining us. I am Ngaree Ah Kit, Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019.

I also acknowledge my fellow committee members in attendance today, the Members for Araluen, Katherine, Namatjira and Spillett.

I welcome to the table to give evidence to the committee Aislinn Hegarty, NT State Coordinator of CREATE Foundation. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly’s website. A transcript will be made for use for the committee and may be put on the committee’s website.

If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go in to a closed session and take your evidence in private.

For the record, could you please state your name and the capacity in which you are appearing this morning.

**Ms HEGARTY:** I am Aislinn Hegarty, the State Coordinator for CREATE Foundation.

**Madam CHAIR:** Thank you very much, Ms Hegarty. Do you have any opening comments that you would like to make before I proceed to the committee's questions?

**Ms HEGARTY:** CREATE is the national consumer body that represents the voices of children and young people in the out-of-home care system from the age of zero to 25. We very much welcome the bill because at least it is going quite a way to address the recommendations of the Royal Commission.

We would have liked to have seen contained in this bill also raising the age of criminality—that would have been nice to see—I understand that there are hopes to address that at a later point but we would have liked to have seen that included.

We very much advocate for an ongoing commitment to reduce the over representation of children and young people with a care experience in the justice system.

**Madam CHAIR:** Thank you very much. I will now open up to the committee for questions.

**Mr PAECH:** You mentioned the age. What age are you in support of?

**Ms NELSON:** Raising it to what age?

**Mr PAECH:** Yes, my apologies.

**Ms HEGARTY:** In line with international standards, so that is the age of 14.

**Mr PAECH:** You are representing the out-of-home care majority of the children. What race would a majority of your clientele be?

**Ms HEGARTY:** I beg your pardon?

**Mr PAECH:** Ethnicity.

**Ms HEGARTY:** The majority of our young people in the Northern Territory are Aboriginal or Torres Strait Islander.

**Mrs FINOCCHIARO:** In the conclusion of your submission, you mentioned:

*... whether the amendments will lead to a reduction in young people entering the youth justice system, and increased protection for their well-being relies on appropriate resourcing of systems of care ...*

Could you expand on that?

**Ms HEGARTY:** If we look at the current state of play, there is not adequate resourcing or collaboration between the various departments. We would like to see Territory Families liaise with Department of Justice to provide the adequate supports for children and young people in order to reduce recidivism. By doing that, it would be taking the appropriate steps and standards to take individual needs into account, to provide appropriate supports for children and young people.

**Mrs FINOCCHIARO:** You feel there is a connectivity breakdown between child protection and youth justice at that department level?

**Ms HEGARTY:** Right across, I would also include service providers, carers and members of the Police force to have the appropriate training to engage appropriately with children and young people. To engage in a more trauma-informed approach. Evidence shows that if young people are engaged with an appropriate manner, they are obviously very open to engaging positively.

**Ms NELSON:** In regard to the bail conditions, I read your submission and agree with the need for further interagency collaboration. In Katherine, we do not have bail accommodation. You commend the changes moving to a presumption in favour of granting bail to young people and removing the breach of bail as a criminal offence. I am thinking of Katherine, where we do not have bail accommodation.

**Ms HEGARTY:** I would see that as a duty of care for the state to provide that. We are looking to reduce the criminalisation of young people, moving towards supporting young people and diverting them away from the youth justice system and to stop that vicious circle.

We already have young people who are a product of developmental needs, social circumstances, they might have various cognitive problems. I do not think it is fair to lay that at a young person's feet. Quite a lot of our young people who are involved in the system already, have enough challenges. I believe that is something for the state to take care of.

**Mr PAECH:** In your opinion, one of the greatest mechanisms we could do, would be to increase the age from 10 to 14 years which would then provide an avenue for more young people to look at alternatives rather than entering the current justice system at the age they are now?

**Ms HEGARTY:** Yes we believe that would be helpful.

**Mr PAECH:** Great. I am not sure if you were here for the previous member talking but what is your view on the current proposals around the closed courts?

**Ms HEGARTY:** CREATE Foundation supports the closed courts. It allows proceedings to go into the nuances of that young person's life and their individual circumstances which would support them whatever actions are going to be taken for them to support in the reducing the risk of reoffending and rehabilitation.

**Madam CHAIR:** You mentioned in your submission in regard to understandings rights and the need for support. It was great to read the snapshot of young people that the CREATE Foundation had spoken to about their experience in coming into contact with the youth justice system. Do you feel that this bill will provide a greater level of support to ensure that when a young person, especially in care or out-of-home care, comes into contact with the system that it can be an experience that does not scar them for life?

That they will be supported to go through or that they are going to wake up and feel like they are getting shafted from cell to cell. Do you think there are appropriate mechanisms in place to support a young person in out-of-home care through this bill?

**Ms HEGARTY:** I feel that there is from the perspective that we were looking to reduce the amount of time that a young person would be kept in the watch house. We were recommending four hours in line with our peers. I think the bill goes a long way to address certain needs of children and young people in out-of-home care but as I said, it does not address all facets of that. There are things that we would like to see improved.

**Mr PAECH:** Following on from Madam Chair's comments around holding a young person. You are supportive of the provision of four hours with a custodial officer and requiring an additional four hours would need to seek approval to do so. I am curious and excuse my naivety—with children who are in out-of-home care to your knowledge, what is the process around being notified by the authorities when that child from care is in a custodial environment?

**Ms HEGARTY:** I am not a lawyer so I am not sure.

**Mr PAECH:** If a child is in out-of-home care and they are apprehended by the police and taken into custody, what is the chain of the out-of-home care personnel being notified within a reasonable time frame that the child has been apprehended?

**Ms HEGARTY:** Again I am not a lawyer so I do not know the nuances of the Northern Territory law but I would imagine that it would be in line with letting any other parent know. I imagine that central intake would be contacted immediately in addition to the service providers because it is a child. Every child and young person is entitled to have an appropriate adult or support person. That is crucial to get a young person the appropriate supports to engage in the process.

**Mr PAECH:** Going back again, you are supportive of four hours?

**Ms HEGARTY:** Yes.

**Mr PAECH:** As a maximum? Or is it four hours with the ability to seek permission to hold for an additional four hours? As I understand there is a provision to do it for up to 24 hours. Is that supported? Or are you just supportive of four hours?

**Ms HEGARTY:** We were looking at four hours. I suppose it depends upon the case and that is up to the police. But then I suppose you would be looking at the superintendent deciding whether to add additional hours or not. You would need some other objective party to come in and review after four hours.

**Mr PAECH:** Just on that, you have said the superintendent. I note in the legislation it said the senior sergeant. You would support it being the superintendent to make that assessment?

**Ms HEGARTY:** I think you would need somebody else that is objective.

**Mr PAECH:** Yes, because there would be a direct conflict of interest there, would there not?

**Ms HEGARTY:** Yes.

**Madam CHAIR:** Does the committee have any further questions?

No further questions. Thank you, Ms Hegarty, for appearing before the committee this morning.

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The committee suspended.

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#### **Office of the Children's Commissioner NT**

**Madam CHAIR:** Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019. I also acknowledge my fellow committee members in attendance today: the Members for Araluen, Katherine, Namatjira and Spillett.

I welcome to the table to give evidence to the committee Colleen Gwynne, Children's Commissioner. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be uploaded to the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record, could you please state your name and the capacity in which you are appearing.

**Ms GWYNNE:** Colleen Gwynne, Northern Territory Children's Commissioner.

**Madam CHAIR:** Thank you, Ms Gwynne. I now invite you to make a brief opening statement before proceeding to the committee's questions.

**Ms GWYNNE:** Thank you, Madam Chair. The Office of the Children's Commissioner welcomes the new legislation amendment bill, particularly in line of the 227 recommendations by the Royal Commission. I acknowledge that the Royal Commission was comprehensive and provide an accurate description of the system at the time. We all agree that the youth justice system was broken and the commission was definitely required.

The recommendations provided a unique opportunity for us to fix this problem. I guess today's session is part of that process. The recommendations also paid particular attention to national and international

principles and standards of the administration of youth justice. We heard from a range of witnesses, particularly young people, people who worked in service delivery and experts about what is best practice and procedures in any youth justice system.

The Office of the Children's Commissioner applauds government for the reform they are implementing. It is a difficult reform. Our view is that we need to continue on with the reform and see it through to the end, which will probably exceed a lot of our time here in our positions.

**Madam CHAIR:** Thank you very much, Ms Gwynne. I now open up to the committee for any questions.

**Mr PAECH:** Ms Gwynne, what is the commission's view on raising the age of criminal responsibility?

**Ms GWYNNE:** The commission's view is that we support the raising of the age to 14. I guess one of our disappointments is that that provision did not appear in the amendment bill. I understand the reason for that was the operationalisation of that amendment in services and programs that were available for young people who were not subject to the criminal justice system. For the ages between 10 and 14, the programs were not yet well established to cater for those, which is what the explanation was at the time.

**Mr PAECH:** Ms Gwynne, in an ideal world where we had the infrastructure and the resources to be able to deliver that, that would by far be the best thing we could do to help young people—raise the age? Is that correct?

**Ms GWYNNE:** Yes, absolutely. We should not have children in detention centres. There is no place for a young person to be in a detention centre. We need to have them in schools, with families and wraparound services and supports for young people who are showing distinct high needs. There are experts that will appear today and provide some more information about what young people are experiencing.

Any process or legislation that we can put in place as a Territory to stop young children entering detention is only going to see a reduction in crime and numbers that move into adult offending later in life.

**Mr PAECH:** I am curious about the commission's views on a time limit of a young person spent in custody. I note there has been people appearing today who have said four hours and that it would be a superintendent who would be the authorising person for additional time. Is that view shared by the commission?

**Ms GWYNNE:** Yes, that was the submission we gave that was consistent. However, ideally it would be a judicial officer. I know there are restrictions around the times that judicial officers or Local Court Judges are available. I understand that finishes at 10 pm. There are circumstances that need to be significant in which they can be contacted beyond that time.

My belief is when we are dealing with young people there needs to be a division between those who are dealing with a young person who has committed a crime and make the decision to arrest a young person and those that make the decision to detain a young person. That is the ideal scenario.

Our submission was that in the absence of being able to use a judge would be to raise that to a superintendent who is often removed from the arrest or circumstances surrounding the investigation. It gives them some independence in that process.

**Mr PAECH:** If it were not a superintendent there would be the possibility of a conflict of interest of the senior sergeant.

**Ms GWYNNE:** In fairness to police it gives them—if they are dealing with a young person who is alleged to have committed crimes—some separation from those circumstances and the decision made to detain a young person. This decision has to be taken with significant information and balancing a range of circumstances including the current personal circumstances of that young person and their family.

It needs to be balanced with the needs of the community and the public interest. I never shy away from that, it is important. After 25 years as a police officer one of the areas that we always concerned

ourselves with was the decision to arrest a young person as opposed to summons or diversion. The decision to arrest was never taken lightly.

**Mr PAECH:** You have mentioned you came from the police previously, I just want to make sure I am very clear. If a young person is brought into custody, whether that is through committing an offence or they have not been charged yet, what is the process around that young person's family being notified that they are being held within that environment?

**Ms GWYNNE:** You are testing my memory. I do not think the legislation has changed around this or the police operating procedures. A parent, guardian or support person has to be notified ...

**Ms NELSON:** Immediately upon apprehension?

**Ms GWYNNE:** I think it is as soon as practicable—which was the wording back then. I do not think that has changed much. That is a national standard.

Quite often unfortunately with some of our young people who are arrested, they come from homes where there is not someone to contact immediately. They may call in a support person, an agency, an out-of-home care carer or other support agencies that may be able to provide support to the young person during that process.

**Mr PAECH:** If a young person is held in a custodial environment and they have not been charged yet, are they within their right to have legal representation there?

**Ms GWYNNE:** Absolutely—even more so. The police will ensure that one of the legal organisations is contacted as soon as reasonably possible and have them attend to provide legal advice to that young person.

**Ms NELSON:** Is that the same case with the paperless arrest?

**Ms GWYNNE:** That came in after me, I am not quite familiar with what the paperless arrest is, I am not the right person to answer that.

**Ms NELSON:** Thank you.

**Ms GWYNNE:** It sounds good. I know as a police officer, there was a lot of paper.

**Madam CHAIR:** You have brought an extensive background in police, prior to being the Children's Commissioner, which I think is helpful. It also means you would have seen a lot of young people come into contact with the Northern Territory youth justice system.

One of the biggest things which I face on a daily basis, as a local member, is the balance between kids learning from their bad behaviour so they can be rehabilitated. I come back to the point you made about youth offenders need to be supported by their family.

Do you think that this legislation, or we as the Northern Territory Government, are doing enough to support families of kids who are reoffending? I see the parents and caregivers continually get blamed because kids are offending. We have not been able to unpack the full history of what led to that offence and what sort of home or family environment we have to support them.

**Ms GWYNNE:** I think there is a move to change how we approach young people, both as young children who are in need of care or are offending. Often one in the same, there are kids who crossover to both areas quite frequently.

The One Child One Case approach by Territory Families, is absolutely a step in the right direction. My Tennant Creek report last year identified a lot of failings in services independently dealing with one particular family over many years, over many instances, and at no time did anyone intervene in any meaningful way to change the circumstances of that family which led to the critical incident that was reported—and led to the report.

We are moving in the right direction. Are we doing it quickly? Probably it could be a little quicker. Do I think that agencies are working well together? I still think we have a long way to go. The services around the family is absolutely a key to reducing youth offending. We all know that many youth will only come before, reported by police, or even enter the judicial system once. Most of them grow out of offending. I think we need to remind ourselves of that.

As the Deputy Chair would be aware, in Alice Springs at the moment we have 10 offenders who are committing most of the offences. Our attention should be to those families. The other part of this, if we keep looking at the judicial system of a way to rehabilitate young people, then we are going to miss opportunities. My view is that the intervention needs to be before that.

Restorative justice and good police youth diversion programs has to be where our focus needs to lie. That is why most people feel quite strongly about raising the age of criminal responsibility. If a child does something that amounts to a criminal offence, there are different ways to deal with that child rather than them entering a detention centre where they are housed with other children who have other needs. They develop bad habits. They become institutionalised and then the chances of them cycling back through detention is far greater.

We have to do everything we can to stop any child from entering detention for that first time, because the risks associated with them coming back into detention are far greater. My view is that our pre-court diversion programs need serious attention. I think we are far from getting that right.

**Ms NELSON:** I agree 100% with you, commissioner. I am also of the opinion that we are spending far too many resources on the pointy end of the situation. Program money is so difficult to come by and that is really what the most effective thing is in regard to youth programs.

**Ms GWYNNE:** In terms of young people offending, the most effective restorative justice process is victim-offender conferences.

**Ms NELSON:** I absolutely agree. I participate in that.

**Ms GWYNNE:** If you have participated you will realise the power of such a process, and it is important that we make that a priority. The benefits of that is it involves the victim and they are completely engaged in the process. They get to have a say, they get to eyeball that young person who has caused such damage and grief and stress to them and often their families and their children.

I have been a part of those processes in a past life and I have to say that the power of those processes far exceeds anything the judicial process could provide.

**Ms NELSON:** I have very involved in Katherine in regard to restorative justice and youth in particular.

The most disengaged kids in Katherine—I know them personally and I know their families. I talk to them often. The thing I ask all the time when we are talking about disengaged youth and youth justice and all of that is, where is the support for the families?

If you are not addressing the family unit as a whole and you are only addressing the youth and the consequences it is just a vicious cycle constantly.

**Mrs LAMBLEY:** I have a question around the restrictions this bill will place on the media reporting of youth crime and youth justice. As an independent member of parliament I glean most of my information about what is happening in the world from the media, including what is happening in terms of youth crime, and the broader public does too.

I am just wondering, Colleen, from your perspective as the Children's Commissioner, what is your perspective on how much information people are entitled to have around the general issue of youth crime and youth justice in the Northern Territory? Presumably under this legislation we are going to see a significant reduction in the amount of reporting on these issues. I for one feel quite conflicted because I understand why the government is going down this track but on the other hand I feel like I, and certainly the broader public, will not know what is going on.

I am just wondering what your perspective is in terms of what the public needs to know about what is happening in this whole highly contentious heated issue?

**Ms GWYNNE:** I was hoping you would not ask that one because it is a really difficult one and I am often conflicted myself.

There is a careful balance that we have to have here. One is that is the public interest transparency to know what is going on in your own community. As a member of the Northern Territory community I would like to know what is going on because we make decisions based on what we know.

For children, the balance has to be a little different. Our priority needs to be the rehabilitation and reintegration of young people. The problem we have when we publish the names or photos of young people is they become known and labelled very quickly. We are a very small community.

There is the other side of it that young people often find the notoriety of being on social media, in the news something that they use as a way to promote their offending—they grandstand. Sometimes they are oblivious to the fact that the damage they are doing to themselves can be quite significant.

We are dealing with young immature people who have and who do not understand consequences of their actions. For them to have the best opportunity to fully integrate in to the community, to get a job, to be rehabilitated, which is possible for young people, it is much easier for young people than what it is for adults to be identified as an offender within our community does not help that.

The issue around closed courts I am not so concerned about. It is the identification of that young person that I think is the concern. It is a really difficult balance. I hear both arguments, but we have to understand that we have it in our hands to make a decision about opening courts and allowing the free reporting of the circumstances of offending. Young people do not really understand that. They do not understand how they are behaving and what they are doing may impact on them in future life.

It is a difficult one, but my view is that it is the identification of the young person that we most need to be concerned about, more so than the access of media into the court.

**Ms NELSON:** I agree with you completely, commissioner. That is why I asked earlier about there being no consequences right now for the average Joe who has taken a screen shot of CCTV footage and posted it on social media which clearly identifies the young person who broke into their house. It is that legislation that needs to be changing, as opposed to focusing on whether a court is closed or not.

**Ms GWYNNE:** Yes, the privacy provisions are there. We just need to fall into line with the rest of Australia with the publication. We always need to be careful about whether these young people use their offending as a badge of honour. They are quite oblivious to the impacts of that later on in life.

**Ms NELSON:** Yes.

**Madam CHAIR:** Ms Gwynne, a number of conversations I have had with the wider community revolves around how times have changed. When I was younger in the 1980s, there was discipline, respect, authority in the family and there still is today. I have spoken to a number of parents who feel they cannot discipline their child—that the power has been taken away over time. It is really heartbreaking because a lot of these parents who have children who are offending are actually really good people and are trying very hard. You can tell that because it is not every child they have who is engaged with the youth justice system, it is usually just one and, hopefully, something they can grow out of.

From your experience as Children's Commissioner, do you see that there are a lot of families and parents wanting to be engaged, to be a better parent to support their child rather than just wipe their hands because they feel like their kid cannot be helped going forward?

**Ms GWYNNE:** Another difficult question. We have a huge risk here. We are dealing with a relatively small cohort of young people who are engaging in really dangerous behaviours, who are acting out in ways we probably never thought young people would. Then we have the cohort that sits behind them. This is when you start looking at school attendances. If young people are not engaged in education, the risks of them either entering into the child protection system or start a life of offending is real.

We need to be very concerned about two things. One is the school attendance rates and the other is the curriculum. We need to use the education system to teach young people about a range of social dynamics, particular about respectful relationships. The curriculum of old needs a complete revamp and review, based on the behaviours of young people we see. The society is changing and we think the way we set up our approach to kids will work into the future. It will not. We have to change with it.

Young people understand their rights much younger. They want to be independent much younger. Therefore, we need to have an education system that is aligned with the changes in our society. Respectful relationships is such an important component and aspect for children to be aware of. A lot of the violence that is creeping into our society, particularly gender-based violence, is closely associated with that issue.

Education I see as a huge key here.

**Mr PAECH:** Ms Gwynne, I want to find what the commission's position is on decriminalising breach of bail conditions.

**Ms GWYNNE:** Our position is that we support it.

**Mr PAECH:** I am curious because breaching bail is not actually a criminal activity itself. I am trying to understand. The commission supports the decriminalisation of breach of bail conditions?

**Ms GWYNNE:** Yes. I do not think we should every use a breach of bail for a young person as a way of adding offences to their criminal history. We should look at bail as an opportunity. If we have a young person who has entered a bail agreement then it is an opportunity to work with that. Using bail instead of having a young person in detention and trying to work with them.

Work with them pre-court or if necessary while they are on bail. You can then enforce particular programs, put in wraparound services and instil some conditions within the family to do certain things. We should look at bail as an opportunity. Bail conditions are required in certain circumstances but I do not think we should be using technical breaches of bail as a way to keep the community safe.

All it does is cause an administrative burden within the judicial system. That is unnecessary and takes you nowhere. It is about working with the families and trying to use that bail condition to mandate young people to attend particular sessions to try to rehabilitate them, and limit the chance of them reoffending.

If we look at the number of young people in detention we did not see a distinct reduction last year. We had less young people in detention, less on remand and more sentenced. It is achievable. There may be a slight increase at the moment.

We look at the daily synopsis and we used to see about 35 to 40 young people in detention. I think today there is 23. Something is working and it would be interesting to unpack that to see how many young people are going through diversion programs that would have normally gone through the judicial process.

**Madam CHAIR:** Are there any final questions from the committee?

**Mrs FINOCCHIARO:** It might not be a question for you, but with the diversion programs are you aware of what they are?

**Ms GWYNNE:** I do not know exactly what programs they are running at the moment. I know some of the programs that are running for sentenced young people. In terms of the pre-court I am unaware of exactly what the programs are. I know they are running some family conferencing.

That might be a question for police. They might be able to give you some exact details of those.

**Mrs FINOCCHIARO:** Thank you.

**Madam CHAIR:** Thank you very much, commissioner. That concludes the committee's questions. Thank you for appearing before us.

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The committee suspended.

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### **North Australian Aboriginal Justice Agency**

**Madam CHAIR:** Good morning, everyone. My name is Ngaree Ah Kit. I am the member for Karama and the Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing into the Youth Justice and Related Legislation Amendment Bill 2019.

I acknowledge my fellow committee members in attendance today: Robyn Lambley, the Member for Araluen; Chansey Paech, the Member for Namatijra; and Lia Finocchiaro, the Member for Spillett.

I welcome to the table to give evidence to the committee David Woodroffe, Principal Legal Officer, North Australian Aboriginal Justice Agency.

Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and we look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record, could you please state your name and the capacity in which you are appearing. I will then ask you to make a brief opening statement before proceeding to the committee's questions.

**Mr WOODROFFE:** David Woodroffe, Principal Legal Officer, North Australian Aboriginal Justice Agency.

Thank you, Madam Chair and committee members for allowing NAAJA to appear today to provide information in relation to this fundamentally important bill.

The Youth Justice and Related Legislated Amendment Bill is a fundamental and important piece of legislation that can really bring about reforms to the youth justice system for the better. It builds upon not only the Royal Commission recommendations but also that long history of many reports and inquiries of the Northern Territory.

These reforms of these bills, for the very first time, look to the needs of Aboriginal people, communities and youth, recognising that we must support the needs of people in remote regions of Central Australia, the Katherine district, Arnhem Land and the islands.

It brings about some crucial and necessary areas in relation to not only the provision of language interpreters for Aboriginal youth in understanding the decisions that occur in police stations but also provides new ways of doing things with consideration of bail support plans for cultural plans. Also, bail criteria that looks to the cultural needs of an Aboriginal child in custody.

NAAJA does see that this particular amendment bill does also need to be strengthened. We need to look to things that provide greater accountability and oversight in relation to the time that children stay in custody in police watch houses and in remote police cells. But also for the limitation of time for bringing children before the court.

NAAJA does see that it is necessary that we need to be looking at the paramount interest of children in these issues, rather than matters of operational needs of police and resourcing.

NAAJA has also had the great opportunity of reading the committee's written questions to the witnesses and the responses that have been provided. But also, has had regard to yesterday's indication of the Territory Families of seeking further amendments to this bill or key areas of respect. These are fundamental issues that NAAJA wishes to comment on, that these proposed changes we see will have a very deleterious and adverse effect in relation to this important amendment bill.

Concerning the issue about the changes to the presumption of bail, NAAJA supports the initial proposal of clause 9. It does reject the need for the amendment of the bill. It would result in the narrowing of the presumption of bail with a greater exclusion of bail and leading to the over-representation incarceration of remand.

We are also gravely concerned in respect of the changes to clause 13, which is a massive change in relation to providing, what we consider, a very dark shadow across the bail system for children in the Northern Territory.

To adopt different approaches in relation to police bail and court bail and providing a situation at that very first point of contact where the consideration of bail in those criteria in section 24, may only be considered, instead of being 'must' be considered.

We know from these new and promising changes in that bail criteria, as I have indicated around strengthening Aboriginal cultural issues and the mental health and the disability issues that surround bail need to be considered.

It would be a grave change of departure to basically having two systems of bail in relation to that first point of contact. We know at that very first point of contact there is a divergence in the difference in circumstances for Aboriginal children.

We know that Aboriginal children are more likely to be arrested over summons, less likely to get diversion, more likely to end before the courts. We need to be looking that at the very first point of contact that there is that uniformity of approaches.

We are also very concerned in relation to proposals of removing clause 25 which is arrest as a last resort. These concerns of our organisation have been long-standing well before the Royal Commission in communications with the police commissioner about not adopting practices of last resort or arrest, or children in schools arrested in handcuffs in front of students and teachers that we are all vividly told at the Royal Commission.

These inappropriate practices are still continued to this day. We have concerns in Alice Springs of children who are arrested whilst asleep in their house in accordance with their bail, handcuffed and taken in police vehicles to watch houses, questioned for incidents for matters that have occurred over many months ago. This also is of concern to us in remote communities where children have been arrested and spoken to matters that have occurred months prior.

In respect of the fourth area of indication in relation to closed courts and the issues of publications, I simply adopt what has already been presented in evidence by the information commissioner and its very important points about that sometimes the mere presence of a person can have—affect the behaviour and the prejudice, the very important process of the court process in bringing across the seriousness and an understanding of what is to occur.

In hearing, Deputy Chair, your comments earlier about how the presence of the people—whether we can enhance those sorts of situations that young children before the courts can learn from the circumstances—that great opportunities can equally provide through the provision of elders in our courts—Aboriginal community courts—ways that we can strengthen the process to bring this great healing process from members of the communities and victims and offenders and their families to learn from what has occurred.

Having sat in many Aboriginal community courts in the Northern Territory and seeing that process and being a lawyer and actually seeing how victim offender works has resulted in really great successes where victims have then routinely come to support that child in the court process. It is a great opportunity.

Though it may be outside the scope of the present inquiry NAAJA does call for the early implementation of the minimal age criminal response, in line with national standards of many legal services and the Law Council of Australia adopting the age of 14, but it is fundamentally important to really change those circumstances. We know that we can make children safer in their community, we know that in working with the family, working with the community it really is about that. We all want to see the ending of offending and working with children and making the communities safer.

**Madam CHAIR:** Thank you very much. I will now open up to the committee for question.

**Mrs FINOCCHIARO:** Thank you very much, Mr Woodroffe and thank you for providing that overview, it was very helpful.

You mentioned—it was very brief so I would like you to explain—something about the time of bringing a child before the court. I am very interested in that. I guess in your experience obviously being on the coalface of this, what is the general time line and could it be shortened, how could it be shortened and how short could it be? If you know what I mean?

**Mr WOODROFFE:** Thank you very much. That is a great question. It is such a fundamental how the youth justice system operates. The existing law provides that there is a minimum of seven days in which a child can be brought before the court. That is something that is rooted, is fixed in the 1930s, the 1950s. It is an antiquated provision that needs to be changed.

**Mrs FINOCCHIARO:** It cannot be less than seven days? It has to be more than seven?

**Mr WOODROFFE:** It is a maximum.

**Mrs FINOCCHIARO:** Sorry, that is a maximum. So they have to be before the court within seven days.

**Mr WOODROFFE:** Yes. We see that there are great and practical solutions of dealing with the issue of Aboriginal children and children in remote regions. The other jurisdictions, such as in Western Australia, provide for telephone conferences. One of the biggest issues we see, and a great initiative—we live in a world of technology of Skype, of videoconferencing, of getting families ...

**Mrs FINOCCHIARO:** Teleconference ...

**Mr WOODROFFE:** In dealing with a matter in the community, what we are fixated on is—let us stop the process of removing children from communities. Let us deal with those issues, because there is that immediacy of what has occurred with the child's offending. Having the family around at that point of time, dealing with the issues, having the expedient resolution of matters, diverting the child immediately into diversion are practical ways. There is too much fixation that we have to remove the children from communities. There obviously will be situations of seriousness and repetition of offending and those situations where the child must be removed.

But we live in a world of technology and resources where we can bring children speedily before the courts. But we need to deal with a child's frame of reference in respect of time. What we see in those difficult situations is that transportation may proceed over a number of days before a child comes before the court. We really have to think about how we deal with these situations quicker, but back in the community, and have that immediacy and wraparound so we are not in that situation where we have this ping-pong effect where children will come to Darwin, Alice Springs or Katherine and are immediately released on bail and returned back to the community. Let us deal with these issues straightaway. Let us fix the problems and address the needs of the child.

**Mr PAECH:** If I may, following on from the Member for Spillett, while we are talking about holding people, NAAJA's position is in relation to holding people within a custodial environment without charge—you are in support of no greater than four hours. Is that correct?

**Mr WOODROFFE:** Our focus is on that there needs to be that review. There needs to be oversight and accountability. But that is only best achieved through a judicial oversight. What we and everyone recognise is the nature of the environment that children are held in custody. That is the reason why the time that a child spends in custody must be to the absolute minimum.

Our focus on implementation of this bill is how we achieve the absolute minimum time a child is held in custody, recognising that watch house cells, remote cells, are terrible places. They are places that may be of chaos, of drunken people, of violence. That is what children are exposed to and the trauma that flows from it. How do we minimise that? The best way to minimise that is through the accountability mechanisms of having the juridical oversight.

We know there are issues. That is why we consider that judicial oversight, rather than police oversight, is the best approach. We recognise the reason for that is obviously police have a very dual purpose. They are there to investigate offences. Children are held under section 137, which allows for that process to occur. What we find is that investigation process under section 137, in our experience and circumstance we have seen, is that Aboriginal children spend long times in custody—particularly given examples about the length of time in custody.

You have this competing interest of a police officer who has to think about, rightly, the investigation of the matter. How do you look after then, the welfare of the child in respect of minimising the trauma of what they are exposed to in the cell while they are in the watch house? That is why the knowledge of the judicial officer—whoever the youth judge is—who has already established these relationships with the children, knowing the family history, their background, the nature of their offending and the nature in relation to the offence and what is an appropriate time. That is why we see you need that. We see there has to be a judicial officer in relation to a cap. You have to have a cap. There will obviously be that discretion in relation to the most heinous and serious of offences of homicides and sexual assaults and things of that nature where that judicial discretion can extend that period of time.

**Mr PAECH:** Just following on, I have asked multiple people who have appeared today and I am genuinely concerned. It has been 30 years since the Aboriginal deaths in custody and it was recommended that the custodial notification system was in place.

One of my concerns is given that the Indigenous young people come from a large extended family which extends to the kinship systems. If a young person is held without a conviction or alleged conviction, what is the process or how does NAAJA feel the process is being serviced at the moment around notifications, given that it is very hard to potentially find the biological parent and taking into account the large geographical jurisdiction we come from? Around access and notification in that system.

I am just trying to work out how that works.

**Mr WOODROFFE:** I will just confine the kinship and family connections and the notification to legal service. Those are practical issues because it ties into issues about the need for a responsible adult in relation to the release on bail or their participation and electronic records of interviews.

The practical solution to those sorts of issues—we recognise police officers will come to a remote a station and will have very limited experience in a remote station and may not know the people. They build up that relationship over years and can become integral members of the community. How do we address that issue?

The fundamental way we can address that issue is the way that this issue is being addressed in care and protection matters. It is working with Aboriginal law and justice groups who can provide mapping of kinship around that particular child. There are great opportunities where the communities can work together to deal with these sorts of issues.

If we work with Aboriginal law and justice groups who have identified the family and kinship networks, that is a resource the police can go to. We can deal with these matters in much less expeditious way and find those people, minimise the time on remand and assist the child. The solutions are already out there.

**Ms NELSON:** Is that one of the components of the youth justice reinvestment principle? It is part of the principles of that? A whole of community approach where you know the child, family and history.

**Mr WOODROFFE:** It makes sense.

**Ms NELSON:** Yes.

**Mr PAECH:** I am curious about NAAJA's particular view on the closed courts. We have heard from people around the concerns in an Aboriginal kinship system, family is quite extended and it is unclear if there are strict provisions on the amount of family support which would be in that court room during a closed court.

**Mr WOODROFFE:** Obviously it is important for that sense of child in being connected to their family and have them there. It is a great strengthened approach, as I have talked about around Aboriginal community courts.

Courts want to have engagement of family and relations to bring home the message of responsibility. I do not see a practical difficulty in the sense of exclusion and there is judicial discretion to have the family and members of the community there in that process.

I do not see it playing a major difficulty in circuit courts that we all attend.

**Ms NELSON:** On that, from a legal perspective the way it is currently it is up to the judge. The judiciary has the discretion to close the courts for that particular case. If we are going to change that and embed in legislation that all youth justice cases will be closed courts, we are undermining the independence and power of the judiciary?

**Mr WOODROFFE:** No, I do not see it that way. I see it more that our courts are evolving and modernising. We reflect this in relation to the victims of sexual violence and child abuse.

We close our courts because that reflects modern society. Modern society use children as different from adult offenders in other categories and the need for those courts to be closed. I do not think it is an imposition upon the court. It is providing the necessity of a default position and judicial discretion is obviously still retained, whether it allows further people in law or categories of person or dissemination of information.

I think it is fundamentally important to change our practises that we have a deep opposition of a closed court.

**Ms NELSON:** Embed that in legislation?

**Mr WOODROFFE:** It needs to be embedded in legislation rather than in practise.

**Mr PAECH:** You have made reference in your submission to prescribed offences and you have recommended taking out our excluding traffic offences. Could you elaborate on that?

**Mr WOODROFFE:** That stems from many years in the Northern Territory from reports as far back as the Carney report of 2011 which called for the inclusion of traffic offences or diversion.

It is a necessity, because what you see on that practical experience is diversion is a wonderful success. You are diverting the child, you are dealing with their surrounding issues and the reasons for offending, and then you have to go back to the court process. You have to have a court-based outcome rather than that diversionary process. It then continues the entrenchment of the child within the justice system, by returning to court.

It is much better if we are able to deal with all the matters through diversion, obviously limited to the prescribed offences, in dealing with all issues at the one occasion. That is the reason why we see that as necessary for traffic offences. Obviously, there are certain degrees.

**Mrs FINOCCHIARO:** What diversion currently exists? What are the legitimate diversion options?

**Mr WOODROFFE:** There is not enough diversion, or diversion in remote communities. It is very patchwork in respect of what is actually there. There is obviously different types of diversions mainly centred on towns and centres. There is great work that has already been done in remote communities in diversion by Aboriginal groups working with non-government services and support agencies. I cannot think of better examples than what is occurring in the Tiwi Islands with the 'Ponki Mediators' around diversion and working with the police. Groote Eylandt, where you have partnerships of diversion

programs working with elders in the community and with local businesses. We have had great diversion successes for an Aboriginal young man, who has gone through diversion processes and then been employed by the mine site.

We have great ways of reshaping diversion and working to do those things. At the moment, it is too patchwork, we need to bring in business, the local community to tackle the importance of getting a job, respecting the community, elders and the ways the young people can grow up in that environment.

**Ms NELSON:** I think the government is doing that through the Back on Track initiative?

**Mr WOODROFFE:** Yes. There is that process that is under way. I understand there is a lot of mapping and plans for diversion. I do see it is integral to have those key elements of the support services which recognise the special needs of children in respect of their trauma and issues of disadvantage, equally, partnerships with Aboriginal elders and communities. Also business is the key integral way of bringing everyone together.

**Madam CHAIR:** I could be wrong, but I think you mentioned something about referring to the trauma of a youth offender's experience. Are there enough provisions in place to measure the impact or the trauma that a young person experiences when they come into contact with the youth justice system? The last thing we would want to do is traumatise them for a minor offence at the start. They are a young child and not able to regulate or understand consequences. I am really curious about that part.

**Ms NELSON:** Yes.

**Mr WOODROFFE:** That is so important, so fascinating. I agree with what has previously been stated about that public health approach, addressing those issues about trauma, rather at that first pointy end of contact with the justice system, but earlier in the fundamental years of the child's development through that schooling process. We need to track that child's trauma and experiences from fundamental days so we have this body of information, so if the child enters into the system we know their journey in respect of their circumstances. The courts are much better informed of the child's history of trauma and those practical solutions of working with the family—the court has a process that is informed of how we address those needs and link it to its advantage.

At present that is not happening. We know that through the early exploration of only the last couple of years with FASD. That is being understood and brought in—the information that can assist that makes a fundamental difference to a legal proceeding for youth.

**Madam CHAIR:** Does the committee have any further questions? There are no further questions. Thank you very much, Mr Woodroffe, for appearing before us today.

**Mr WOODROFFE:** I thank the committee for the opportunity to present today. It has been a wonderful opportunity. Thank you.

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The committee suspended.

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### **Jesuit Social Services**

**Madam CHAIR:** Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. I welcome everybody to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019. I also acknowledge my fellow committee members in attendance today, the Members for Araluen, Spillett, Katherine and Namatjira.

I welcome to the table to give evidence to the committee from Jesuit Social Services John Adams, General Manager NT and Elle Jackson, Manager for Darwin. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record, I will ask you each to state your name and the capacity in which you appear before opening to the committee for any questions.

**Mr ADAMS:** John Adams, General Manager of Jesuit Social Services.

**Ms JACKSON:** Elle Jackson, Manager of Darwin Jesuit Social Services.

**Madam CHAIR:** Thank you very much. Mr Adams, would you like to make a brief opening statement before I proceed to the committee's questions?

**Mr ADAMS:** Thank you. I thank the committee for giving me this opportunity to speak to them today.

Jesuit Social Services is a social change organisation. We have had over 40 years' experience working with young people and adults involved in the justice system. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference.

We have a presence in Victoria, New South Wales, the Northern Territory and internationally through our involvement in the Jesuit Prison Network. Our practical support and advocacy covers five main areas: justice and crime prevention; mental health and wellbeing; settlement and community building; education, training and employment; and gender and culture.

Our work in the Northern Territory commenced in 2008 with an invitation to work collaboratively with the central and eastern Arrernte people in Santa Teresa and Alice Springs. Since then our work has grown to include the communities of Artitja, Engawala on the Plenty Highway and Tennant Creek. Our work in Central Australia has focused on building the governance and service delivery capacity of communities and organisations that we work with to enable a more strategic response to structural issues we see playing out in the lives of people on the ground.

In 2015 we established an advocacy presence in Darwin. Responding to a need identified by Aboriginal legal services of the Northern Territory, in 2017 we received funding from Territory Families to pilot the Northern Territory's first presentence youth justice group conferencing program in the Darwin, Palmerston and Katherine regions.

To date the program has received 77 referrals and completed 64 conferences. Jesuit Social Services welcomes the bill which advances a number of key recommendations of the Royal Commission. We note the extensive consultation that has informed the bill via the Legislative Amendment Advisory Committee.

We give our full support to a number of reforms in the bill including: the introduction of new specific criteria to inform bail applications and conditions; the shift to a presumption in the favour of bail for youth for certain offences; strengthening of children and young people's right to privacy with the introduction of closed courts for youth matters; preventing the publication of identifying information that identifies; providing for early access to legal assistance; and ensuring children and young people are provided with information about their rights in a manner and language that they understand.

While not detracting from these significant achievements, there are aspects of the bill that fall short of the Royal Commission's recommendations and where we believe the Northern Territory can do more to protect the rights of children and young people, and promote a safer community. In particular, we would like to see the bill raise the age of criminal responsibility, full repeal the offence of breach of bail, ensure an upper limit on the time which a young person can be held in police custody and removal of barriers to diversion for traffic offences.

We believe that these changes the reform contained in this bill will bring us significantly closer to realising the vision of a safer community for all Territorians, where Aboriginal children and young people have the opportunity to thrive and connect to their family, culture and community.

Thank you.

**Madam CHAIR:** Thank you very much. I will now open up to the committee for any questions.

**Mrs FINOCCHIARO:** Thank you Mr Adams and Ms Jackson for coming today. You mentioned in your opening that you had 77 referrals and 64 completed presentenced victim offender conferencing, is that correct?

**Mr ADAMS:** That is correct.

**Mrs FINOCCHIARO:** Is that in the Top End region?

**Mr ADAMS:** That is in the Top End region.

**Mrs FINOCCHIARO:** Of the 64 victim conferences, does Jesuit Social Services keep track of—recidivism is what I am getting at—how many times a young person comes back through victim conferencing?

**Mr ADAMS:** It is interesting that you should ask that question because that information sits within a range of government databases. We are currently negotiating with the Northern Territory Government to try to get that information released. One of the issues is around the *Privacy Act* and some issues around the Information Commissioner.

One of the things we have done is modify our consent documentation to try to make it a bit easier for that information to be released. I would love to have it because I reckon I am doing alright.

**Mrs FINOCCHIARO:** It would be interesting.

**Ms NELSON:** So Jesuit Social Services does not keep that record?

**Mr ADAMS:** To keep those records, because of the nature of our involvement with a young person where the convener in a conference is a neutral person and we need to be careful to maintain some of that neutrality. What we do is meet with the young people, victim and stakeholders and have the conference. Then we do some follow-up to ensure that the outcome plan is complied with, so after that point we really do not have a role that would keep the case open.

**Ms NELSON:** No, because that means that that goes in the case management, does it not—and that is not really your role?

**Mr ADAMS:** There is also the thing that if we keep a case open we need to actively work it. The only way we really have a legitimate need to involve ourselves in a young person's life is to have an open case, which is not how that works. I think we will resolve that matter soon.

**Mr PAECH:** I just have two questions, Mr Adams and Ms Jackson. One is, in your submission you talk about fully repealing the offence of breach of bail for children and young people. I want to expand further, you are concerned that it does not extend to decriminalising the breach of bail?

**Mrs FINOCCHIARO:** I think he said repeal.

**Mr ADAMS:** Yes, repeal.

**Mr PAECH:** Yes, repeal. My apologies.

**Mr ADAMS:** I was working on the sector when they brought in the criminalisation of breach of bail. I saw no real difference on ground when they did that. It really does nothing more than clog up the courts, and we need the most efficient justice systems as we can possibly have, and by criminalising the breach of

bail—surely the issues is if you breach your bail chances are you are going to be detained—I do not think it needs to be criminalised as well.

**Mr PAECH:** Jesuit Social Services would be of the view that in the current system the breach of bail then being recorded as a criminal offence only further disadvantages the young person to a full road to recovery or to overcome their challenges.

**Mr ADAMS:** Hinders rehabilitation.

**Mr PAECH:** Hinders rehabilitation, certainly. I am curious, we have had many people talk this morning from different sides of points of view around the closed courts. I think that there are many different positions. I just want to further explore that with the Jesuit Social Services around what your position is and why—that you feel it is important for the closed courts?

**Mr ADAMS:** The role of Jesuit Social Services and the capacity that I appear before you today, is around that role and that is to give young people the best chance we possibly can of rehabilitation. The publication of their names does not add to that. It hinders that.

My job is basically to give kids the best chance of not reoffending, and having their names publicised denies that.

**Ms NELSON:** There are already laws that prevent that. They are not allowed to publicise names, ages or those sorts of identifiable markers.

**Mr PAECH:** Going back to it—Jesuit Social Services is in support of having a closed court system because you feel it is in the best interest of the young person not to have that information being dispersed to the public where it can have a detrimental impact on the young person through the identification.

**Mr ADAMS:** Especially in a small town like Alice Springs or Katherine or Tennant where that information gets dispersed through word of mouth anyway. If something goes to the media and too many details are put in the media, what happens in about minutes flat down at Monte's, or whatever local bar is in Darwin, or at coffee shops or when people talk about the crime and they try to work out who did what to whom, I think that labels kids. That is a bit specific around the Northern Territory more so than other places. In Adelaide or places down south it works out a little differently.

We are currently spending a whole lot of money in developing a whole stack of aligned data bases at the moment—police and child protection—and the media should have access to that data. They should have access to evidence based data.

It is very hard to make an assessment on what is happening in a community based on a very narrow vision about one court case.

**Ms NELSON:** That is a good point.

**Mr ADAMS:** I also think that the sector needs to take some responsibility around—these are conversations for the community about the issues that are happening. The sector needs to get better at talking to community about some of these issues, rather than—we have evolved to a point where we lobby politicians.

**Ms NELSON:** Yes, absolutely.

**Mr ADAMS:** We will talk to ministers but we need to be talking to the people of the Northern Territory because they are stakeholders in this situation as well. We need to have a conversation with them about what is going on.

**Mr PAECH:** Thank you. I have asked everyone this question today about your organisation's opinion or view on the upper limitations of holding someone in a custodial environment. To further elaborate on that, I note in your submission you talked about detaining someone without charge for up to 24 hours without judicial review. What would be your maximum, in an ideal world, without that approval of a judicial review or correctional custodial officer?

**Ms JACKSON:** The upper limit we would like to see would be four hours, then after that point we believe it needs to be reviewed by a judicial officer. There needs to be an independent review of the child or young person in custody after that time.

**Mr PAECH:** Okay. Fantastic.

**Ms NELSON:** Custody notification. Is that ...

**Mr PAECH:** Yes. The submission on behalf of Jesuit Social Services by Ms Edwards talks about the Royal Commission into Aboriginal Deaths in Custody. I want to further expand on the custody notification system. Given that your organisation would probably have quite a detailed view about working with young people about how achievable it would be to notify people or responsibly agencies which have the order of the child's care?

**Mr ADAMS:** As some members of the committee know, I worked in an after-hours environment in Alice Springs for many years. There are some challenges there. One of the challenges is if we do not fund Aboriginal organisations to deliver 24-hour service, it is hard for police and agencies to get access to the right families or members of those families.

We continually come across cases in court where people have the wrong guardian or they are not talking to the right family members. We will travel to a remote community and continually be asked what is happening for a young person who is in Don Dale because the people they have on the list are the wrong people.

To really be effective with notifying people at that first instance, you need to have access to the right people with the right cultural knowledge and knowledge of family. For years and years in Alice Springs, we used to rely heavily on Tangentyere Youth Patrol. They would know who is who, where kids should be. Every time we have implemented the government program to replicate that, it has been messed up until we actually recruited the right Aboriginal people in those jobs to give us the direction about where kids should be. It is the most efficient way to respond after hours.

Everywhere but Darwin does not have a 24-hour child protection response which is manned all the time. For me, there are differences in the effectiveness in after hour responses between Darwin, Katherine, Tennant Creek and Alice Springs. There are a few reasons for that. One is that in Darwin they have the intake system which is staffed 24 hours. They have access to (inaudible), so they have access to notes. They also have people who tend to work after hours, so they know the kids that are escalating or busy at this point in time.

In those other jurisdictions you need to have access to people with that information. It only works if we resource—and I think to make it the most cost-effective, that needs to be Aboriginal organisations to deliver that service.

**Mr PAECH:** A question for you, Mr Adams and Ms Jackson. In your submission your first area for further change is raising the age of criminal responsibility. Are you able to further expand? You obviously have provided as recommended age. Why do you think that is important? What impact do you think that would have on the youth justice system if that was implemented?

**Mr ADAMS:** We have recommended the age of 14. The opportunity that exists by raising the age to 10 and 14 is not to do less intervention but more. We need to acknowledge that between 10 and 14, we do not criminalise young people but there is some heavy lifting that needs to be done. That heavy lifting does not just sit with Territory Families. I think everyone, in the last couple of years, is focused on Territory Families.

These young people need assessments. Territory Families can fund some of those but the health system and Aboriginal health services need to be funded and resourced in a way that we have access to people who can do the assessments. Government services, we need access to people who can do the assessments. We do not have those practitioners.

We need to make sure that the Education department does some of the heavy lifting too. I do not think there is a young person who comes into the criminal justice system where indicators have not been

flagged in the education system. We need to keep an eye on truancy. We also need to make sure that people in the education system have sight of young people and are aware when things are not going right and they access to those services than can engage those young people before it gets to the youth justice or child protection systems.

**Ms NELSON:** That is not mentioned in this bill. What is your opinion on the fact it is not mentioned? The suggestion has been that it is going to be raised in a different amendment or piece of legislation.

**Mr ADAMS:** I think we need the legislation to be able to act on the age of 14 years. I think legislation needs to be resourced and we need to make sure that the Health and Education departments are appropriately resourced and working in this space as well.

I would not think it was part of the legislative amendment. You have the legislation and you do not want it to get in the way of being able to respond. One thing, if you do criminalise young people and you tend to pull them out of supported structures like education, we do not want that. You want to try to maintain a young person's momentum within the education system, you do not want to disrupt that part of their life too much, but you want to be able to resource the young people.

**Mr PAECH:** In its entirety, as it is before us now, the Jesuit Social Services is in support of the bill, bar a few suggested amendments?

**Mr ADAMS:** Yes.

**Mr PAECH:** You have also indicated, following on from NAAJA, the removal of traffic offences from prescribed offences?

**Mr ADAMS:** Yes.

**Mr PAECH:** The same rationale as NAAJA?

**Mr ADAMS:** Yes. I also think there is a professional experience I have had with traffic offences. Part of the issue with the strength of removing the traffic offences from the prescribed issues is that, not all responses from police and diversion are the same between Alice Springs and Darwin.

**Ms NELSON:** Or Katherine?

**Mr ADAMS:** And Katherine.

Say, little Jimmy has his 'L' plates and he jumps into his mum's or auntie's car and takes it down the street. He gets pulled over by police and the policeman asks, 'What is your name?', and Jimmy says, 'John Adams', and the policeman says, 'John Adams is a big white guy who annoys me'.

In Alice Springs, what would happen is the young person would have lied to police, so gets a crime of dishonesty and a traffic offence. The crime of dishonesty could be diverted, but in Alice Springs they do not. They put the two together, and they say they will not divert the crime of dishonesty because it is with a traffic offence and you cannot divert a traffic offence. So the kid gets a crime of dishonesty, which can go against him later on.

In Darwin, they would separate the offences, they would divert the crime of dishonesty to diversion and they would charge him with a traffic offence. I think, by taking this out of the prescribed offences, one, I think it is reasonable to divert an offence when the offence is not—all offences are problematic but not as problematic.

**Mrs FINOCCHIARO:** Sorry, are you saying that how diversion is dealt with in Alice Springs and Darwin is different? In that situation, they would be treated ...

**Mr ADAMS:** Differently.

**Mrs FINOCCHIARO:** ... completely differently?

**Mr ADAMS:** That is my experience.

**Mrs FINOCCHIARO:** Yes. Okay.

**Ms NELSON:** That comes down to the police discretion?

**Mr ADAMS:** Yes.

**Ms NELSON:** The law is the same, it just—yes.

**Mr ADAMS:** We have a remarkably high number of young people in the prison system in Alice Springs as opposed to Darwin. It may be those differences in practice might have something to do with that, especially where ...

**Ms NELSON:** Maybe we need to look at the standard operating procedures.

**Mrs LAMBLEY:** John, what are the implications of increasing the criminal age of responsibility to 14? Why would the government not just do that? What are the blocks there?

**Mr ADAMS:** It is probably about political perception.

**Ms NELSON:** Thank you, John.

**Madam CHAIR:** Does the committee have any further questions for Jesuit Social Services?

**Mr PAECH:** Is there anything further about Jesuit Social Services you wish to supply in addition to the original submission?

**Mr ADAMS:** No. All good.

**Madam CHAIR:** Thank you.

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The committee suspended.

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### **Human Rights Law Centre**

**Madam CHAIR:** Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019. I also acknowledge my fellow committee members in attendance today: the Members for Araluen, Spillett, Katherine and Namatjira.

I welcome to the table to give evidence to the committee Shahleena Musk, Senior Lawyer Aboriginal and Torres Strait Islander Rights Unit, Human Rights Law Centre. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be uploaded to the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record I will ask you to state your name and the capacity in which you appear. Then I will invite you to make a brief opening statement.

**Ms MUSK:** Shahleena Musk, senior lawyer at the Aboriginal and Torres Strait Islander Rights Unit of the Human Rights Law Centre.

Thank you, I am grateful to be here.

I am a Larrakia woman, born and bred in the Northern Territory, having lived most of my life here bar a few years in Western Australia. More recently I spent two years in Victoria. I have worked for over 20 years in the criminal justice system both in Western Australia and the Northern Territory either as a prosecutor or criminal defence lawyer.

For the last five year prior to going to Melbourne I was the manager and senior lawyer in NAAJA's youth justice team. I have great experience when it comes to interactions with the justice system for children, particularly Aboriginal and Torres Strait Islander children who have been accused or alleged of having committed offences, and/or charged and prosecuted for criminal offences.

I have been a member of the Legislative Amendment Advisory Committee since its inception and have participated in all the consultation regarding the legislative reforms that we are dealing with today. I have provided advice regarding these reforms.

These amendments seek to implement key recommendations from the Royal Commission into the Detention and Protection of Children in the Northern Territory and considers best practice nationally and internationally. As is evident from my submission, the Human Rights Law Centre supports the majority of these amendments as crucial to reforming harmful aspects of the Northern Territory's youth justice system.

In summary, these amendments are directed at reforming key aspects of the system that have been shown to contribute to children being drawn in, harmed and entrenched in the youth justice system. Particularly those around policing powers and the exercise of police discretion. They will ensure there are appropriate safeguards in place at various stages of the system for children alleged of or accused of crimes that reflects and take into account the unique experiences and vulnerability of children.

However, there is one glaring omission which we are going to talk to but it is a concern for us that the age of criminal responsibility was not raised by these amendments. This simple reform would prevent vulnerable children being funnelled through the quicksand of the criminal justice system and harmed as a result. When considering the present amendments, we need to keep firmly in mind that children differ from adults in their physical and psychological development, and there emotional and educational needs.

Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other difference are the reasons we have a separate youth justice system and why it necessitates differential treatment when it comes to children in contact with the system. The youth justice response to children will be in contrast to that for adults.

For instance, the traditional objective of criminal justice systems, like retribution and general deterrence must give way to rehabilitation and restorative justice objectives when we are dealing with young people. This can be done with attention to effective public safety. In particular, we know that the further a child goes into the youth justice system the more likely they are to return. Even a short time in detention without adequate interventions or supports can normalise a child's experience of the justice system, expose them to negative peers and may lead to increased offending.

Every opportunity must be tried and exhausted to prevent children from coming into contact with this system and at all costs, preventing their incarceration as a result of their contact. Failure to do so risks isolating and marginalising these children, increasing the risk of offending and reinforcing the very behaviours we are trying to change. We know what works when it comes to children in conflict with the law, it is developmentally appropriate, culturally safe and responsive interventions that help children to learn from their mistakes, address the factors that led to their offending and help them to get back on track.

**Madam CHAIR:** Thank you very much. I will now open it up to the committee for any questions.

**Mr PAECH:** I do. That was very well articulated.

**Ms NELSON:** I asked earlier about paperless arrests and how that applies to youth. The paperless laws, how does they apply to you? We are talking about reducing time in police custody but yet we still have legislation like the paperless arrests in place.

**Ms MUSK:** The Human Rights Law Centre provided a submission to the alcohol review two years ago calling on the Northern Territory Government to repeal the paperless arrest laws. We provided statistics which identified the overrepresentation of Aboriginal and Torres Strait Islander people when it came to the use of these laws.

The statistics—I cannot off the top of my head draw the figures out—but it was well over 70%, or more. We did not have the data in relation to children and that would be something that I would be asking the Northern Territory police to provide, but on my assessment, the powers do extend to children.

**Ms NELSON:** Those powers extend to children. Okay. Under the paperless arrest laws somebody can get picked up by the police. How long are they detained by the police under that law?

**Ms MUSK:** It has been awhile. I do not know if I can respond to that question. I might have to take it on notice and provide a written response.

**Mr PAECH:** Following on from that though, maybe the question is—in your submission you are advocating processes to reduce the time in police custody?

**Ms MUSK:** Yes.

**Mr PAECH:** You have indicated in your submission of no more than 24 hours after extensive consultation with the judiciary?

**Ms MUSK:** Yes. Our submission is aimed at trying to prevent children being held unnecessarily long in a custodial setting. There are aspects of our submission which go to police custody as well as time on remand in a detention centre.

In general, no time in custody is of any benefit to children. I have at length in this submission and previous submissions talked to the impact of time in custody for children, but if we just concentrate on time in a police cell—we are concerned that extended periods of time can impact on the social and emotional wellbeing of children, particularly young children who as we know from all the data are children who come from—vastly the evidence reflects experiences of trauma, compounded trauma, experiences of disadvantage.

Many have health issues whether or not it is cognitive impairment or mental health issues—and extended periods of time in a police setting, which is a setting designed for adult offenders, and removing them from the social supports that are necessary for children to function well.

We have seen by numerous judgements of the Supreme Court that children's will when it comes to their ability to choose to speak or not to speak when it comes to engaging in the interview process can be overborne by excess periods of time in custody and we know that these children do not—there is a real powering balance when it comes to police and young people.

Police are in a position of authority. They know the laws, they know the processes. Children do not know their rights and children will often speak out. We have had so many times where children—because of the power imbalance and their will being overborne—will make admissions to offences that they might not have made admission if they had been given the right protections and safeguards—advice from their lawyers about their rights.

We are concerned about extended periods of time in custody when it comes to not just the physical, mental and emotional impact on children but also in terms of the potential overbearing of their will and the impact on them exercising their rights appropriately.  
Does that make much sense?

**Mr PAECH:** Yes, absolutely. Following on from that, in your submission you are advocating that it is a judicial officer who would be the person required to approve any additional time that would exceed four hours?

**Ms MUSK:** Yes. The Northern Territory police have come a long way. There has been a specialist unit developed and there has been some training being rolled out.

The Northern Territory police—this is based on my personal experience as a youth lawyer who has worked in the Northern Territory for over 10 years in the Aboriginal legal service—but there is a divergence between certain numbers of police in their understanding of youth justice principles, the *Youth Justice Act* and there has been countless hearings that I have been involved in, or colleagues have been involved in—appeals to the Supreme Court where it is indicative that there is, at least in my time, a growing understanding that police were not fully cognisant of the *Youth Justice Act*, the objects, the principles and their obligations under the act, including the requirement to have a support person there.

I can name a number of cases which attest to this imbalance when it comes to understanding of youth justice principles and obligations on police. In all jurisdictions around Australia there is judicial oversight when it comes to extensions of time. There are specific time limits in trying to ensure young people are not held unnecessarily long, because of the very things that I spoke about.

**Mr PAECH:** Would it be the Human Rights Law Centre's opinion that it is better placed with a judicial officer to reduce the perception of conflict of interests if it were to be held by a custodial officer, as a senior sergeant or a superintendent.

**Ms MUSK:** Yes. There needs to be independence when it comes to the decision to extend time.

One would understand that a police officer seeking a senior officer to extend the period, would have some influence. There would be a relationship of trust and respect to that person, as well as the specific approach.

The angle, if you can call it that, the nature of the information and the basis for the extension would be definitely received in a different way if it is coming from an officer to another officer as opposed to an independent judicial officer, who understands the impact of extended periods of time on a child's social and emotional wellbeing; who understands the impact of extended periods of time on the young person's will and ability to exercise their right to silence; who would have a clear understanding of the objects and principles of youth justice.

**Madam CHAIR:** Access to a judicial officer would be reasonably easy, every four hours, to get that extension?

**Ms MUSK:** I think that is a question for the judiciary. My experience has been that for judicial officers, there is a custody phone, but it has been two years since I have practised in this jurisdiction.

**Mrs LAMBLEY:** What is a judicial officer, their qualifications, experience?

**Ms MUSK:** We are talking about magistrates and judges. I think they are all called judges now in the Northern Territory. We do not have Justices of the Peace who are in this category. I know in other jurisdictions that may be the case.

Here we are talking about ensuring that there is an independent, objective, additional third party who can determine what is in the best interests of the young person, what are the considerations for ensuring that police are able to investigate the offence and ensure appropriate supports are in place for that young person.

It is a balancing act which I do not believe can be appropriately achieved by having another member of the police force.

**Mrs LAMBLEY:** To clarify, I am not familiar with the system. You would be requiring someone like a judge to provide that independent advice for an extension of time?

**Ms MUSK:** Yes. A judge of the Local Court or the Youth Justice Court, at the first instance.

**Mr PAECH:** I wanted to touch on your concerns of clause 33. In the submission it is noted that:

*'Whilst we commend the amendments aimed at implementing recommendation 25.25 of the Royal Commission we submit that the restrictions on publication in s.50(1) may be too broad.'*

Could you expand on that?

**Ms MUSK:** I think it has been an experience in Victoria that victims of crime, and we are talking more in the superior courts—District Court and Supreme Court—have wanted to tell their story. What happened to me—the impact of the crime on me? That was why there have been certain amendments, to ensure that these victims can tell their story.

In my experience, what the Royal Commission was trying to achieve with these amendments was to prevent the naming and shaming of children. We have had experience in the Territory over many years where there have been sensationalist reporting of youth offending. In my own experience as a youth lawyer, I have had children as young as 14 years or 15 years, chased down the street by media, including cameras, having their image—a pixelated face in some circumstances—broadcast on mainstream TV and social media. The harm that causes to a young person and ongoing harm is unmeasurable.

I can take one example where this young 15-year-old boy was charged with offences that occurred at a school. It was heavily reported in the media. They had cameras and reporters at the court house when his matter was being heard. We asked for the court to be closed, which it was, and suppression on publication, but they still were at the front of the court and chased him down the street, pixelated his face and reported on the objective circumstances that were reported earlier. It was a matter he was contesting. The charges were all denied and went to hearing and he was discharged, found not guilty.

That is an example where the damage was already done. They knew the school and who the person was. This kid did not engage at school since—when I left he was still not in school and had gone down a really rocky and dangerous path. That is one case study which shows that allowing media to be present and then to publish—even just objective circumstances, the details of the alleged offence—can be so damaging and can follow a child for months, if not years, down the track.

The other aspects of the naming and shaming is I have had young people—particularly with social media where it is posted—where that is their brand. It can impact on their reputation and identity. It is really dangerous because you are then further categorising and marginalising that person as a criminal, as opposed to there should not be any mention of this. This kid needs to get back into school. We need them in the community in a way that they will develop social relationships—pro-social relationships, I should say. We want them to learn better behaviours.

These types of interactions which further brand, label and marginalise them only serves to harm them and distance them from the things we are trying to achieve.

**Ms NELSON:** In that case you have just relayed to us, the media attention was already there before it went to the court?

**Ms MUSK:** Yes.

**Ms NELSON:** So, having a closed court really would not have made that much of a difference. Would it have made a difference having closed court ...

**Ms MUSK:** The fact we had the media law ...

**Ms NELSON:** It was not closed ...

**Ms MUSK:** The point I was trying to make is there had been some media of an incident—no knowledge of who it was.

**Ms NELSON:** Okay.

**Ms MUSK:** The thing is once the matter was before the court, then the media were all out there. This kid was, 'You can see me'. The family was ringing me up the next day saying you could tell who I am.' They saw the mum. That is a clear example. You can close a court, but simply having media around—even to me following the kid down and associating this image with the mother of this kid is really dangerous.

Another thing going to closed courts, in all my time as a youth lawyer, the children who are coming through, particularly at that young age group of 10, 11 or 12-year-old bracket, were either in the care of the minister—so, they are under a protection order—or undergoing investigation regarding whether or not they should be under a protection order. They were children who, of course, had experienced significant trauma. All this material we had to disclose in court. Imagine if you had a courtroom open to members of the public and you are talking about how that child was sexually abused and why this child has all these behaviours.

There are times—I can feel myself getting emotional—when I have cried because of the nature of the material I have had to disclose in court. It is really hard.

**Ms NELSON:** As a lawyer, when you are representing these in the court, can you apply to the judge to close the court?

**Ms MUSK:** Yes, that is what we do.

**Ms NELSON:** That is what you do.

**Ms MUSK:** Yes.

**Ms NELSON:** Right. Is it then just at the judge's discretion, 'Yes, I will go ahead and grant your application' ...

**Ms MUSK:** Yes.

**Ms NELSON:** ... or 'No, I am going to leave ...

**Ms MUSK:** Yes.

**Ms NELSON:** Now I understand why the previous NAAJA lawyers said, 'No, it needs to be embedded in legislation'.

**Ms MUSK:** Yes, it does. It is really hard, because if you understand the experiences and the characteristics of the young children who are coming through—the vast majority of children are diverted. We do not see them. It is by and large, the high-end needs kids, the kids who have the complex issues, who are the ones who are being pushed through the tertiary end, going through the courts and ending up in detention.

To ensure that they get the appropriate interventions and support whilst in the system, we need this information. We need to know what has happened to that young person—what supports and interventions do these young people need to stop them from continuing down that path? However, there is not the wealth of services. There is not the type of resources we really need to help those kids. We have a better chance to help them if we are identifying them earlier. Mr Woodroffe talked about that.

There are all these things that are happening now where we are looking at children and families at risk. The children and family centres are so important to this. The partnerships that the Aboriginal community-controlled organisations—particularly the health sector—have with government departments.

These are all points of intervention where we have a greater chance of stopping these children being criminalised and pushed through the justice system when it is potentially too harmful and too late. That is what is behind all these amendments, they are complimentary and go towards identifying children

who are at risk and at need early and providing the right interventions. That is why diversion is so important and there are options.

I do not know if there has been much information provided to you around persisters and desisters. The vast majority of children will desist. Low level interventions are appropriate for these children by way of cautions and warnings. For the moderate to high risk young people we need to be ensuring that they are assessed based on risk and need, and the interventions have the right intensity and are directed to addressing the causal factors that have led to their offending. It might be behavioural change.

In this case restorative practices have a high success rate. Case management where there are ongoing issues that long term addressment. We have a better chance of preventing crime in the future if we are doing this early and identifying these at risk kids. We are making our community safer if we are doing this.

These are all a combination of interventions and strategies that work together to prevent harm.

**Mr PAECH:** What I take away from the Member for Katherine was that she was asking about the closed courts. In your experience and in the opinion of the Human Rights Law Centre, is a closed court more beneficial for a young person? They will feel more open to discuss the experiences, if they have been quite horrific.

They will feel more comfortable in disclosing that because they are not living in the fear of being outed by someone who might be sitting in that court room—who might not necessarily say who it is—but will have enough information to allude the identity of that person.

**Ms MUSK:** For me there are a combination of things. As a youth lawyer we get crossover kids and a high proportion of them will be under a protection order. You get access to these reports which detail horrific experiences.

We know and the evidence is there—we often have a psychological or psychiatric report which draws the link. We know that to address their offending behaviour we need to address experiences and what has happened to them. All of that gets ventilated in a court. It can be extremely embarrassing and shameful to the young person. It can be stigmatising.

If they know that this is a court where there is confidentiality in the proceedings and we are all here for their interests and to ensure they get the best possible help they can, that is the therapeutic nature of the youth justice jurisdiction here in Darwin.

It can be very different in other jurisdictions. One of my former colleagues had spoken about the experiences in Alice Springs. There is not this level of specialisation that comes with the youth judges who are working in that jurisdiction.

**Mr PAECH:** The Jesuit Social Services appeared before you. I took the opportunity to talk to them around one of the recommendations from the Royal Commission into Aboriginal Deaths in Custody. It was the custodial notification system. Ms Jackson and Mr Adams spoke about the need for that and how it would work with a kinship system in the context of the Northern Territory.

Is that a similar view that the Human Rights Law Centre would also share?

**Ms MUSK:** Yes, of course. I have worked in the Aboriginal legal service in Western Australia and in the Northern Territory. I have seen the benefits of the New South Wales model which is what we are asking for. There needs to be a legal service which has that connection to the community and country. We have strong relationships in all these remote communities around the Northern Territory, particularly when it comes to Aboriginal kids who are arrested in regional or remote areas.

If we are able to speak to the young person early we are able to get in contact with family and other supports in the community. We can help put a case for bail to prevent the young person being brought into Darwin or Alice Springs. We have a better chance to understand the issues when it comes to—there are health issues.

With the New South Wales model it is also a health check. If we have concerns about a young person's wellbeing we can ensure that that is addressed. We can also provide the advice needed to prevent children will being overborne when it comes to being offered the opportunity, if you can call it that, to participate in an interview.

The benefits of this being appropriately resourced and funded in the Northern Territory and having a legislative base too will ensure that children's rights are being properly respected and that they get access to quality legal advice and representation early, and appropriate supports and interventions can be put in place.

**Mr PAECH:** You talked about children's rights—one of the things I am very interested in is, how do we as a jurisdiction make sure that young people know their rights? I am a copper and I grab a young kid, they are in a remote cell—how do we educate young people to know that they are only allowed to be held there for four hours without the additional permissions? Having your experience in the Aboriginal legal justice system, how do we build on that to explore options around young people being fully aware of what their rights are?

**Ms MUSK:** That is such a vexed issue because my immediate response would be I would rather not be having this conversation with children in the justice system. I would rather police be preventing children from coming into contact. I would rather that we had a higher age of criminal responsibility so the vulnerable ones are not being funnelled through and further criminalised. That is the difficulty.

**Mr PAECH:** In there, I suppose, is that you are saying that if it is 14 then a 14-year-old is more likely to be able to understand and comprehend than a 10-year-old.

**Ms MUSK:** Yes, definitely.

**Madam CHAIR:** Ms Musk, we have heard from previous witnesses today in regard to how important education is, and I have to ask with all of your experience—if we have young kids who are engaged regularly at school if their attendance is very high, are they, in your opinion or your experience, less likely to be engaged with the youth justice system?

**Ms MUSK:** Yes. There is a lot of data behind that and a lot of research in to that. Yes.

That again goes to the whole persists and desisters. When you are looking at desisters—a young kid who might well come from a really good home, be in school but is out with his mates, and he steals a chocolate bar. He gets a warning and we will not see him again because he has strong social support, because he has the protective factors cemented in, including good family, good family environment, he is in the school and he has pro-social peers—this was just a mistake, we will not see him again. As opposed to children who persist are children who are marginalised disengaged and particularly disengaged from education.

We all know education is such a protective factor. It is well-known. In Victoria, as an example, recognising the high proportion of kids who are disengaged from school going through the court system, they have invested in an education justice initiative, ensuring that they are educators based at the court house, who a magistrate can refer the young person to who family and the young person can go and see voluntarily because we know that if we are going to stop this kid from continuing down this justice path, committing further offences, we need to get that kid back in to school, or an alternative education or vocational pathway.

The education justice initiative has been going for quite a number of years. There was an evaluation some years ago ...

**Ms NELSON:** Is that public?

**Ms MUSK:** Yes, it is public. I can send the link to the committee. We even did a briefing paper to the Minister for Education about that. Also, in terms of its uptake, the recent inquiry in Queensland by Bob Atkins recommended Queensland introduce a pilot program based on the Victorian education justice initiative.

Well over 70% of the young people in this evaluation who went through the initiative had returned to school or some other alternative program and were still engaged. There has been a high uptake. The thing it does, we have educators who understand the system, and they are linked to Parkville College, based at the detention centre, they also understand very well and are able to navigate the justice system. They assess the child and the family, they understand what the issues are. They can refer to the court clinician if there needs to be any health issues, including cognitive impairment and mental health assessed and diagnosed and understood.

They can then use leavers being part of the education system to get children back in to school. It has been amazing, particularly in terms of justice outcomes because we connect the kid back in to school, they get pro-social peers, and they do not have idle hands and minds. We are helping to build the behaviours that we want. Rather than the challenging behaviours, we can address those through getting them back into school and ...

**Ms NELSON:** Reinforcing the positive behaviours and keeping them on that track is where the focus and attention needs to be, as opposed to the negative.

**Ms MUSK:** Yes, but there needs to be—particularly with any justice involving a young person—education is a crucial key. It is such an important factor.

**Ms NELSON:** Crucial, I agree.

**Madam CHAIR:** Thank you, that was very helpful. Does the committee have any further questions? There are no further questions. Thank you very much for appearing before the committee this morning, Ms Musk.

**Ms MUSK:** Thank you.

**Ms NELSON:** Thanks for your submission, Shahleena.

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The committee suspended.

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#### **Danila Dilba Health Service**

**Madam CHAIR:** Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing on the Youth Justice and Related Legislation Amendment Bill 2019. I also acknowledge my fellow committee members in attendance today: the Members for Araluen, Spillett, Katherine and Namatjira.

I welcome to the table to give evidence to the committee from Danila Dilba Health Service, Rodger Williams, Deputy Chief Executive Officer, Joy McLaughlin, Senior Policy Officer Strategy and Reform, Tess Kelly, Policy Officer and Jahmayne Coolwell, Social Worker. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and will be placed on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record, I will ask you each to state your name and the capacity in which you appear before I proceed to the committee's questions.

**Ms McLAUGHLIN:** Joy McLaughlin, Senior Policy Officer, Danila Dilba Health Service.

**Ms KELLY:** Tess Kelly, Policy Officer, Danila Dilba Health Service.

**Mr COOLWELL:** Jahmayne Coolwell, Social Worker, Danila Dilba Health Service.

**Mr WILLIAMS:** Rodger Williams, Deputy CEO, Danila Dilba Health Service.

**Madam CHAIR:** Thank you very much. Mr Williams, would you like to provide a brief opening statement before proceeding to committee's questions.

**Mr WILLIAMS:** Thank you. First I acknowledge the traditional owners of the land that we are meeting on her today, elders both past and present, as well as the youth as they are our leaders of tomorrow.

I also acknowledge the Social Policy Scrutiny Committee and thank you for the opportunity to be here today.

The Chief Executive Officer, Olga Havnen, would like to send her apologies for not being here today, as she has taken ill and has asked me to read the opening statement on her behalf.

My name is Rodger Williams. I am a Wiradjuri man from New South Wales and I currently hold the position of Deputy CEO at Danila Dilba and have so since November last year.

We welcome the opportunity to provide input regarding the Youth Justice and Related Legislation Amendment Bill. We are grateful for the opportunity to provide feedback on earlier working proposals and drafts of this bill through the Legislative Amendment Advisory Committee.

In opening, I note the remarks of Juan E Mendez, UN Special Rapporteur on Torture and Other Cruel Inhuman and Degrading Treatment or Punishment who stated, in his 2015 report on juvenile detention:

*... even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development.*

I have a copy of that report which I would like to table.

**Madam CHAIR:** Thank you.

**Mr WILLIAMS:** DDHS supports reforms that recognise the vulnerability of children coming into the system and encourages the implementation of approaches tailored to meet their individual, cultural, development and health needs.

On a whole, we support the bill in its current form which implements several key recommendations of the Royal Commission and best practise in youth justice systems, nationally and internationally. It demonstrates an understanding of what the evidence says about what works in reducing youth crime and making the community safer.

DDHS support the majority of the proposed amendments in their current form. We note the proposed changes and additional material tabled by Territory Families late yesterday afternoon. We are opposed to these changes and reserve the right to provide further feedback on these to the committee.

In short, we strongly disagree with the removal of clause 16, which clarifies that arrest is to be used as a measure of last resort. This provision merely codifies existing policies, standing orders, responding to Royal Commission findings, that police sometimes fail to comply with this requirement. This amendment is essential, it recognises that the experience of arrest can be particularly traumatising for a child and so should be a genuine measure of last resort.

We reiterate our support for amendments to section 49 and 50 which operate to protect the privacy of young people, preventing the damaging effects of naming and shaming young offenders.

We oppose the amendments to clause 9 and 11, as we will discuss in a moment. We support the bail amendments in their current form.

Firstly, Danila Dilba supports the bail amendments. We begin by noting the over-representation of Aboriginal young people in detention on remand. Our analysis of the daily census is that approximately 70% of children are in detention or on remand.

Evidence presented to the Royal Commission demonstrates that ongoing contact with youth justice system exasperates underlying causes of crime by stigmatising children and perpetuates ongoing more serious criminal behaviour, thus failing to make the community safer.

We welcome the inclusion of presumption in favour of bail, section 8A, in its current form which creates the presumption in favour of bail addressing growing remand rate, reducing pressures on the youth detention centre.

We oppose changes to this amendment, Territory Families tabled yesterday, which will exclude many more young people from the presumption. Our understanding of the current drafted amendment is that it does not mean all young people will automatically and definitively be granted bail. If a police officer or court consider that a youth is an ongoing and serious risk, then they will still have the discretion, considering the section 24A matters, to find that the presumption is rebutted and refused bail.

Noting the damaging effects of detention, we consider that for children the starting point should always be that bail should be granted, except in the case of serious risk to the community safety.

We welcome the inclusion of provisions ensuring that appropriate conditions and support are provided to children on bail. We also support the current drafted provisions regarding considerations police and courts are required to take into account in any bail determination.

We oppose the proposed changes to the provision as we consider that it is essential that all decision makers, courts and authorised officers take these factors into account, in particular, we consider the following must always be considered:

- Trauma. As we noted in our submission, a child's brain structures that regulate emotion, behaviour and impulses are less developed in young people who have experienced trauma.
- Cognitive development, health and development needs of the youth. Noting the evidence of the high prevalence of neurodevelopmental impairment among young offenders—note Telethon Kids Institute study at Banksia Hill Detention Centre in Western Australia—89% have severe neurodevelopmental impairment and 39% foetal alcohol spectrum disorder.

We also welcome provisions ensuring that young people are not denied bail due to a lack of appropriate accommodation. We note the success of Saltbush Bail Supported Accommodation enabling implementation of this legislative amendment.

We support the repeal of offence of breach of bail condition, but reiterate our feedback that the offence of breach of bail should be repealed in its entirety. We note that removing the offence of breach of bail undertaking does not prevent the police or courts from responding to a breach of bail. Children who breach bail may still have their bail revoked as a consequence of the breach.

Support for amendments designed to increase access to diversion. Support the amendment of section 39 which removes previous barriers to diversion where the youth has left the Territory.

The list of serious offences for which a young person was no eligible for diversion, noting that we maintain that some offences in the list of prescribed offences should be removed.

These amendments are consistent with evidence that diversion addresses the cause of unacceptable conduct and not merely the consequence of it. The preference for diversion as an alternative to formal judicial proceedings is noted in the UN Convention of Rights on Child Article 40.3(b), Mandates,

*'states parties shall seek to promote measures for dealing with children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.'*

Third—support the privacy amendments. The amendments contained in sections 49 and 50 are consistent with protecting a young person’s right to privacy. It is well-recognised that a young person’s rehabilitation is seriously compromised by early identification as an offender. We understand that public interest concerns with closing the courts and restricting publication. However, we consider that these issues are adequately dealt with.

The purpose of closing the court is also to ensure that the environment is child-focused and conducive to open discussion. We consider that when the court is closed, parents, guardians, carers, service providers and other support people are likely to feel more empowered to give detailed information about sensitive and other matters affecting the child and allows the judge to obtain a more holistic understanding of the child. We fully support these amendments.

Fourth—further opportunities to strengthen the bill: raising the minimum age of criminal responsibility to 12 and a minimum age of detention to 14.

We encourage the committee to implement the Royal Commission’s recommendations that the minimum age of criminal responsibility be raised to 12 and the minimum age of detention be raised to 14. The evidence shows that the younger the children are, when they enter the youth justice system, the more likely they are to reoffend.

We consider that raising the age would more accurately reflect modern understanding of brain development and would ensure that the number of children brought before the courts is reduced. We note that the United Nations has stated 12 years should be the absolute minimum age of criminal responsibility. We believe we are operationally ready for this change and we were disappointed to see the government back away from this important amendment in this bill.

Stricter requirements regarding time in the police watch house without charge. We recommend further amending section 137 of the *Police Administration Act* to provide that young people may only be held in custody for up to four hours and that any extension beyond this should only be granted by a judicial officer, as per recommendation 25.3 of the Royal Commission.

The current proposed amendment gives the senior sergeant the power to authorise the holding of a young person in custody without charge, without the approval of a judge, for up to 24 hours. We note that the condition in the police watch house make them totally inappropriate for holding children, let alone for long periods of time without charge.

An example raised by police, at the Legislative Amendment Advisory Committee, related to a situation where a young person is too intoxicated to be dealt with, four hours in the middle of the night. In our opinion, a young person in such condition is vulnerable and should not be detained in police cells but should be medically supervised. We consider that if additional resources are needed to give effect to this provision, they should be provided rather than adapting the legislation to the current resources.

Fifth—ongoing concerns regarding the *Youth Justice Amendment Act 2019* Serial No: 84 – the urgent bill.

Finally, we note our ongoing concerns regarding the *Youth Justice Amendment Act 2019* Serial No: 84 which was introduced on an urgent basis to Parliament on 19 March 2019 without any consultation with the Legislative Amendment Advisory Committee or other key stakeholders. In our view, the urgent act and corresponding updated policy determinations are inconsistent with the recommendations of the Royal Commission and open the door to kinds of treatment that led to the Royal Commission in the first place.

We recommend that this act is repealed and updated policy determinations revised immediately. The bill was not referred to the Social Policy Scrutiny Committee for review before it was passed. The process of rushing this bill through Parliament completely undermines the role of this committee, the Legislative Amendment Advisory Committee and the value that the sector can add to the development of legislation.

I will hand over to Jahmayne.

**Mr COOLWELL:** Thank you. I will begin by acknowledging and paying my respects to the Larrakia people.

My name is Jahmayne Coolwell, I am a Yugara man from South East Queensland. I am a social worker at Danila Dilba and I am on the youth social support team.

We are based in Don Dale six days a week and we provide social and emotional wellbeing support, as well as other programs, to the young people within the facility. We also provide some post-release support and, when needed, support for young people who are attending court.

From my observations since being in the role, a vast majority of the young people in detention are Indigenous. Most cases it is always 100% and I have noticed that the re-offending rates of young people are pretty high, coming in and out of detention. I understand that it is roughly around 80% who re-offend within weeks of being released.

We support the proposed amendments which acknowledge the damaging effects of detention and aim to increase the bail diversion and other supports.

In my experience, youth detention is a damaging environment and it should be a last resort for only the most serious offending.

**Madam CHAIR:** Thank you, Mr Coolwell. I will now open up to the committee for any questions.

**Mr PAECH:** I think you have covered most of it in your opening statements. You mentioned briefly around the repeal of the offensive breach of bail and its entirety. We have asked everyone this morning about the approaches to be taken around decriminalisation of bail, and investing in the youth diversion program.

I have asked the question of everyone this morning about your provisions or recommendations around the time that a young person is held within police custody. There seems to be a general consensus that it is four hours to a maximum of 24 hours. I want to ascertain the views of Danila Dilba as an organisation on that.

**Ms McLAUGHLIN:** We share the views of some of the earlier witnesses. We believe that children should not be held in police cells and watch houses for more than four hours without the permission of a judicial officer, a judge or a magistrate. Those environments are not suitable places to hold children for long periods of time, leaving aside the inherent trauma and potential harm to children of being held for long periods of time when they have not been charged or sentenced in any way.

**Mr PAECH:** If I may, Madam Chair, you are suggesting 14 and 12. Is that correct? Twelve for criminal ...

**Ms McLAUGHLIN:** I just lost track for a moment there.

**Mr PAECH:** Why the difference?

**Ms McLAUGHLIN:** Twelve, we believe along with most of our fellow stakeholders, that we should not be holding children criminally responsible under the age of 12 and that it is simple brain development and brain science says you really cannot do that. Children of that age are not capable of fully understanding the consequences of their behaviour, understanding what will happen if you break the law and are much more prone to ill effects of becoming part of the justice system.

We propose 14 as did the Royal Commission as the minimum age for detention for the vast majority of cases, acknowledging that there may be some very small number of very serious offences where children are a danger to the community who may need to be held in some secure location.

Again, that is purely based on, as Mr Coolwell discussed, the damaging impact that the detention environment can have on very young people. Children under 14 are very vulnerable in detention. They are very vulnerable to problems with other children and just to the psychological impacts of being in there. You should be able to deal with children under 14 through diversion and hopefully produce a better outcome for those young people.

**Mr PAECH:** Mr Coolwell, in your experience as a social worker based in a youth justice environment, would you, in your opinion, come to the conclusion that people under the age of 14 or 12 sometimes do not have the full ability to comprehend the situation which got them there in the first place, and how they would then participate in reintegration and rehabilitation program?

**Mr COOLWELL:** I would agree with that statement. It is obvious developmentally at that age there is a significant social understanding and how they operate is significantly different to the older youth that I see within detention.

**Mr PAECH:** Danilla Dilba as a whole—what is your position? Does it remain the same as you articulated? There has been a majority of people today who have put on record their position on the closed courts. Do you share a similar view to those before you?

**Ms McLAUGHLIN:** I did not hear everyone before me, so I will say what our view is, rather than attribute to others.

We support the amendment as written for the committee. We are not immediately supportive of the further change proposed by Territory Families in the documents they provided yesterday afternoon.

While we appreciate and understand that there are some public interest concerns in relation to the publication or transparency of courts, we believe that the amendments as currently written cover that possibility, in that they give an option for members of the media or other persons to seek permission to come into the court. We would much prefer, given the very negative impact on young people of being named and shamed and so on, as Ms Musk detailed in some of her examples. We would prefer the onus—the starting position is they are not there. If anyone can demonstrate a public interest, they can seek permission.

Also in the event that the young person consents to other people coming into the courtroom, which is also an option available under the amendment.

**Madam CHAIR:** My question is to any and all of you, I guess. Considering the exit from a youth detention facility, if we are putting our young kids back into the same environment which they entered, without any changes, we would probably be expecting the same outcome. Do you think we are faring okay, or through this legislation do you think there is an opportunity to provide extra support for their reintegration into the community—to make those changes with the family to help prevent reoffending in the future?

**Ms McLAUGHLIN:** Absolutely. When we see the kind of reoffending rates that we believe we have—and the data is not terribly easily available in the Northern Territory on reoffending—a number of things must be going wrong. We are not achieving good rehabilitative outcomes in detention. Also, as you suggest, we are returning children to environments that are not conducive to good outcomes for those children. A number of those children are in care and protection as well.

It is quite challenging and I do not think this legislation takes us near the solution to this issue. The opportunity for broader reforms across youth justice and child protection gives us the opportunity. In my opinion, if a young person is offending, the other thing we should be doing apart from dealing with that young person, is offering support to the family to look at what the issues is in the family and the environment that is leading—especially very young children—and allowing that young child to get into that position.

We see that as part of the broader reforms that really need to be done. There is a lot of work and stuff that we have written about broader reforms and the need for holistic assessments, family group conferencing—probably a bit more than you want to get into at this point.

But definitely, it is an important issue.

**Madam CHAIR:** We will definitely follow up.

**Ms McLAUGHLIN:** Yes.

**Mr PAECH:** You are supportive of a custodial notification system?

**Ms McLAUGHLIN:** Yes, we are. We do not have any particular role in the custodial notification system, but we are strongly in favour of that recommendation from the Royal Commission. I believe there is progress on that, but I am not totally up-to-date on it.

**Madam CHAIR:** Does the committee have any further questions?

**Ms NELSON:** No.

**Mrs FINOCCHIARO:** Mr Coolwell, I will ask you a question, given you spend a lot of your time in Don Dale with youth detainees. I think you mentioned in your opening that—and it is approximate I understand—80% of the young people in detention are repeat offenders.

I was wondering, in your experience, presumably a lot—if not all—of those young people had been through some sort of diversion prior to being either back in Don Dale or perhaps in Don Dale for the first time, what that diversion looks like or what your understanding of the diversion process is?

**Mr COOLWELL:** To clarify, you are asking what does diversion look like for the youth post-release, when they are in the community?

**Mrs FINOCCHIARO:** I was thinking beforehand. Presumably, if most of the young people are repeat offenders, we would assume that they at some point must have been diverted. Maybe that assumption is incorrect?

**Ms McLAUGHLIN:** To clarify, I think part of the answer, while Mr Coolwell considers, is that we do not have access to the whole of the young person's history of offending and charges. An answer will be based on what you know from the young people.

**Mr COOLWELL:** From what I have heard and experienced from the young people, I have not heard much about diversion from the young person themselves specifically, what that looks like I am not entirely sure.

**Madam CHAIR:** Would you say that your interaction with the young people in Don Dale has been quite receptive and fruitful. You are able to build good rapport with them?

**Mr COOLWELL:** Yes, I would have to agree with that question. One way I think that shows is when outside of work hours I am in the community and I have youth, who I have worked with, come up to me and they want to know how I am going and what I have been up to.

**Madam CHAIR:** Fantastic. It would make more sense if you were able to do this outside of that setting. As the Member for Spillett was saying, to be able to engage with them especially from the social worker experience, prior to them having to enter a detention facility?

**Ms NELSON:** Continuity of care is important.

**Mr PAECH:** Going back to Minister for Spillett's question, do you think that they have that lack of understanding because the opportunities of diversion are not made available? Do you think that is through lack of being notified or having the understanding that there is this avenue of diversion rather than the environment which they come in on?

**Mr COOLWELL:** That may well be one aspect that impacts on them.

**Ms NELSON:** Can you briefly explain who engages the Danila Dilba social work program at Don Dale?

**Mr WILLIAMS:** I think Joy would be better off to answer that.

**Ms McLAUGHLIN:** We are contracted by Territory Families to provide a social support program, social and emotional wellbeing, positive pro-social activities ...

**Ms NELSON:** That includes intensive case management of the youth who are in detention?

**Ms McLAUGHLIN:** No. Territory Families has a case management unit. It has changed its name, I cannot remember its current title. They have a number of case managers and that number has improved a lot, even in the last six months. They have had some success in recruitment. They provide the case management, but we work in with them, we attend their case conferences and liaise on our activities with young people.

**Mr PAECH:** It stops once they leave the facility?

**Ms McLAUGHLIN:** Not totally, there is a little bit of wriggle-room on the margins to provide some support. Our aim in providing support post-release is to attempt to engage that young person back into the Danila Dilba Health Service to have ongoing support from us with our normal funding.

**Mr PAECH:** The funding is just while you are inside?

**Ms McLAUGHLIN:** Just a tiny bit at the margins that we can do with that funding outside the centre, but mainly Don Dale.

**Mrs FINOCCHIARO:** Last question. Territory Families contracts Danila Dilba to provide that social support within but the case management is still run by Territory Families. Is that the youth outreach re-engagement offices? They are not the case managers, so how do you see them linking in with the broader ongoing support for that person?

**Ms McLAUGHLIN:** In detail, Territory Families can probably answer that better than me, but what I observe is that the YOREOs—which is the word we use for those workers—their main responsibility is for young children who are young people outside the centre. They are certainly very engaged with the case management team inside the centre and they are attending case conferences and discussions with young people and about young people as are we. We are all connected through that case conferencing mechanism mainly, and that is working quite well at the moment.

**Madam CHAIR:** Does the Committee have any further questions?

**Madam CHAIR:** Thank you very much. That concludes the committee's questions. I would like to thank you all for appearing before us this afternoon.

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The committee suspended.

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#### **NT Legal Aid Commission**

**Madam CHAIR:** Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing on the Youth Justice and Related Legislation Amendment Bill 2019. I also acknowledge my fellow committee members in attendance today: the Members for Araluen, Spillett, Katherine and Namatjira.

I welcome to the table to give evidence to the committee from the Northern Territory Legal Aid Commission Fiona Kepert, Lawyer and Russell Goldflam, Lawyer via teleconference. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing that is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

For the record, could you each please state your name and the capacity in which you appear before I invite you to make a brief opening statement. Russell?

**Mr GOLDFLAM:** My name is Russell Goldflam. I am the Policy Officer with the Northern Territory Legal Aid Commission.

**Ms KEPERT:** My name is Fiona Kepert, and I am a youth justice lawyer with Legal Aid.

**Madam CHAIR:** Thank you very much. Mr Goldflam or Ms Kepert, would one of you like to make a brief opening statement?

**Mr GOLDFLAM:** I can start. I should note that it is difficult for me to hear Ms Kepert. I hope that can be remedied.

Ms Kepert and I have agreed to divvy up what we want to say. Depending on the questions we receive we may defer to them to the colleague. I will be speaking about the significance of the Royal Commission and the timing of the commencement of this legislation. I will be speaking about watch house detention, the list of prescribed offences and the age of responsibility. Ms Kepert will be focusing on the amendments in relation to bail, close court and suppression of publication, interviewing of youth and the four new amendments that were foreshadowed to us yesterday afternoon by Territory Families, which I know the committee has already heard something about.

I will commence by talking about the very significant events that have already taken place and which, in a way, make this inquiry—without wanting to sound disrespectful—almost unnecessary. That is, of course, the Royal Commission into the Protection and Detention of Children in the Northern Territory, which was a massive undertaking. Thousands of pages of material were produced—very detailed findings and a comprehensive list of recommendations, all of which were accepted—in their intent and direction—on 1 March 2018 by the Northern Territory Government.

This bill, which in large part is very welcome to the Northern Territory Legal Aid Commission, is part of the process of implementing those 227 recommendations. We cannot emphasise strongly enough how important it is that government sticks to the commitment it made on 1 March last year and sticks to the program and road map laid out for us with such care, as a result of such detailed inquiries by the Royal Commission. It will not work to fix our broken youth justice system if we implement it piecemeal. Yes, it has to be done in a staged manner, but the entire package needs to be implemented because the recommendations are all interlinked. If we were to implement bits of the Royal Commission which are easy to implement and did not do the rest, we will end up back where we started, with a broken youth justice system and ever-increasing number of children and young people in the Northern Territory being locked up and unable to reach their potential as citizens of the Territory.

There is one small exception I would make to the very general statement I have made—that the Royal Commission recommendations needs to be faithfully and entirely implemented. That is in relation to the—I do not think it is too strong a term to use—bombshell that was dropped on us yesterday afternoon when there was an indication given that the clause in the bill which would provide the *Youth Justice Act* be amended to require that police only arrest children as a last resort might be abandoned.

The Royal Commission did not, in terms, recommend that provision be introduced into the *Youth Justice Act*. The Royal Commission recommended in recommendation 25.2 that Northern Territory Police undergo training every two years to reinforce their obligations under the *Police Administration Act*, the *Youth Justice Act* and the Police General Order, in relation to the exercise of their discretion, to arrest children and young people.

When one looks at the details of the findings and the discussion of the Royal Commission on this issue, it becomes apparent that the Royal Commission was proceeding on the basis that it is already the law in the Northern Territory that arrest must only be used as a last resort for children and young people.

We were rather flabbergasted to be told yesterday afternoon that this apparently radical new provision cannot or may not be able to go ahead because it is too confusing. The fact is that the general orders that police are obliged to comply with already state that arrest must be used as a last resort. The *Youth Justice Act* already states that children must only be kept in custody as a last resort, and indeed the

international conventions to which Australia is a signatory say that as well, and I am talking about the Convention on the Rights of the Child, article 37(b) of that convention requires that state parties, of which Australia is one, shall ensure that arrest is a last resort.

The Royal Commission did not in terms say pass a law saying arrest should be a last resort. It is quite clear when you look at their report that it was their belief, as it was many of ours, that arrest was already a measure of last resort under Northern Territory law, and this part of the bill had only been introduced to consolidate that rather than to change it.

I said that I will talk a little about the issue of watch house detention and I will proceed to do that now. It is covered in our written submission that we made to this committee commencing on page five. The Royal Commission again, has laid down a road map and they have recommended that children not be permitted to stay in a watch house without being charged for longer than four hours without the approval of a judge and that would mean the judge of the Youth Justice Court or in some cases the judge at the Local Court, used to be called magistrates.

The Royal Commission made that recommendation because of the history and the evidence that they received in relation to this issue, in particular in Alice Springs where I live and where I am speaking from today. The Royal Commission noted that in a one month period that they looked at in detail, several children were kept in custody at the Alice Springs watch house, which as other witnesses have already observed, is a totally unsuitable place for kids, for periods of about 24 hours and in some cases up to 30 hours before being charged with an offence.

That is why the Royal Commission has said we have to do something about this. It is not just a number or an idea that they plucked out of the air it is solidly based on a mountain of evidence. This issue goes back some 40 years in the Northern Territory. There was High Court litigation arising from a case involving young people and children who committed an extremely serious offence, murder, back in the late 1970s.

In that case the police had kept the children for a lengthy period without giving them the opportunity to apply for bail or charging them. Strongly criticised by the courts, the Federal Court initially. Ultimately in other cases the High Court enunciated a doctrine that you are not allowed to keep people in custody for lengthy periods.

The purpose of arrest is to bring them before a court as soon as possible, and that led to various parliaments around Australia legislating periods that police could keep people in custody for before charging them while they are continuing to investigate.

Every jurisdiction except—I do not know why—Victoria and the ACT has fixed periods and we have set that out in a table in our submission. It is on page six of our submission. Those periods, and the longest one is 12 hours in Tasmania and Western Australia, but mostly they are around the eight hour mark.

This is not for children; this is for adults that the legislatures around Australia and the Commonwealth *Crimes Act* as well, set fixed periods beyond which you are not allowed to keep people in custody without getting a court to approve it.

Here we have children under this Act are able to be kept in custody in a watch house without the involvement of a court for up to 24 hours. That is completely out of step with Australian standards. It is completely out of step with what the High Court has recommended and it is completely out of step with making sure that children are not harmed.

The effect of keeping a child for a lengthy period like this, before being charged, is on the one hand potentially traumatic and harmful for them, it might be an experience they will never forget. You may have seen the recent Four Corners program which looked at watch house detention of children in Queensland—quite an unnerving experience to watch. If you have not seen it, I commend it to you, on the ABC iView platform.

Not only that, but if you keep people in custody for long enough, guess what, it is easier to get them to talk. That is often the situation when young people are held, certainly in the Alice Springs watch house, they are eventually broken down just by the passage of time sitting in a cell for hours after hours on end

and then the police get the confession they want. That is completely inconsistent with the way our youth justice system should work and the way the police should use their power.

The next issue that I will address briefly is the list of prescribed offences. We have set out in the table on page 3 of our submission, our submissions as to what sort of offences should be added to the list. There are two lists of prescribed offences in this bill. One is for the purpose of deciding whether or not there is the presumption in favour of bail and the other is for the purpose of deciding whether a child has access to diversion.

Just to give an example of the items on the first of those lists, we put section 125B of the Criminal Code. That is the offence of possessing child abuse material. As we all know, these days it is extremely common for people under the age of 18 years to engage in what is colloquially called 'sexting', send rude pictures of each other and themselves around to their other friends.

That practise, although it is extremely common, often would qualify as an offence against section 125B of the Criminal Code. It probably is not what people who wrote section 125B had in mind when they wrote it many years ago, but the practise of 'sexting' certainly falls within that category. It is quite clear, that in many cases, that sort of activity, although harmful, disgusting, illegal is not the sort of activity that should raise a presumption against bail for a child. It depends on the case, of course.

That is just one example, there are others there that we have on our list which I will not talk about now, but you can see them for yourselves that we say that it is not necessary or appropriate to raise a presumption against bail or to exclude a child from access to diversion in circumstances where they are charged with that sort of offence. If it is a very serious example of the offence, they may not be an appropriate vehicle for diversion, but the starting point should be that they are.

Finally, I would like to say something about the 'age of responsibility' issue, which I know that several other witnesses have referred to as well and the part of our submission where we discussed that is on page 4. Not so much the issue itself, you know what our views are about that and we support and endorse the views that have been expressed by many of the other witnesses who have appeared, that the 'age of responsibility' needs to be raised, but the process.

We are members—I have personally been the Northern Territory Legal Aid Commission's primary delegate on the Legislative Amendment Advisory Committee—and a very important part of the whole process of implementing the Royal Commission has been the use of this committee to guide government from stakeholders and service providers in how to frame this legislation.

With the permission of the Chair of that committee, a director at Territory Families, we included in our submission reference to the fact that there was an intent to raise the age in this bill. It was in the earlier drafts of the bill, it was strongly supported by the members of the committee, who were stakeholders from the non-government sector and the legal services, including Legal Aid, and it was a big surprise, an extremely unpleasant one, when the bill was finally published to the world and these provisions had been deleted.

I would ask the committee to have serious reservations about accepting the explanation that has been given that we need to have all these other services set up before we can go ahead and raise the age. We do not accept that. We could delay forever raising the age, using the excuse that we are not quite ready yet.

This is a key recommendation of the Royal Commission and it needs to be implemented, particularly in the context of the recent disappointing announcements by government that the Pinelands site will not be used and they have to find a new site to rebuild the centre that is now Don Dale, and the indefinite delays to replacing the Alice Springs Youth Detention Centre. We will have that centre in place, it would appear, for many years to come and Don Dale for some years to come.

In those circumstances, it is more imperative than ever that we get on with the job of not exposing children under 12 to criminal prosecutions and not exposing children under 14 to the threat of detention except in the most serious of cases.

That is the opening statement I wish to make, thank you, committee.

**Madam CHAIR:** Thank you, Mr Goldflam. Ms Kepert, do you have anything to add, or can I go to the committee for questions?

**Ms KEPERT:** We have divided them so I will try to be brief. As part of the opening statement, I want to address what I am sure all the members know. We are not dealing with miniature adults. We know and we have learned much more about brain development and what that means for young people.

The obvious things that go to offending are there. It is the behaviour and emotional maturity, the impulse control, the lack of consequential thinking. So, it is not about letting these kids off, it is about understanding what their abilities and their capacities are and supporting them to take responsibility and make changes.

A lot of young people grow and mature out of criminal offending. So, when we can divert them, whether through diversion or alternatives to detention, we see some really good outcomes. But it is also important to remember that there is this cohort of young people who need a lot of support and they do not behave and respond the way we would expect young people to. When you are looking at a 16-year-old in age who has foetal alcohol syndrome disorder, a mental illness and terrible trauma history, they just do not respond in the same way. That can be difficult to understand and ensure we properly change to respond to that.

But that is what part of this Act is trying to do. That is part of what things like a presumption for bail, as was originally proposed, is trying to achieve. It does not mean bail cannot be refused, but you recognise that you might look at an individual and see that because of their complex background and their capacity, they must be treated differently.

That is why we are strongly supportive of the changes that the *Youth Justice Act* were trying to achieve, and having a really flexible bail system—not one that prevented court necessarily and in all circumstances, but gave it the option to look at it on an individual basis.

Legal Aid is very concerned about the changes that were foreshadowed yesterday. They are not minor amendments. Members might note that, in fact, some of those amendments that have been proposed or foreshadowed yesterday, were the very changes that people made submissions on and noted that those were the key parts of this Act.

I will speak to you briefly about bail and then about accessing a lawyer before an interview. In relation to bail, we know that detention is harmful, not rehabilitative even in the short term such as the watch house. That is why it is so important that police get it right because they make the first decision in relation to bail. To remove or change the considerations that the court would have different considerations as opposed to the police in Legal Aid's submission, is concerning because that is the first decision.

If you want to get the benefit of not institutionalising young people or locking them up, you have to get the decision right in the first place, particularly for people who come from remote communities. I say remote, but even Katherine and Tennant Creek are places where, if you do not get bail, you are then moved a long way away.

So, if we have a situation where police are looking at different considerations and a young person does not get bail, they then come to court and, based on those other considerations, they are an appropriate vehicle to receive bail, there is a significant cost to get these young people back to where they came from, and there is significant dislocation because you have already moved them so far. So, that is why it is particularly important at that early stage when police are making a decision.

The other matter in respect of bail is the current decision that failure to attend court will still be a criminal offence with breach of bail. There is no evidence that suggests young people are deterred from further offending by making breach of bail an offence, as opposed to just dealing with it in the way it was always dealt with before, which is that you get arrested by police and if you do not come to court there is a warrant that is issued.

We have a mechanism for dealing with young people who do not follow their bail conditions and Legal Aid's position is that it is more than adequate and it is appropriate and that is the best way to deal with

those circumstances and we no longer have that risk of harm that comes with an automatic presumption that with a breach of bail it should be dealt with in a particular way.

**Mrs FINOCCHIARO:** On that point, are you saying, maintain the status quo is better than the proposed amendment in the bill?

**Ms KEPERT:** No. Legal Aid say that we should go back to the position where breach of bail is not a criminal offence for young people. For a long time, breaches of bail were not dealt with as a particular offence, whether it was a breach of conditions, or a failure to attend court, people could be arrested and brought to court.

Legal Aid says that should be the position for young people. It is a status quo that we have only had for a number of years and we say that in fact the Royal Commission's recommendations should be followed, which is that the criminal offence should be abolished completely for young people.

**Mr GOLDFLAM:** If I could add to that answer. The offence of breach bail was created in 2011. The Royal Commission looked specifically at this and noted that there was a very large upsurge in the number of arrests of young people immediately after the introduction of the offence of breach bail.

The number of young people who were arrested tripled over the period 10 years up to 2016 and most of that tripling happened immediately after 2011 when breach bail was introduced as a separate offence. A very serious practical and harmful consequence for young people.

**Mrs FINOCCHIARO:** Thank you.

**Ms KEPERT:** I cannot recall, but I think there was one submission in which police acknowledged there had not been a reduction in offending, so it is not as though there was evidence that it was creating a benefit, which might be justification.

The last point is quite minor, well it is not minor but I think it has been addressed a little less in the committee, is about accessing a lawyer before an interview. It is an important point. Young people are often overwhelmed by the situation they are in, whether it is their first arrest or their seventh. The number of young people I see who, despite going through the system, still do not understand.

We know young people do not always make good decisions for themselves, it is part of their developmental stage. That is why we have adults who are there as support people. I regularly speak to adults on the telephone and they also are a bit overwhelmed, do not know what is happening and do not understand. It is really important that a young person and their support person speak to a lawyer, not just be told that is an option but actually put them on the telephone and give them that chance.

The reality is that there is probably a misperception as to what a lawyer can assist them with, at that point. It is important to give them advice about that record of interview, but it is quite complex advice. They might think it is just talk or not talk. But with young people, you have the question of whether you should speak because of diversion, what it means in terms of bail. It is a very complex question and really a discussion you have with the young person and their support person.

It is difficult for police to have that discussion because of the perception that anything they say would then somehow influence that young person and possibly be improper. Even where police are trying to do the right thing, it is difficult for them to have that role. They have to have an independent legal representative who they can speak to.

There are also other things that happen when a lawyer speaks to a young person and their support person. You do welfare checks, we address things like risks of suicide, and we can ask them if there are other family members they want contacted to reassure them that someone knows where they are.

You might demystify the process, so even if that young person should be arrested because of what happened, you can help them to understand what will happen next, how long this will take and reduce the trauma. Minimise the trauma that you have to cause to these young people.

It may also lead to better cooperation with young people. They might be on the phone saying I do not have to do this, I know my rights. You can explain in what circumstances they do or do not have to do that and that results in a better dialogue with police.

There are a range of benefits that come out of it and I think young people and their adults might not realise that and the proposal from the Royal Commission is far better, which is they must get that advice so that they can be supported through the process.

**Mrs FINOCCHIARO:** You would like to see that provision go further?

**Ms KEPERT:** Yes.

**Mrs FINOCCHIARO:** Under the bill it would be that you were asked would you like legal representation or to call your lawyer, and Legal Aid is still concerned that people might say no whereas it should be an automatic—somehow police tee you up with a legal agency immediately. Is that how you would see it practically working?

**Ms KEPERT:** In fact, I see that happen sometimes. I have had police call and say, look, we have a young person here they said they did not want to speak to a lawyer but we think they should. It is a good practice and should be legislated for.

It is interesting the phrasing you used—would you like to speak to *your lawyer*. You have that situation where young people think I do not have a lawyer so I cannot do it. It does not work that way, they will find one for you.

It is all those misunderstandings of what it means or a misperception. I am not suggesting police are putting this there but it is a community misperception that 'if I call a lawyer that must mean I am guilty'.

It is really important that it just be normalised and they be encouraged to do it and then they can answer all those other questions as well, not just about the interview.

**Madam CHAIR:** Ms Kepert, I like what you said about minimising trauma through doing the welfare checks and assessing risk of suicide and things like that, and I take your point that it is important for the young child to have an adult support person go through them with this process.

What I keep coming back to at the back of my mind is that not every child that ends up in custody is guilty, and that could be extra traumatic, so I really appreciate you going in to that detail.

**Mrs LAMBLEY:** Could you talk through the four amendments that the department has put through—why you object to them, please?

**Ms KEPERT:** I have separated mine out in to different sections, so if I could just have a moment.

The first variation is in relation to clause 9, replacing 'and' with 'or'. The starting point for why we oppose that is that it is harmful for young people to be in detention and it is a matter of last resort.

How do we represent that, how do we do that in practice? One of the ways that we do that in practice is by saying it has to be both the serious or prescribed offence as well as the youth presenting an ongoing and serious risk to the community.

Mr Goldflam can address you if the members wish about other prescribed offences, but he gave an example of sexting. If that is a prescribed offence or the youth presents an ongoing serious risk, we have a situation where the youth does not present an ongoing serious risk but it is a prescribed offence and then the presumption is no longer there. It is important that it be both because the reality is even with serious offences a young person might not end up in detention so we do not want to cause the harm at the outset or it is the kind of offence that although falling under that legislation is not treated by society in that particular way and should not warrant detention.

Why we submit that that is not an appropriate amendment is because it is not reflecting imprisonment or detention as a last resort, and that is what needs to happen.

We have seen many positive situations where you find alternatives to detention and including remand in custody, and you can have really beneficial outcomes. It is a great outcome for the young person but also ultimately for the community.

Property offences are commonly seriously offences that young people may or may not grow out of, so we will have situations where instead of remanding them and not having a presumption in favour of bail you find alternatives about YouthWorX or other educational programs or you find a rehabilitation service. You find the ways to support that young person to change without keeping them in custody.

The benefit of having that higher test for a presumption for and against bail is that the courts in my view have listened when the legislation was changed about presumptions for and against, and it did result in a change.

The Legal Aid says what we need to see is individually tailored decisions. If this young person is offending seriously and there are risks and they should not be on bail then they should not be on bail, but do not hamstring the court in making that individual decision because we look much more closely in to the individual young people's lives to try to come up with a solution.

**Mrs FINOCCHIARO:** Ms Kepert, because you mentioned that we can find other ways, could you just tell this room who the 'we' is and what some of those diversion options are. At what point are the options available to someone? Also, what are those options? Only if you know, obviously.

**Ms KEPERT:** It depends at which point you are asking. If you want to ask about police diversion options and court youth diversion options, it is probably better to ask those people who run them. My understanding from looking at some of my clients is that it can be quite extensive. YMCA runs a back-to-school program that often seems to be included as part of diversion. Diversion is not just looking at the offending, but also, 'You are not attending school. How do we get you back there?'—reengaging you there, and then they end up back at school.

DAISY is a drug and alcohol service for young people. That can be a part of a youth diversion program. It can also be about addressing the family. There might be some family conferences that look into how that family needs to be supported and some referrals for the adults in the young person's life.

I suppose the 'we' that I see more often is the lawyers at court. Legal Aid and Aboriginal Legal Aid have social workers as well. As a team and working with the court as well, we will try to find those solutions. Those solutions are pretty broad. It might be counselling. Sadly, we see a lot of young people who are victims of sexual abuse. We try to encourage them to find a path into the right counselling. It might be getting an assessment done to discover that someone has foetal alcohol syndrome disorder and then getting the therapy or treatment that targets that. It might be that a young person needs to go to Boarding school because they want to do well in education, they are capable, but their home life is not safe. So, they will be sent. That is not a specific program, but you are finding the mechanisms to get them there.

Maybe they need intensive case support. I actually think case management is a bit lacking at times. There are some great services that are trying to do intensive case management for young people. I see that as an area that needs some more funding because those young people who need intensive support really need intensive support. It is not a small job. These young people need the basics. They cannot get the transport to get them to YouthWorX to start the program. They do not have the skills and the capacity to get themselves to a counselling appointment.

But they also need that support person who helps them to have a better outlook on life. A lot of these young people can be quite negative because this is the image they are getting of themselves, 'I am a criminal. I get arrested, and the police are targeting me.' You are trying to create a positive hope theory where you are saying there are goals you can have, 'What are your goals, where do you want to get to?' There is a huge range of ways in which we address that. It is difficult to pinpoint it down to singular programs but I definitely think the case management is key.

There are other services out there that Legal Aid and NAAJA will utilise—CatholicCare and Anglicare. We might address housing needs or it might be violence and addressing anger management. I am not sure if that is helpful but it ...

**Mrs FINOCCHIARO:** Yes, thank you.

**Ms NELSON:** Just to recap. With one of your youth clients, you are working in collaboration with the Youth Outreach Services Team from Territory Families or any other case management agency that has already had contact with that client? Is that right?

**Ms KEPERT:** We try to.

**Ms NELSON:** Sorry. Do you also refer? Do you have input in the youth diversion program, or youth diversion for that particular client? Do you make recommendations?

**Ms KEPERT:** Probably not generally. There are two parts for diversion. If police put a youth on diversion, as the criminal lawyer I would rarely see them and be unaware of the program. When someone comes to court, they can be referred back to police diversion or they can be referred to a family conference or a victim offender conference. That sort of diversion I suppose I would be involved in and, in a way, be making the recommendation because I would be speaking to the client and then saying to the judge, 'We are seeking this kind of conference'. Lawyers can be involved in those conferences and can attend and make recommendations as to the kind of support that is appropriate.

If court diverts them back to police diversion, I think we are less involved as a general rule. I do not know what the practice of other lawyers are.

**Madam CHAIR:** We have time for one more question.

**Mrs FINOCCHIARO:** I just want to ask a small extension to that. What if the youth does not want to participate in the victim or family conferencing?

**Ms KEPERT:** Then they cannot go through diversion if that is the program.

There was one matter that was quite specific for Legal Aid. I appreciate that members do not have a lot of time, but if I could very quickly address it. It is some concerns about the way in which the limitation on section 49 prohibiting restriction of publication and identification of the location of the defendant. We are very concerned about that unintentionally affecting practices and the proper running of the court.

**Ms NELSON:** That is my concern, the slippery slope.

**Ms KEPERT:** The reality is we are experiencing that in the child protection area and, despite efforts to try to find a way through, we have not been able to. That is inhibiting people's access to justice and our ability to run the service efficiently. We are concerned that although that is not the intention, that will happen.

The very basics: can we get a court list and a custody list if section 50 remains as it is? What has to be recognised is, if you have a threat of criminal proceedings, it is a criminal offence to do the following: you must expect that public servants and individuals will be conservative. They should not have to put themselves at risk of something like that, so they will make a conservative decision in interpreting and understanding that legislation.

We are happy to provide a separate submission and have a discussion as to proposals as to how it could be amended. There is definitely a need to allow some kind of sharing of that information for the right reasons.

**Madam CHAIR:** I thank Mr Goldflam and Ms Kepert for appearing before the committee this afternoon.

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The committee suspended.

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### **Criminal Lawyers Association of the Northern Territory**

**Madam CHAIR:** Good afternoon, everyone, and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and the Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019.

I also acknowledge my fellow committee members in attendance today: Robyn Lambley, the Member for Araluen; Lia Finocchiaro, the Member for Spillett; Sandra Nelson, the Member for Katherine; and Chansey Paech, the Member for Namatjira.

I welcome to the table to give evidence to the committee Marty Aust, President of the Criminal Lawyers Association of the Northern Territory. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast from the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private. For the record, could you please state your name and the capacity in which you appear today.

**Mr AUST:** Marty Aust, President, Criminal Lawyers Association of the Northern Territory.

**Madam CHAIR:** Thank you, Mr Aust, I know that we are on a time restriction, if you would like to make a brief opening statement, or you have the option to table that and go straight to the committee's questions.

**Mr AUST:** I have a tight schedule, I will have to leave in about 15 minutes. I apologise, I have a court matter. I will give a brief opening, just because I want to clarify one thing and otherwise I am happy to stand by the submissions and take some questions. I note that submissions are actually quite short because they endorse some of the other submissions that no doubt you have all been absorbing.

I am tired, I am exhausted. All my colleagues, criminal lawyers on both sides of the bar table, defence, prosecutors—we are tired. We are sick of 70 hour weeks, we are sick of youth crime, we are sick of crime in general. More so we are sick of there being victims of crime.

Part of the reason we have so many people committing offences is because they have gone through an ineffective, unsuitable and inefficient youth justice system and they are trapped. They never got the appropriate assistance to start with and unfortunately it is a revolving door.

I do not want to see this committee allow years of failed policy, irrespective of who was in government, years of failed policy reinforced and continued. We had a Royal Commission. There was a final report with over 200 recommendations. There was evidence taken for weeks on end, expert evidence, the final report with the recommendations was based on that evidenced based expert opinion. Yet nobody is prepared to just trust the experts and implement the legislation.

I do not know if it is because people who are in power are too scared to lose power by seeming to be unpopular with the voters. I do not know if people who are not in power want to garner favour with the voters and on that basis they do not want to pass it.

Tough on crime is not real. Tough on crime is nothing. There is no tough on crime. Tough on crime is ending crime, and that is what I want to see all of the committee members undertake to do at the end of these hearings. Do not endorse poor policy for political gain. Endorse good policy for the benefit of those that vote the members in to our Legislative Assembly, because what is in their interest is not being a victim of crime.

If you do not put the recommendations in to place, if you water down the legislation, you are effectively endorsing your constituents to further suffer as victims of crime. That is my opening statement.

**Madam CHAIR:** Thank you very much, Mr Aust. We will now go to the committee with any questions.

**Mrs FINOCCHIARO:** Thank you, Mr Aust. I want to ask about number four of your submission about holding a child in police custody for four hours—sorry, Chansey ...

**Mr PAECH:** You stole my question.

**Mrs FINOCCHIARO:** We have been asking everyone about that question and whether after that four hour period it needed to be a judicial officers. I just wanted you to expand on the Criminal Lawyers Association position on that.

**Mr AUST:** The position is that if after that four hours the child is not charged and thereafter processed in the ordinary way then they would be released. An ordinary investigation in to any alleged offending could be undertaken and if at some point that there is enough evidence to give rights to a prima facie case against that youth then they should be charged and then dealt with in accordance with what we say should be the amendments to the *Bail Act*.

**Mrs FINOCCHIARO:** If for some reason there needed to be an extension—or you are saying there should be no extensions—that is the time frame, not if there is an extension who should be the one to grant that?

**Mr AUST:** What I would concede—it is not a perfect term of art—for instance, if somebody who is a young person is charged with a very, very serious offence, for instance, a charge of murder or a very serious rape or any sort of serious sexual offence.

It may be that, for the proper investigative undertakings to occur, they would need to be held for longer than four hours. In those circumstances, it would make sense that they get taken before a judicial officer, whether it by telephone or to a court, in order to have the situation progressed by someone who is made aware of the position of the investigation, the allegation and any specific factors relevant to the wellbeing of that child at that time.

**Ms NELSON:** We would have to make exceptions to the paperless arrest laws? How will that work with the current paperless law?

**Mr AUST:** I am not sure what you mean by paperless arrest?

**Ms NELSON:** Right now, someone can get picked up by the police for whatever reason and held up to four hours, I think, or maybe longer than that, without any paperwork needed. That is the paperless arrest?

**Mr AUST:** I am not sure that is currently.....I do not think it is applicable to youth at all. I am not sure that is current legislation, it may well be.

**Ms NELSON:** We heard earlier from Ms Musk that it is applicable to youth.

**Mr AUST:** Really! Can I take that question under advisement and undertake to provide a response?

**Ms NELSON:** Thank you, I would appreciate that

**Mr AUST:** You have caught me unawares. I would really like to have a look at that; it is a good question.

**Madam CHAIR:** We might have time for one more question.

**Mr PAECH:** In your submission, the minimum age for criminal responsibility, you are suggesting that it be raised to 12 years, but no child under 14 years should be sentenced to detention. Is there a reason why one is 12 years and one is 14 years?

**Mr AUST:** The basic response to that is, 12 years was the recommendation.

**Mr PAECH:** From the Royal Commission?

**Mr AUST:** Yes. But I am aware that there is international concerns about raising it to 14 years. There probably should be a degree of consistency. I suppose in some respects, it does not really matter because to be charged or criminally responsible, does not equate to being detained. To think that it does, is part of, I think, a misconception that many members of the community have. That, when people are charged or even found guilty of offences, they go into detention or gaol. That should be the very last thing that happens. Only when there is absolutely no other alternative available, particularly for a young person who has entrenched trauma or the varying backgrounds.

I am not here to preach to any of the members and that is not to do a disservice to many of the other witnesses who have given evidence. You are all aware of the complex background that many young people who come into contact with the criminal justice system unfortunately share.

I also have a fear that my committee and association, I think share, we are seeing more and more cases of young people with very difficult backgrounds in that it seems we are almost at the tip of the iceberg where we are likely to see a significant increase in persons who are diagnosed with FASD or have other issues which are able to be diagnosed or recognised.

We need to find a way to appropriately manage the needs of those young people. Some of those issues can not only lead to criminal behaviours on the basis that they have difficulties regulating behaviour and keeping even to simple tasks, but also there are some connections with the degree of cognition and or entrenched cognitive functioning deficits or the brain damage that comes with some of these backgrounds, or developmental issues that leads to not just impulsive behaviour but quite dangerous behaviours.

We do not want to lock up people that are sick because they are dangerous. We do not like to do that with adults. We certainly do not want to do that with youths, but we do want to protect the community.

We need to start preparing now for what is an inevitable unfortunate reality within this sphere.

**Madam CHAIR:** Thank you very much, Mr Aust. We will let you get to your next appointment. We really appreciate you taking the time to address the committee today.

**Mr AUST:** I really appreciate you making a slot available for me.

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The committee suspended.

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### **Tangentyere Council Aboriginal Corporation**

**Madam CHAIR:** Good afternoon, everyone, and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019.

I also acknowledge my fellow committee members in attendance today: the Members for Araluen, Spillett, Katherine and Namatjira. I welcome to the table to give evidence to the committee from Tangentyere Council Aboriginal Corporation, Andrew Walder, Access to Education Manager. Thank you for appearing before the committee via teleconference today. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made for use by the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private. For the record, could you please state your name and the capacity in which you appear today.

**Mr WALDER:** Andrew Walder, Access to Education Division Manager, Tangentyere Council Aboriginal Corporation.

**Madam CHAIR:** Mr Walder, would you like to make an opening statement?

**Mr WALDER:** Yes. Tangentyere Council has provided a letter to the committee on the inquiry. We have raised a range of concerns around the legislation and the proposals. A key point here is that these concerns were raised through consultation with our Board of Directors. Our Board of Directors is representative of all the town camps of Alice Springs and is made up of the president of each of the housing associations of those town camps.

What came out strongly through that consultation was particular concern around amendments to the age of criminal responsibility. As you would know, recommendation 27.1 of the Royal Commission suggested that the age should be raised. We have noted that this is not currently supported through the legislation. This is a big concern for us given that actually the Board of Directors actually recommended more strongly that the age of criminal responsibility should be raised to 14 years, and that young people under the age of 16 years may not be ordered to serve a time in detention.

**Madam CHAIR:** Thank you. I will now open to the committee for questions.

**Ms NELSON:** I would like to seek clarification, did you say you are in support of raising the age of criminal responsibility to 14 years and raising the age for detention to 16 years?

**Mr WALDER:** Yes. That was concluded unanimously by the Board of Directors at Tangentyere Council.

**Madam CHAIR:** Any other questions?

**Ms NELSON:** If you could elaborate on decriminalising breach of bail and the Board's position?

**Mr WALDER:** We support the introduction of youth specific bail consideration, under the bail act. Specifically, creating a presumption in favour of granting bail to young people.

What we have seen over many years, is that the breach of bail, when considered to be a criminal offence, really does not play into the best interests of young people, and it leads to a disproportionate impact upon Aboriginal young people.

This is something that the Board hold very strongly - often unrealistic bail conditions are set up for young people, they can have difficulties understanding them, and for a range of reasons those bail conditions are not met, but in and of itself the Board hold that breach of bail for young people should not be a criminal offence.

It is noted by the Board that criminalising a breach of bail is very much inconsistent with the principle of detention as a last resort for young people. This is a principle that is really very consistent with any best practice approach based upon the best interests of those young people.

**Madam CHAIR:** In previous testimony today we have heard about the importance of young Aboriginal people who are in custody having access to lawyers and legal advice. Is that something that Tangentyere would be supportive of?

**Mr WALDER:** Yes. It is clearly vital that young people receive timely legal representation and obviously that includes representation and the use of interpreters as needed so those young people can really properly understand what is being spoken about, what the charges are et cetera. Yes, absolutely that would be supported by Tangentyere.

**Madam CHAIR:** We have heard a lot of testimony today also about youth defenders and the correlation between the education system and irregular attendance. Is that what Tangentyere's experience is with young people in the Central region?

**Mr WALDER:** Yes, it is to some degree. We are not talking about a huge cohort of young people for this necessarily, but for a particular cohort of high-risk young people, what we are currently experiencing is a cycle which leads to increased risk for that young person both to themselves and to others - but also risk of them offending in the criminal sense.

What we are seeing is a young person might not be able to regulate themselves in the mainstream schools so then we try to get them in to more flexible educational context. Even those educational institutions are not necessarily able to support that young person and their needs, meaning that these very highest-risk young people are actually excluded from and unable to get an education in any setting.

Not only that but because they are not able to access an education, which is important—because of this exclusion it means there is a lack of a structure in terms of their day-to-day lives, a lack of self direction and purpose as to what they are meant to be doing. This does not always mean, but it can mean that the young person then gravitates towards a different peer group and risk taking behaviours on the street et cetera, which they might not ordinarily do.

As someone who used to work in child protection—one of the first things we would focus on would be reengagement in education. The reasons for that would be multifaceted, but one of them would be that once a young person goes back to school we start to set up a routine in the house. Not only does that mean we can then work with the parents and they can start to work on whatever they need to address barriers in their lives, it also it means that that child or young person starts to have a set routine and pattern in their lives which is fundamentally important to them achieving positive outcomes. Without access to and engagement in education that it is very difficult.

I would most certainly like to say there are—I do not want to exaggerate the number—but there are a number of children in Central Australia who currently are unable to be placed in any educational setting, which is a disaster for their own individual outcomes, but also for the community.

**Madam CHAIR:** Taking the opportunity because you are from Alice Springs, my final question. We were talking about the need to support families to be able to help their young ones get back on track and stay on track. Does Tangentyere feel that there are enough local family support services to be able to support the families?

**Mr WALDER:** There are a number of family support services here. In answer to your question, we believe there are within the statutory system, but not such much at the early intervention stages.

We used to run a program called the Ketyeye program and that was a very broad family support service that could take referrals from the police, schools, hospitals, Territory Families and also received a lot of self-referrals from the communities. It was able to work broadly across the domains from a social work perspective, and referrals could be youth justice issues, as simple as schooling and truancy, or low level concerns about the welfare of the children from a child protection perspective. That flexible type of early intervention program currently does not exist.

Territory Families have changed the eligibility rules of the intensive family and parenting service. There is now a limited capacity in IFPS to take referrals through the FACES service through Territory Families, but that probably does not come close to meeting demand. When the Ketyeye program closed we had 43 open cases and what happens, both in terms of the youth justice system as well as the child protection system, is that without those early intervention support services, families, when they are struggling, can unfortunately track into those statutory systems - both the families and those young people within the families. Yes, absolutely, there is a gap in these areas at this stage.

**Madam CHAIR:** How long ago did that program close?

**Mr WALDER:** It was defunded in June 2016.

**Madam CHAIR:** The committee has no further questions. Thank you for dialling in and speaking with us about this important bill this afternoon.

**Mr WALDER:** Thank you for the opportunity.

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The committee suspended.

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### **Central Australian Youth Justice**

**Madam CHAIR:** Good afternoon, everyone, and thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019.

I also acknowledge my fellow committee members in attendance today: the Members for Araluen, Katherine, Spillett and Namatjira.

I welcome to the table to give evidence to the committee from the Central Australian Youth Justice, Adrian Scholtes, Deputy Operations Manager. Adrian, I was wondering if Sophie Trevitt was there with you.

**Mr SCHOLTES:** No, Sophie has to be an apology, I am sorry. We had the change of time and then something came up so it is just me.

**Madam CHAIR:** Not a problem. Thank you for clarifying. Thank you for coming before the committee this afternoon. We appreciate you taking the time to speak to the committee and we look forward to hearing from you.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing and is being webcast through the Assembly's website. A transcript will be made for use for the committee and may be put on the committee's website. If at any time during the hearing you are concerned that what you will say should not be made public you may ask that the committee go in to a closed session and take your evidence in private. For the record, could you please state your name and the capacity in which you are appearing?

**Mr SCHOLTES:** Adrian Scholtes, Chair of the Central Australian Youth Justice Committee.

**Madam CHAIR:** Thank you, Mr Scholtes. Before we proceed to the committee's questions would you like to make a brief opening statement?

**Mr SCHOLTES:** No, that is all right. I am fine to go with your questions.

**Madam CHAIR:** I will now open up to the committee for any questions.

**Mr PAECH:** I want to ask you three questions. One, I just wanted to go a bit further in relation to the comments made by the Central Australian Youth Justice organisation about the decriminalisation of the breach of bail.

Could you further elaborate on that on why you are advocating for it to be changed?

**Mr SCHOLTES:** It seems to get a lot misused, breach of bail for fairly trivial offences it would seem a lot of the time. A lot of young people end up spending a fair amount of time in the watch house because then they are on breach of bail for half hour miss on their curfew or being somewhere they are not meant to be.

It just seems that it further entrenches them in to a system that we are trying to keep them out of and the breach of bail often ends up—whether it is even just being kept in the cells of the police watch house over night or for longer than necessary or it becomes a custodial remand situation for them for some fairly minor breaches of their bail.

**Mr PAECH:** Following on from those comments, we have heard consistently today throughout the hearing a different range of the total number of hours a youth could be held in a custodial environment. I make reference to the organisation you represent submission where you are suggesting that it is four hours with a total of up to 24 hours with the appropriate approvals and that is with judicial approval only.

We have had some mixed reviews from people around judicial or custodial. You remain in support of the judicial approvals only?

**Mr SCHOLTES:** Yes, technically. And the maximum of four hours before it needs to be sought.

**Mr PAECH:** That is it me for the moment, Madam Chair.

**Madam CHAIR:** In your submission you refer to the overcrowded conditions in the Alice Springs Youth Detention Centre and also that young offenders are often sent away from family to Darwin to be held at the Don Dale Detention Centre. I would image that has quite a traumatic impact on the young person and their family.

Could you paint a clearer picture for those of us who live in Darwin and who do not get out to the Alice Springs Youth Detention Centre?

**Mr SCHOLTES:** What sort of a picture do you want me to paint? Is it of the small areas that are available in Alice Springs? Or the process?

**Madam CHAIR:** No, it is the impact on the young people being transferred from Alice Springs, away from home and family, in a detention centre where there is overcrowding.

**Mr SCHOLTES:** It further punishes and exacerbates any of the issues that they may be trying to deal with and then have them end up on remand generally or in the detention centre.

On the one hand we talk about the importance of attachment to country and family, the nurturing effect and the positives that can have and then we go: no we are going to move you 1500 kilometres up the highway now, because we do not have room for five of you, five of you too many, and we are going to choose, you, you, you and you for whatever the reason may be and send you off.

There have been some checks and balances around consultation with the family and everything like that, before such a move occurs. The amendments are saying that would no longer need to occur, they would need to consult with solicitor or family and legal advice and social or support programs which are working with around the validity and impacts of those changes.

It is hard, if you are sending a 12-year-old or 13-year-old—may be their first or second time in custody—to somewhere a long way from not only people they know but a completely different climate. There are people who they have no connection with at all, it isolates and further compounds any issues for them that may be going on.

**Ms NELSON:** On the back of the Member for Karama's question on the children who are being held in police cells for 30 hours in Alice Springs. I am playing a devil's advocate, could this be an indication that we do not have sufficient bail accommodation services in Alice Springs?

**Mr SCHOLTES:** No. Saltbush has places for 10, ASYASS has places for three, for young women. It is more about the underutilisation of those bail support programs, for a long period of time, by police particularly, in terms of organising bail. There is always going to be shortage at the incredible rate we incarcerate young people. The short answer is no, we have enough at the moment.

**Ms NELSON:** They are just being underutilised?

**Mr SCHOLTES:** It has been underutilised to a degree although I think Saltbush, over the last three or four weeks, may have been close to full.

**Ms NELSON:** Reading your submission, NAAJA and NT Legal Aid are in the process of withdrawing services to attend the police cells due to funding constraints. Can you tell the committee, what sort of impact that is going to have on the community?

**Mr SCHOLTES:** That would just mean we are having a lot more young people detained in the cells for longer periods, until a responsible adult can be found or until legal representation can be organised.

Given that a lot of young people are picked up out-of-hours, not having access to a lawyer or any representation would just be an automatic 'you are here until the next day'. There will be that increase, I suppose, on the resources at the watch house with the number of young people and the amount of time they are spending there.

**Ms NELSON:** In Katherine, we do not have bail accommodation or after-hours youth drop-in. If a child or youth gets picked up at 1 am and it is not safe to take them home and there is no other family around to take them to—it almost comes down to we do not have any option but to take them to the watch house.

How does that play out in Alice Springs? Is that the same case?

**Mr SCHOLTES:** It depends on the age of the child, of course. The after-hours programs, the recreation programs or engagement programs, do not have the staff to release staff to go and act as a responsible adult in those situations. They may be a program that police could contact to say we have this young person do you know of a family for them or anything like that.

If they are 15 and above then there is the youth refuge that can be accessed so long as it is not full, so there are a couple of options there that may not be available to you in Katherine.

**Mrs LAMBLEY:** A few of our witnesses today have talked about the fact that a significant number of kids across the Territory that come to the attention of the youth justice system are also in the out-of-home care system too. That must present enormous challenges in terms of trying to provide wraparound support people for those kids.

How do we do it in Alice? Do we eventually find family to help these kids that are in the out-of-home care system, that come to the attention of the youth justice system, or do we provide services to perform that role? How does it work in practice?

**Mr SCHOLTES:** That is a fairly big question, Robyn.

**Mrs LAMBLEY:** I am sorry. I have been sitting on it all day and I have waited to ask it right at the end. It is an important one because it is about the practicality of helping these kids with really special circumstances.

**Mr SCHOLTES:** Often if young people are in out-of-home care it depends on what their order is in terms of the out-of-home care. If it is still a reunification then yes, there is a lot of work hopefully, whether it is through Territory Families or it may be outsourced to the few programs here that do that family support work. It would be around what needs to occur within the family so there is stuff happening for that.

If you have a young person who is on a long-term order, an order till they are 18, that is often as a result that there are no other identifiable family who are able to take them and that means that they are in care from up until they are 18. Even that may be the case—I know there are different times where young people we have had in out-of-home care where there is some strong family connection and contact but it is still not appropriate for that young person to go and live back with family, so you support that engagement and contact with family as much as possible.

**Mrs LAMBLEY:** Thank you. That is all I wanted to ask.

**Mr SCHOLTES:** Sorry. Trying to be an adequate response.

**Madam CHAIR:** I wanted to clarify, you mentioned that there are a few organisations in Alice Springs that undertake family support work. Earlier today we were talking about young people coming out of

detention and returning back to the environment in which they were in before they entered—making sure that we are supporting the families to help them get on the right track and stay there. Do you think Alice Springs is geared up to do that through those services?

**Mr SCHOLTES:** In a very limited manner, yes, for a very small number of young people and families.

**Madam CHAIR:** We just heard from Andrew Walder at Tangentyere who was saying that there are not enough services as preventative measures. They are all tied up in the system. Would that be accurate through your organisation?

**Mr SCHOLTES:** Yes, that would be similar.

**Madam CHAIR:** Thank you for clarifying. Does the committee have any further questions for Mr Scholtes?

Thank you for your time today to speak with the committee. We really appreciate it.

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The committee suspended.

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### **Territory Families**

**Madam CHAIR:** Welcome back everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee I welcome everyone to this public hearing on the Youth Justice and Related Legislation Amendment Bill 2019.

I also acknowledge my fellow committee members in attendance today: Robyn Lambley, the Member for Araluen; Lia Finocchiaro, the Member for Spillett; Sandra Nelson, the Member for Katherine; and Chansey Paech, the Member for Namatjira.

I welcome to the table to give evidence to the committee from Territory Families, Ken Davies, Chief Executive Officer, Brent Warren, General Manager Youth Justice, Luke Twyford, Executive Director Strategy, Policy and Performance, Seranie Gamble, Director Law Reform. Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public hearing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please state your name for the record and the capacity in which you are appearing.

**Mr DAVIES:** Ken Davies, Chief Executive Officer

**Mr WARREN:** Brent Warren, General Manager Youth Justice

**Mr TWYFORD:** Luke Twyford, Executive Director Strategy, Policy and Performance

**Ms GAMBLE:** Director, Law Reform

**Madam CHAIR:** Mr Davies, if you would like to make a brief opening statement? I assume you have listened to a lot of the testimony that has come forth today?

**Mr DAVIES:** Yes. I would like to kick off by acknowledging that this public hearing is held on the land of the Larrakia people and pay respect to Larrakia elders past, present and emerging.

I would like to thank the Social Policy Scrutiny Committee for providing us the opportunity to be here today to talk to you about the Youth Justice and Related Legislation Amendment Bill 2019, which was introduced as draft legislation to the Legislative Assembly on 20 March 2019.

I acknowledge also that staff from Territory Families appeared before the committee for a public briefing about the bill on 1 April 2019 and that the public briefing enabled Territory Families to invite an overview of the bill and the rationale for how and why it was developed.

Following the public briefing, a total of 26 submissions were made to the committee, presenting a range of views about the bill. Twelve of those submissions were from members of the Legislative Advisory Committee, or the LAC as we call it, who have contributed to the development of this bill. Territory Families has responded in writing to 12 questions that were asked by the committee in preparation for today's hearing.

This bill is designed to provide the right legislative framework to support the coordinated efforts of this government to achieve important reform for young people and the community. It strikes a balance between the complex operational requirements of our police, the judiciary and youth outreach and reengagement teams and a range of community sector organisations, working together to address and prevent offending behaviours of young people and ensuring there are consequences for their offending behaviour.

Territory Families is focused on ensuring victims are supported, including their participation in victim offender conferencing.

The key features of the bill include removing the barriers to youth diversion, limiting the time children and young people spend in police custody, ensuring earlier access to legal assistance for young people, improving the application of bail, protecting the right to privacy for young people in court proceedings and ensuring consistency for young people to commence legal proceedings.

Our aim is to reduce offending behaviour by young people earlier so that we can make our community safer for everyone. To achieve this we are providing improved early intervention to young people and families through a range of programs that hold them accountable, have more timely consequences for their offending and are more tailored to their needs.

To provide a bit more context about our work with young people, I can provide the following snapshot of the current system. As of 26 May 2019 there were 24 young people in detention in the Northern Territory. Of these young people in detention, 16 were on remand awaiting appearance before court and eight were sentenced. Twenty-two were male and two were female. All 24 were Aboriginal youth. Eleven were in Don Dale and 13 were in the Alice Springs detention facilities.

In the community we had 20 young people in bail support programs and 37 young people on electronic monitoring. More broadly, 174 young people have received active youth diversion case management in the first three months of this year and in the first nine months of this financial year 238 restorative justice conferences and victim offender conferences have been completed.

Furthermore, we are in the process of the establishment of accommodation to support Back on Track and other diversion programs announced in the 2019–20 budget, which will improve an alternative pathway for young people and provide an alternative pathway for young people and provide an alternative pathway for young people that enables them to stay out of detention on country and connected to family.

Today, Minister Wakefield has announced the Northern Territory Government is investing \$10m to refurbish the Alice Springs Youth Detention Centre to improve security and amenity and increase the delivery of therapeutic services for the rehabilitation of young people.

We are committed to working with stakeholders to deliver these program services and reforms to the system. You will have heard from witnesses today, including the Northern Territory Legal Aid Commission, the Human Rights Law Centre and North Australian Aboriginal Justice Agency which supports key elements of the bill but have also consistently raised their views that government should go further with reforms to youth justice.

We have also heard from other organisations like the Darwin Press Club and the Information Commissioner presenting different views and approaches to closing the courts and protecting young people's rights to privacy.

We have listened to those views and we are continuing to work closely with stakeholders and other agencies representatives to improve the legislation that underpins our youth justice system.

On 29 May, Territory Families provided written responses to this committee and confirm that consideration is being given to make minor amendments to this bill based on the feedback we have had to date. These amendments are in the line of information identified during the scrutiny process and we will also look forward to your report to enhance this bill.

The amendments we are considering include limiting the presumption in favour of bail so that it applies to a youth that has been charged with a prescribed offence or the youth presents an ongoing and serious risk to the community.

Clarifying a distinction between police and court bail by stating an authorised member may take in to consideration the youth's specific criteria for consideration of bail that the court must take these criteria in to consideration.

Removing the amendments to arrest being a measure of last resort and amending the closed court provisions to enable a reporter to be permitted to attend closed court proceedings.

You have heard through evidence today mixed views in response to these proposed amendments. The Youth Justice and Related Legislation Amendment Bill continues our journey towards generational change. It balances complex operational requirements with expert opinion and analysis of best practices that has to adapt to succeed in the unique context of our Northern Territory.

I thank you for your time and confirm that the Territory Families representatives are here to discuss each of these areas with you and welcome your questions on the bill.

**Madam CHAIR:** Thank you, I will now open up to the committee for any questions.

**Mr PAECH:** I would like to ask a question on the time a young person can be held in custody without charge. The proposals put the Northern Territory out by itself with an expiry period of 24 hours. There are two jurisdictions which do not necessarily have a period specified, but every other jurisdiction indicates no more than eight hours. I would like to ascertain why the legislation is suggesting 24 hours?

**Mr DAVIES:** I will ask Seranie Gamble to provide the answer to that question.

**Ms GAMBLE:** Thank you. This bill has been developed in consultation with a range of stakeholders through our Legislative Amendment Advisory Committee with a number of representatives who have made submissions today and other agency representatives.

The starting point for considering these reforms was very much connected to the Royal Commission into the Protection and Detention of Children in the Northern Territory, which made an explicit recommendation about this issue. It recommended that four hours should be the time limit that young people should be held in custody without charge with any further extension of that time to be enabled by a judicial officer or by a judge.

It is through the consultation that we have undertaken with our agency colleagues to determine the most appropriate way to implement the intent of this direction. At present, as you say, the Northern Territory is one of the only jurisdictions that has no time limits on a young person, or any person, being held in custody. We have undertaken a significant analysis of best practise in other jurisdictions to try to identify what would work in the context of the Northern Territory.

The way the bill is drafted presently, includes that four hour limitation where internally police would be reviewing the need for a young person to be held in custody without charge for the purpose of an investigation. That would be reviewed every four hours by a police officer with the decision to extend that timeframe at 24 hours being reviewed and only permissible by a judge.

**Mr PAECH:** In the lead up to that, every four hours would be permissible by a senior sergeant. Would that not be a conflict of interest that the senior sergeant who very well could have a historical relationship with the young person, be the person granting those extensions? Where there is a judicial, their likelihood of having a relationship with the person, or knowing previous convictions, would be somewhat limited?

**Ms GAMBLE:** The purpose of the amendment is to introduce limits that currently do not exist and to change police practises in a way that police support and will embrace to improve practise. Police have worked closely with us as to how they would operationalise this and an investigating officer conducting the investigation into a youth is not necessarily the decision-maker about the continued holding of a young person in detention. That is made by a senior sergeant. The senior sergeant is not necessarily the one undertaking the investigation. The purpose of judicial review is that additional oversight, if that then needs to be extended beyond 24 hours.

**Mr PAECH:** My question is, Queensland, South Australia and I think New South Wales and other jurisdictions have a period of eight hours, where has the figure of 24 hours come from?

**Mr TWYFORD:** If I can respond to that and your previous question as well. In making an approval, a senior sergeant would be required to record that approval in writing and would therefore be open to scrutiny, transparency and challenge around their decision-making. Through that way, I would suggest that there would not be conflicts of interest in that process and it would be incumbent upon any senior sergeant, who did have a conflict, to therefore not put themselves in that position and to escalate that decision or to have another senior sergeant make that decision. That is in part a response to your question around conflict of interest.

Other jurisdictions, as we did the analysis, do have different timeframes to what we are proposing, but also have different criteria around the clock-stopping whilst the young person is being transported and have, what they call carve-out provisions around that time limit they set works.

We have attempted to keep this bill very simple with a clear timeframe, the 24 hours. It is worth noting that in talking to operational police, Mr Warren might have more to add, the unique context of the Northern Territory where we have very small community settings, long distances away from each other, does require a different approach to the timeframes than what other jurisdictions, such as ACT, Victoria or Tasmania may have.

**Mr WARREN:** To build on the comments from Luke. There is a need to balance the fact that police might be exercising these powers in very remote settings, they might be challenged particularly in the wet season in the Top End by weather and geography that means that it is not easy to actually move a young person from one area to another so by building in a reasonable timeframe before there is a requirement for a judicial overview that that creates some operational space for them to move.

The other thing that I was just going to touch in on and reaffirm the comments earlier is in relation to the designation of a senior sergeant as the reviewing officer. That is quite consistent with the police structures in the Northern Territory where a senior sergeant is the operational senior officer running operations in the Top End and in Central Australia and consistent with decisions they are making around other aspects of custody. It fits in to that framework operationally quite well.

**Mr PAECH:** What is the current process for Territory Families now that a young person is apprehended and held in custody who is the responsibility of the department—what is your responsibility to notify or what avenues to you exhaust to notify the family that that young person has been taken in to custody?

**Mr WARREN:** If I could answer that questions—if a young person is taken in to custody the police then make a decision about notifying Territory Families if they think that young person might be a child who is in care. If that young person is a child in care or subject to some other kind supervision by the agency then we will respond, and that often means going in to the watch house and making contact with the young person directly. Then the case manager who has attended will make decisions about the appropriateness of making contact immediately or the next morning. I guess you need to be aware of the fact that sometimes these interactions are happening unsociable hours of the night, but certainly Territory Families has an obligation through our case management structure to be sharing information around with others that need it.

More than just family. It is often making notifications to other agencies that are providing a service to the young person as well, potentially a placement or potentially another service provider.

**Mr PAECH:** You would therefore support the Jesuit Social Services? This morning's application spoke about the custody notification system.

**Mr WARREN:** I might defer to Luke on that one, but broadly the changes that we are talking about are about creating a space where that system can be activated.

**Mr TWYFORD:** This bill introduces a requirement on police to inform a legal services provider whenever a young person under the age of 18 years are charged within the watch house. That is a new requirement. It does place a new obligation on police to do that work. Previously there would have to be consent of the young person prior to making that call and it was not through the Royal Commission evidence seemed to be happening often enough.

We spoke to this in our public briefing that it is not the custody notification scheme that is being discussed by stakeholders for the adult system but it is certainly placing an earlier emphasis on every young person who is apprehended and charged to have a referral to a legal service provider.

**Mrs FINOCCHIARO:** Which clause of the bill is that one?

**Ms GAMBLE:** It is clause 20, the amendment to section 135 of the *Police Administration Act*.

**Madam CHAIR:** Can I confirm, Luke, that you were referring to people under the age of 18 who are charged, having the legal support called upon as opposed to being taken in to custody?

**Ms GAMBLE:** If I could clarify a couple of things the bill does to give effect to the start of the custody notification scheme, which currently does not have an existing legal framework.

The first clause I earlier referred to clause 20 amending section 135 of the *Police Administration Act* removes the current requirement that police have to obtain consent of the person being charged to contact a legal service provider.

Currently, if someone is in custody they have to ask the person if they consent to contacting a legal service provider. What this provision does is remove that consent so that police can automatically do it upon intake as soon as someone comes in to custody. It is a practical matter to allow the custody notification scheme to operate at a basic level.

The next thing the bill does is make amendments to provisions in the *Youth Justice Act* about the way the police undertake interviews with young people. That is amending section 18, but introduces through clause 26 steps that police may follow or must follow when they undertake that interview. There are different ways that these provisions operate according to the way that young people come into custody and whether they are being charged or actually formally interviewed.

**Mrs FINOCCHIARO:** The bill is not easy to follow in clause 20, because it is omitting and inserting. Could I ask what the wording is? Is it police 'must' or 'may' or 'should' in terms of making that connection with a legal service?

**Ms GAMBLE:** Current section 135 of the *Police Administration Act* refers to disclosure of names. It currently says that a member of the police force shall, when requested to do so, disclose the information. The way that the clause will work is saying that it will amend it, under sub-section (1): a member of the police force shall, when requested to do so, by a legal practitioner or a spouse...

**Mrs FINOCCHIARO:** By a person mentioned in subsection (1)(b)?

**Ms GAMBLE:** It is omitting under subsection (1)(b) the request by a person...

**Mrs FINOCCHIARO:** The reason I ask, to give it some context, is I think one or a couple of the submitters raised the issue of it is one thing for police to ask the person 'would you like legal representation' it is another thing to have that positive obligation to arrange for legal representation.

I was wondering where the bill landed and if it was, in effect, 'police shall when requested', then police have the obligation to ask and when the person says no, they have no obligation to provide that? Would that be correct?

**Ms GAMBLE:** Could I clarify what you are referring to is the amendments in the *Youth Justice Act* rather than the *Police Administration Act*?

**Mrs FINOCCHIARO:** Yes.

**Ms GAMBLE:** That is what I am looking for, multiple pieces of legislation.

**Mrs FINOCCHIARO:** I thought I would provide my context because perhaps we are not talking about exactly the same thing.

**Ms GAMBLE:** To be clear, I am going close off the point raised about the *Police Administration Act* so I can get that out of the way. The way that the provision will read is that 'a member of the police force when requested to do so, will provide the information to a legal service provider'. The next subsection says: that a disclosure requested by a person mentioned shall only be made by consent'. Essentially it reverses the requirement that consent is necessary. That is a very slight amendment to the *Police Administration Act* to enable the provision of that information when someone comes into custody.

If you separately look at the way that then a young person is interviewed, we move to section 18 of the *Youth Justice Act* which talks about...

**Ms NELSON:** Would there be an exception to the way this is applied to youth?

**Ms GAMBLE:** That is what the amendment does to the *Police Administration Act*.

**Mr PAECH:** A young person would therefore then be notified rather than 'would you like' it would be...

**Mrs FINOCCHIARO:** I think that is what you are about to read.

**Ms GAMBLE:** That is the notification of the person coming into custody. There is then a separate requirement before a police officer commences the actual interviewing of a young person about what an officer must do before interviewing the youth and that is when the police officer is now obliged, through this provision, to inform the young person of their ability to contact a legal service provider for assistance.

I understand there has been evidence raised in submissions, and today, discussing the requirement that police should not proceed with the interview until that legal advice is provided. This relates to a matter of practicality and that police, not proceeding with an interview where a young person may decline legal advice or that legal advice may not necessarily be available, they are informing that young person of their rights and they cannot proceed through subsection (1)(b) if the youth then says I do not want to speak to you, police are obliged not to continue with the interview. If they exercise their right to silence they cannot proceed.

**Madam CHAIR:** Can I clarify that a child at the start might say no, I do not want to speak without legal representation or an adult or guardian, what if 4 hours the first approval comes through for an extension in custody and by the seventh hour they are just over it. I will tell you whatever I want. Can they change their mind without going through that entire process again, we did hear a lot about the terminology was breakdown ...

**Ms NELSON:** Coercion.

**Madam CHAIR:** ... and we heard from Ms Kepert from the Legal Aid Commission saying what has been good practise in some instances is where police have asked a youth, they have said no I do not require legal advice or representation, but then police have notified Legal Aid Commission and they have turned up and done the risk assessments—risk of suicide and all those things we need to ensure are looked after to minimise that trauma. I am guessing, if a young person says no at the start and then they say yes later, is there a provision for that in the act?

**Ms GAMBLE:** There is no express provision to enable that or to prevent that from occurring. It works in conjunction with what is happening in practise through the new custody notification scheme. That has a legal component to it, but also a massive operational component as well.

My understanding is NAAJA and the police are working through the operationalisation that this provision helps to enable, including social supports with staff on call who will be receiving the custody notifications. It is not the comprehensive legal framework for it, but it is a starting point.

If a young person is in custody, the legal service has the ability to make themselves available to the young person. It shares the responsibility of that support for a young person as well.

**Mr DAVIES:** I might get Brent Warren, General Manager Youth Justice, to explain this in practical terms around how it would work.

**Mr WARREN:** I think a practical scenario, you suggested that a young person initially says that they do not wish to speak to police until they have had legal advice and then a period of time goes by and they purport to change their mind. In practical terms, if the police went ahead and conducted that interview, there is an obligation on them to actually step out the fact that the child had changed their mind and they would have to demonstrate what it was that changed the child's mind.

I would suggest that if it was the duration of time, if they had been in custody for a long period, which would be a factor that mitigated against that being an admissible interview later on. They are potentially exposing themselves to challenge.

**Madam CHAIR:** The scenario I am thinking about is a 15-year-old who is quite young—unless there is a mental health or cognitive assessment, if that person is not of sound mind or judgment or incapable of making that decision to proceed without having a legal guardian or access to a lawyer. I am worried about them being left on their own in the custody process.

**Mr WARREN:** I think the other component to this outside the legal advice, is to recognise that young people have to have a responsible adult with them. If a young person, 15 years was to be interviewed, they could not be interviewed unless they had a responsible adult, be that a parent, relative or at worse case it could be someone from the Register of Appropriate Support Persons or it could potentially be a Territory Families staff Member. There would always be an adult, in an impartial position, to help protect their rights.

**Mr PAECH:** Does that not raise concerns, given you can have what you deem as a responsible adult but given the makeup of the Northern Territory, being largely indigenous, there could be language challenges where the young person might not have any idea of what the responsible adult is communicating?

**Mr WARREN:** In operational terms, it is absolutely incumbent on the investigating officers to make an assessment on the young person's language skills and a key piece of pre-interview work that has to be done every time. It keeps the interviews consistent with what is called the Anunga Rules with what police can do when they speak to a person in an interview setting is to check on their language capability. There is an obligation for police when they are dealing with a young person who is demonstrating that they do not have English to look for an interpreter.

**Mrs FINOCCHIARO:** I want to go back to our original conversation around the four hours, but I do have to mention, Mr Davies, in your opening I think you said something along the lines of this bill was introduced in a draft form in to the parliament.

It is really important we are very careful around our language in that respect. When a bill is introduced in to the parliament it is not a draft. That is the intended piece of legislation by the government of the day and whether or not that gets amended along the way or changed or in fact even withdrawn from parliament that is part of the process. Bills can be amended even in committee stage, but for the public record it is important to acknowledge that what is before us is not in fact a draft. If that was what government intended they would have published it as an exposure and we would not at this point in the game.

I just wanted to make that point, thank you.

**Mr DAVIES:** Thank you for that, Member for Spillett.

**Mrs FINOCCHIARO:** Mr Warren, I know we have moved on but would like to come back to the four hours.

What type of situation would police need to continue to detain a young person for more than four hours without charging or bailing them?

**Mr WARREN:** Section 137 and 138 of the *Police Administration Act* set out an exhaustive list of reasons for why police might need to detain someone before charge. A couple of examples might be that a young person is tired and needs to rest. It might be that there is a requirement to travel from one place to another. It might be a requirement to undertake forensic sampling and the other common example is time taken for the appropriate investigating officers to arrive to take carriage. If you can appreciate in a remote setting in particular, there is often a need for detectives to come from an urban centre.

**Mrs FINOCCHIARO:** Member for Namatjira, when we started this conversation you mentioned something about what happens when that young person is in the care and protection of the CE or the minister and I think Mr Warren said often these situations arise at those unsocial hours, it might be one o'clock in the morning or three o'clock in the morning or something like that.

What happens in that situation if a child under the care and protection of the minister is taken to the watch house outside of business hours—put it that way—who and how is that support person arranged?

**Mr DAVIES:** We have officers on call and I can attest to the fact that on the weekend we are constantly engaging with families and constantly working with children who are at risk. Notifications late at night we always respond to those.

**Mrs FINOCCHIARO:** That would not be a factor holding up the four hours? Territory Families could provide that support within a reasonable timeframe?

**Mr DAVIES:** No. We move very quickly to be there.

**Mrs FINOCCHIARO:** Thank you. That is what I wanted to clarify.

**Madam CHAIR:** Does the committee have any further questions?

**Mrs FINOCCHIARO:** Yes.

In terms of measuring recidivism I really feel like this is something very important because we all know that repeat offending, or certainly at least anecdotally, repeat offending is high and we have heard that today from various stakeholders. That is just not my view.

How are we capturing that information to know whether or not measures that the department is putting in place are actually having a positive impact or whether or not they may need to be tweaked or enhanced or better resources or changed for something else?

I think in your opening, Mr Davies, you said there were 238 victim conference or a number similar to that which is quite large. When we heard from Jesuit Social Services today, I think they said they had 75. Is the difference in the number because different organisations are also providing that service?

**Mr DAVIES:** That is correct, Member for Spillett.

**Mrs FINOCCHIARO:** When I asked Jesuit about recidivism they are not in a position to capture that data at this present time. Does Territory Families capture data at its end around how many times a young person is being put in to various diversion including the victim conferencing?

**Mr DAVIES:** I will have a start and then I will hand to Brent. It has been a real challenge for us just joining up our data sets with AGD, with police and we are doing a lot of work around a project to get more accurate data here.

In terms of the young people that reoffend repeatedly 80% of young people commit one offence and do their diversion, do their programs and move on and do not reoffend. For those young people, and we get down to the 15% to the 20% of young people who have repeated offences tracking them and keeping a line of sight to what is going on, particularly in terms of offences they are committing and the number of times they have reoffended and whether or not the case management process we are putting around them is working, is mission critical to us.

Brent had a meeting just before we were coming up around our data sets because we need to have an evidence base to what we are doing. We are seeing some fantastic early signs that a lot of what we are doing is making a huge difference but we need to make sure we have the systems to report in a very timely way around this matter, and it is a complex process.

Brent, I will hand over to you to explain where we are up to.

**Mr WARREN:** Thank you. Just to build on what the CEO was referencing there, we are able to, through laborious manual means mostly capture data about effectiveness and some of that is captured through our agency directly and some of it is captured through the work of police.

To give you a couple of examples of effectiveness—the police in the last financial year were able to identify that of the group of young people that were offered victim offender conferencing and participated they had about an 80% success rate where young people were not reoffending afterwards.

**Mrs FINOCCHIARO:** Is that for all victim conferencing—the 238 figure for all the different agencies providing the service?

**Mr WARREN:** It is the amalgamation that is correct, yes. We recognise that we need to do a bit more of connecting the systems together as well as that backend data work that is going on at the front end. We have been working on embedding our staff in the police system and the police staff in our system. We now have a number of officers from Territory Families who work in the police environment to make sure that our data sets are getting merged together and we have just this week started trialling having an officer from the Youth Diversion Unit with police co-located with our staff in Darwin Plaza. That is already giving us positive feedback about the data sets we are using and how to interpret it correctly.

**Mr DAVIES:** That is designed to speed up the process that we currently respond to young people around to get in early. Also to make sure that there is follow up around work with victims and dealing with the consequences of their behaviour.

The other thing, if I can just say, is that government has committed \$65m to a case management system that Territory Families is putting together and that is a four or five year project, joining that up with health data around mental health services and all the services that young people access along with the police data sets is a critical process and will be a great outcome in terms of analytics for us to make sure that the policy interventions that we are applying are actually working and where we need to change them. We will be able to get some early heads up around what is not working. There is a lot going on in this space and we are getting better at being able to tell the story.

**Mrs FINOCCHIARO:** I have asked a few times today about diversion. When Territorians talk to me they always ask what is this diversion? What does it look like, what does that mean when someone is diverted and how do you know if that works and if they complete it? There is a lot of questions around. I feel like that is how people perceive diversion—what is this thing?

By and large it seems difficult to explain. Victim offender conferencing is one form of diversion and of the uptake that you have on the numbers you have at the moment it seems very effective that 80% are not reoffending once going through that form of diversion. What are the other forms of structured diversion that you are measuring? If that is only one and you are measuring that one, fine, but if there are a myriad of others, how are you then capturing that information?

**Mr WARREN:** To give a bit more context about the things that make up the diversion system, Territory Families was created through the machinery of government change to make sure that we were focusing on young kids before they enter the system, as well as being able to track them through and work with their families once they ended their youth justice system.

At the very front end of our diversion system at the moment, we are actually targeting kids from regional areas who have not actually entered the youth justice system or are not currently in trouble with the police, so to speak, but are at risk because they might have attendance issues with school or they might be starting to be in public places when they should not be.

We have been working with partners to collect groups of those kids and send them away to things like Operation Flinders Boot Camp, which is run interstate. That is a process where we identify a group, we work with them in advance, assign case managers, send them away on their seven to ten day trip where they do a long hike and undertake a range of counselling. Then they come back and they have aftercare as well. What we have found in that setting is that we are having about an 80% success rate with kids completing the camp, doing the through-care and not reoffending. Possibly, more importantly, we are seeing good examples of those kinds of kids re-engaging in school as well, which is a real key correlate for success later on in life.

In terms of the kids that have reached the youth justice system, the necessary first step is always that the police have had an interaction with the young person who has committed a crime. That is the gateway into the youth justice system. We are always really conscious that we are taking referrals from police or the courts, because they are the two bodies where it is appropriate for them to make those decisions.

The police have got a discretionary framework around deciding whether a young person they have arrested should be considered for diversion and if they are, then they refer them across to our providers. We have 10 providers across the Territory who manage those referrals coming in.

They do things including assessing the young person and their family, case managing the young person, getting them to a restorative justice conference, getting them potentially doing things like community work or restorative work with the victim, getting them to participate in some kind of education program or some other kind of support program to get them back on track again.

For a young person to be considered to have succeeded with diversion, they need to adhere to the case plan and do the work that has been set out for them. Some of that work might be things like attending the conference, sometimes kids will be asked to make a written apology to a victim and not achieving those things could be an indicator that they have failed.

If a kid fails diversion, it is not the end, it is the start of the next step, which is then being referred back to court for a judge to make a decision about what next.

The last thing I was going to say in what we have been calling diversion pathways, is pathways away from detention. Kids who are in that court system, who might have failed diversion or were not considered eligible, are being case managed if they are on bail, they might be assigned to supported bail accommodation, which has got extra layers of control and support around it. We are using tools like electronic monitoring to make sure that kids are complying and non-compliance gets those kids back in front of court again.

**Mrs FINOCCHIARO:** Thank you. Once a youth has had that first police interaction and if the police determine that they are eligible for diversion, they are referred to one of the 10 providers, whatever is decided, whether it is just counselling or counselling plus something else, three or five things, whatever combo might be decided, a case plan is developed every time?

**Mr WARREN:** Correct.

**Mrs FINOCCHIARO:** Who then reviews that case plan to work out if the child is or is not actually attending or doing what was intended in the first place?

**Mr WARREN:** For kids who have been referred straight to our providers from police, the case manager at the provider is charged with assessing success. They then provide their report back to police.

**Mrs FINOCCHIARO:** Is it up to police to decide whether that was an adequate level of compliance?

**Mr WARREN:** Why we are joining up a little bit better is to make sure that police are properly connected with the case managers, if there is a disagreement about an outcome, it can be hashed out. As a rule, the case managers are providing a completion report back to police and they need that information in order to manage their records as well and to track things like the success rate of diversion and the criminal history of a young person.

**Mr DAVIES:** The other thing we are doing is engaging. We have people on the ground now who are talking with police about what the conditions of bail or the diversion could look like. What things are reasonable to apply to a youth or a child as against what is a condition that they will never be able to meet?

There was an example recently in a regional centre where the police were going to refer a young lad, who had not been to school for years, to require him to attend five days a week, every day of the week, at school. There was an alternative plan put in place to manage him going to some alternative education processes rather than making that a specific requirement, which he would not have been able to meet.

There is interaction going on in that regard. We would love to be able to get in early, particularly around consequences, where young people have offended and they need to do clean-ups around where the offence may have occurred and that sort of thing. That is why we think putting our youth diversion team with the police staff who are engaged in the youth processes, will be able to respond much more effectively and appropriately around that.

It is really important that we cannot direct young people out to do something, there has to be a legislative framework and the right care around that. Making sure all of those processes are in place, but doing it quickly, is certainly a specification and a requirement we are hearing loud and clear.

We need to join up, because consequences for young people need to happen sooner rather than much, much later, post the event, which sometimes occurs when there are court cases that take quite a while to be actioned and heard.

**Ms NELSON:** Expanding on that, what support systems have we got in place for the families of that child? To get the 15-year-old to school, what are we doing to support the family to help him or support him?

**Mr DAVIES:** The issue is that our youth outreach officers always take into account the broader family context so they are, when they are interacting with the young people. That is the environment they in, connecting with their friends and families. That is part of the process, when they are out and interacting it is not just a one-on-one conversation with the young person, it is very much about their networks and their family. We want families to step up, to be supported to help work with these young people. They are part of the solution in the longer term. We recognise that. Do you want to add to that Brent?

**Mr WARREN:** To build on that, every young person who is going through a diversion process specifically will have a case manager through one of our diversion providers who has also a key role in connecting with the young person and their family.

The other thing I wanted to bring to the committee's attention is that in terms of those really challenging kids who might have a rough family situation, we do have more detailed scrutiny around families through what we call a crossover families framework.

We have committees that meet in the Top End and Central Australia examining kids from families who are having entrenched issues because of things to do with the parents situation, potential poverty and domestic violence in the home setting. Through that process we are able to allocate extra case management resources and support through some of our other funded providers for example Anglicare, through the intensive youth support service. There are a range of ways we can make sure that those kids and the family are getting support to re-engage.

**Mrs FINOCCHIARO:** Closing off on diversion, a case plan is developed, diversion takes place and a case manager from the NGO provides a report back to police. Is it the police keeping data on recidivism?

**Mr WARREN:** The police maintain the database which identifies when a kid comes back to notice again for committing another a crime. They are the first point of contact. We are working with the providers around getting better cross-checking on their lists of kids who they are working with. That is one reason why we brought the police into our diversion team, so we can start doing after-the-point checks to make sure we are monitoring recidivism in a really detailed way and this is going to connect back in to some of that data warehouse work that we spoke about earlier where at a systems level we will be able to start checking that in more detail as well.

**Mrs FINOCCHIARO:** Then when the before at risk diversion—kids not interfacing with the justice system—there is Operation Flinders—that is the only diversion available?

**Mr WARREN:** No, it is not. Those kids in the first instance will be connected in through the Youth Outreach Re-Engagement teams.

**Mrs FINOCCHIARO:** That is the YOREOs?

**Mr WARREN:** Yes. They would be working with those kids in what we call a voluntary sense so they are not subject to a court order or anything like that yet, but we can see they are at risk and they need a hand. Somewhere between 30% and 50% of our case load depending on the office, can be kids who are in that voluntary space who are being supported by our teams. That support is more than just our team. It is often us connecting in with another provider.

This is where the intersect between—or the value in amalgamating Territory Families and bringing the child protection of family support side of the agency in to the mix as well. Often kids who are in, particularly that sort of eight to 10, 12 year point in their life, if they are having trouble it is often because there is also some kind of family support need in the background.

It would sometimes be what we call a strengthening families case being run through the child protection support arm of the agency that would actually take the lead in that with support from the youth justice team.

**Mrs FINOCCHIARO:** How many Operation Flinders camps have happened?

**Mr WARREN:** I might just need to check the data for a second.

**Mr DAVIES:** Going to that question that the Member for Katherine asked, the young people cannot go away on those camps without the support of their families. They absolutely know what is going on and they are required to make sure that they are in there and standing behind those young people.

**Mrs LAMBLEY:** Does that mean children that are in out-of-home care do not go on those trips?

**Mr DAVIES:** No, it does not mean that. They definitely will go. We always, whenever we are interacting with even when they are in the care of the chief executive, we still maintain contact with parents. When we are sending them interstate or indeed young people travelling overseas with foster carers we always make efforts to keep parents informed. Always.

**Mrs LAMBLEY:** Is it possible for us to have a list of the 10 diversion providers? That would be great. Just out of interest.

**Mr WARREN:** Yes, absolutely.

**Mrs LAMBLEY:** I am just wondering about the four proposed amendments that we were sent through yesterday morning. These amendments do not appear to have gone through the Legislative Amendment Advisory Committee because we have had some feedback today from some of those members saying that they do not agree with them.

How have they come about? Is this directly from government?

**Mr DAVIES:** I will start the response, Member for Araluen, then go to Seranie and Luke who have been on the forefront of dealing with all of this.

In our advice back we talked about consideration for amendment. Clearly, the agency cannot amend this bill. The point Member for Spillett made is correct, so it is the government. These are suggestions and I think we said we are currently considering—when I say we are currently considering, there are issues that we will be raising with ministers and with the government and with Cabinet around suggestions around possibly what needs to be amended.

**Mrs LAMBLEY:** These proposals have not gone through government yet? They have come directly from the agency?

**Mr DAVIES:** No. Absolutely, these are directly from the agency. These are based on both legal advice we got and feedback we have had obviously in the early phases. We are awaiting feedback from yourselves and then we will provide a further advice to government around amendments that we think they may need to consider.

**Mrs LAMBLEY:** The feedback that we have been given today—and I am sure you have been listening, some has not been particularly favourable—are these amendments going to go back to the Legislative Amendment Advisory Council?

**Mr TWYFORD:** Through the Chair and Member for Araluen, we had an out-of-session LAC meeting yesterday to inform members that we had made this submission to you as a scrutiny committee. We wanted to make sure they were forewarned about what we would be presenting to you and to give them an indication that you may then ask them questions about these four matters. It was essentially to put them on notice through a special LAC meeting yesterday. We have a meeting scheduled within the next fortnight, where we will work through, in greater detail, both the outcomes of the discussions today, any potential public commentary or other publicity that the debates today will produce. In that LAC meeting we will then work through in greater detail their input and seek their input into crystallising whether these issues that we have flagged are 'live' issues and what the solutions might be.

It is certainly an attempt and an intention to be transparent about this. To keep them informed and a part of the design of this bill as it goes through your process and goes before the House.

**Madam CHAIR:** Following on from that, could you please clarify, and I might have missed it, 'arrest as last resort'. Are you looking at amending that?

**Mr DAVIES:** We might do that from a legislative framework but also from an operational lens as well, if that is okay. Let us do the legislation first.

**Mrs LAMBLEY:** Could I go back a little? You are saying this has not gone through government at all—this has come directly from the agency, government is not aware of this. We can only really scrutinise bills which are handed to us. If these are just ideas from the agency, this is a slight deviation.

**Mr DAVIES:** I think this goes to the transparency issue. We had the previous legislation, the previous amendments that went through in a very fast process. We did not want to have surprises. We have flagged and had discussions with our minister around some of the prospective issues we are seeing come up. She was anxious to make sure that we are briefed as we went along. That was the context for here.

Certainly, at a government level, the minister knows the sort of feedback we have had and saw the response we were planning to send to the committee.

**Mrs LAMBLEY:** The minister has approved you doing this today? You have come here with the support of the minister, essentially?

**Mr DAVIES:** The minister absolutely understands and knows what we are doing.

**Ms GAMBLE:** I will explain the technical issues with this provision. Currently arrest is an ‘action of last resort’, a principle that stems from the power of arrest under the *Police Administration Act* in relation to all people. There is a general order on the way that that power works around ‘arrest as a last resort’.

What the bill currently seeks to do, is enshrine that principle in legislation. The legislation that it seeks to do that is in the *Youth Justice Act*. The way that it sought to do that, is by amending current section 16 which relates to guidelines in relation to arrest.

What has happened is the current section 16 in the *Youth Justice Act*, enables the Police Commissioner to develop guidelines and standing orders in relation to arrest for young people. However, there is no specific youth guidelines or standing orders in relation to arresting young people, there is the general standing order.

We have conflated what is in policy into legislation, but only as it applies to young people, which has led to an operational issue around how this plays out in practise. It also has to be read in line with section 4 of the *Youth Justice Act*, which is an overarching principle about young people being in custody as a measure of last resort and has led to some uncertainty around arrest and placed into custodial facility as an action of last resort. Or any kind of arrest, a constructive arrest or other arrest where a police officer is apprehending a young person in the field and how that actually translates on the ground.

**Mr DAVIES:** Can we ask Brent to explain how this works practically?

**Mr WARREN:** A couple of examples of where there might have been some confusion from some quarters is in relation to police doing their first response, their first intervention out in the field. In the community, they might be called to an incident, or they might happen across an incident occurring, they need to step in and intervene and use their powers, in some cases, to make people safe, whilst they figure out what has been occurring and what to do next.

In an extreme case that might mean that they actually have to intervene in violence that is actually happening in front of them and that would mean that they have to use their powers to actually put hands on people and stop and detain them on the side of the road whilst they establish what to do next. That means that they are arresting someone on the side of the road.

What we wanted to do is make sure that there was a distinction between what police do tactically when they go out and keep people safe in the community and deal with incidents that are in front of them versus the investigative process and the custody processes that they apply for kids who might go in to a watch house setting.

**Madam CHAIR:** Okay. That goes a lot towards what we have heard today about the importance of being very clear about the legislation and the benefits and the impact on Territorians.

I am going to go a bit off tangent while we have time and just ask about the planned way forward to bring the Territory along in the education process of what this legislation is, how the youth justice reform has been going because a lot of the witnesses we heard today were very apprehensive about the removing of arrest as last resort.

**Mr TWYFORD:** I might have to have the question re-clarified.

**Madam CHAIR:** The engagement and the communication with Territorians. It was great to get that explanation. How do we make sure that other Territorians who are not watching today who are not across all of the bill—we heard from the Darwin Press Club this morning about the media reporting—how do we make sure Territorians understand exactly what this bill is about and how these provisions will work in a practical sense?

**Mr TWYFORD:** In essence, part of the answer is through the transparency we demonstrated yesterday by flagging this with you and with the LAC members calling them together to put on the table that there were these four issues that was requiring some re-clarification before it was debated and passed in the House, and working then with partner agencies. Our police force is very keen for Seranie and other members of our department to conduct road shows with the frontline officers.

Whilst there has been a very strong partnership and engagement senior officer to senior office around this bill it is recognised that as it comes time to pass this legislation or debate this legislation and have it passed, we will need to do more with frontline officers, both within our department and other departments to ensure that they understand not only the impact of the changes that are being proposed but the rationale and what it actually means at an operational level.

A lot of the discussion that I was able to listen to today through your hearing was around the construct of legislation and a couple of speakers made a very good point around the communication needing to be about the pragmatic change that will happen on the ground. How will this be different for a worker? How will this be different for a child and a family? That is some of the communication we intend to do. We propose that if this bill was to pass parliament there would be a six month implementation process recognising that that change management is critical to the success of implementing this legislation but also to the community support.

For this change, one of the great challenges is conducting a change management process before legislation passes. Having surety about what we are communicating that the change is. We are working at the senior officer level having those conversations, developing in very initial stages the training, the manuals and the procedures that might flow out if this bill passes, but it would be at the next stage where it passes but is yet to take effect where there would need to be concerted effort to roll it out to those frontline workers.

**Ms NELSON:** I would suggest six months would be really optimistic. It would be six months from the day that the legislation is passed, I am assuming, for that change management process and putting it all in to practice. That is a lot of agencies that we are trying and get that across and try and get everyone on the same page. It is a huge amount of work.

**Mr TWYFORD:** If I could briefly respond to that concern. In part, many of these changes are part of the current system. It is a reforming bill but as we say arrest as the last resort is an existing general order. This bill proposed to make it part of the law and we do need to unpack how that proceeds in to the future, but it is part of the current system.

The communication change management for that as an example is not a significant six month change management journey. Things like improving diversion decision-making, improving the application of bail processed and powers that are already established people are making those decisions today. It is about taking them through a training a communications exercise to highlight the component parts that have changed but fundamentally and overall a diversion decision will be a diversion decision and bail process will be a bail process. We are confident that six months would be a sufficient amount of time to do a change process and to communicate to the frontline workers.

**Mr DAVIES:** The issue for us is that this is a very complex process. We are intending to move to a one act and this is a step in the road. In practical terms in our interactions with police and ourselves the last thing we wanted was to have people who are operationally out there on the ground confused about how to apply the legislation.

We definitely do not want police driving past young people at night and saying we cannot do anything about that that is Territory Families. It has to be about the partnership. It is very complex. There is a lot of reforms going on here and we are building a new system that is more robust, it has better data behind it, we have a better handle on the youth justice system, particularly internally in the youth justice centres now.

We are building a new system and, Member for Katherine, the issue for us is how long do you wait? We have these reforms going on and we need to have the enabling environment that sits over these to allow us to share information to ensure the cooperation with police. We have to do better contract management around our providers, those people who are running the youth diversion programs. We need to be working with them to make sure they are delivering the numbers, delivering the conferences that they said they were going to do. It is a real partnership here.

The Back on Track program when that gets announced will roll out a further sit of infrastructure and programs to keep young people out of the youth justice system or if they are in it to get them back on track. We are going to have a youth work camp in Tennant Creek that will be established. There is a lot

of things that are going on here. We will have remote settings where we can refer young people to. We are working with a shire in the central southern region to run camps for us in the similar vein to the Flinders camp.

There is a lot going on here and we need to have the right legislative framework. We have to make sure for the people who are on the frontline operationally they are very clear about how they can and cannot interact with young people and for young people they have to understand that the rules are very clear as well. It is about clarity for young people too in terms of their engagement within the system.

**Mr PAECH:** Ken, building on from that, I appreciate you have already answered half of the question. Change is good and I am supportive of the direction which we are trying to head in. One of the recommendations of the Royal Commission and around diversion was looking at organisations that provide it.

In the Royal Commission there was a huge emphasis on Aboriginal organisations being those organisations to do that. It is a two part question. One is, what is the agency of Territory Families doing to grow the capacity of Aboriginal organisations in the youth diversion space?

Two, how do you evaluate and determine whether or not something is successful or has been successful, and if not other than cutting funding what is the retribution for not complying with what they originally said?

**Mr DAVIES:** There are a range of questions in there, Member for Namatjira, but in a nutshell, engagement with Aboriginal organisations is absolutely what we are doing.

Some of them are not necessarily great big Aboriginal organisations either. We are talking at the moment to a family that runs a station who is wanting to run some support accommodation and get young people out on to country and working on a station in a very remote location that we are getting in to help them with around setting up some infrastructure and providing some program support.

It is not just organisations. It is a family context as well. We are working with the Anindilyakwa out on Groote Eylandt, the (inaudible) have indicated an interest in providing some youth diversion work as well. In a regional context and in a remote context there is a lot of interest in this area.

We have a proposal at the moment that we are considering and looking at from ALPA around working with youth in East Arnhem Land. There is a lot in this space. Then there are the bigger organisations and there is a procurement process going on at the moment. I cannot talk too much about it, but I can say actively there are Aboriginal organisations that are partnering with mainstream organisations to look at programs that are about supporting and keeping young people on track. Thankfully, some of these programs, as well as having a focus around emotional wellbeing and connection with family, are really talking about training and employment outcomes as an underpinning as well.

We are going to have a lot of options around being able to refer people into diversion programs which work, which have interactions with victims, if that is necessary, with consequences as well as providing support. The challenge for us is making sure the system we create we can report on and make sure we are keeping track of all the obligations we have in the system. They are still young people and they need to be dealt with in a set of rules which make sure they are safe. That is where we are heading to and the system with this new legislation will continue to improve.

**Madam CHAIR:** Thank you. I would like to go off a bit tangent here. In regard to the department's response to the committee's written questions. Could you give an explanation about recommendations 1 and 2?

**Mr TWYFORD:** I will respond and Seranie can add or correct me.

In relation to the presumption in favour of bail, it is important to note that this bill proposed to introduce a presumption in favour of bail for young people, but that presumption was the starting point for a decision-maker. Following the arrival at the presumption, that it was or what not in favour of bail, the decision-maker still had to take into account current section 24 of the *Bail Act* and propose new section

24A of the *Bail Act* which is the youth-specific considerations to be taken into account as to whether or not a young person should be granted bail.

In defining the presumption, the use of the word 'and' was to say that the young person would receive the presumption unless they committed a prescribed offence 'and' were a risk to the community. The flow-on effect was then to take into account the 24A and 24 considerations, which quite clearly say regardless of the offence, if the young person does present a serious risk to the community, you should not receive bail.

In essence, the use of the word 'and' was creating some unnecessary angst within the community in relation to the fact that people who were a serious risk might receive bail, when quite clearly the 24 and 24A considerations would suggest they were not.

It became a slightly circular argument, acknowledging that a presumption is the starting point and not the end point of a decision. In the interests of clarity and to remove that angst, the use of the word 'or' creates that greater clarity without changing the fact that there is a presumption as a starting point and that a person who is a serious risk to the community, more likely than not and in the discretion of the authorised officer or the court, would not receive bail.

**Ms GAMBLE:** If I could add a little bit more context to the background and history of developing the amendments to bail.

As you are well aware, the *Bail Act* is legislation under the portfolio of the Attorney-General's Department and Territory Families has been working closely with that department for a long time prior to the finalisation of the report into the Royal Commission. This has been something long considered.

Actually, going to the wording of the recommendations from the Royal Commission around how we do improve bail, we have looked at what that said and tried to deliver on the intent and direction of that. If you look at the recommendation wording, 25.19 of the Royal Commission, it actually uses the word 'or' rather than 'and'. These terms have been long considered and debated and what we are trying to land on is the best way to achieve the intent of these recommendations.

**Madam CHAIR:** I have one more question and it came through clearly from Marty Aust. Why were all these recommendations from the Royal Commission not introduced as stated? I think the term was watering down.

**Mr DAVIES:** I will start and my colleagues may want to contribute. This is a system that we are developing and growing. With the set of amendments that have gone through, it has been about lessons learnt and also dealing with the Royal Commission recommendations in a way that is structured and planned. The adoption of all the recommendations immediately of the Royal Commission would have some unintended consequences on our system. That is a fact.

We are still growing the services to get young people back on track. We are still working with police around our partnerships with the youth outreach teams. We are still working with our NGO providers to grow their capacity.

Going to the Member for Namatjira's contribution, we absolutely need Aboriginal organisations in there, walking with us, helping, contributing and taking responsibility for some of these young people. We need to work with families to give them the capacity to support these young people in a more robust way.

It is a developing system and to take on all those changes and recommendations in one hit would have meant that the system just could not have delivered on the expectations of the Royal Commission. It would have, I think, placed the whole reform process at risk. In fact it may have alienated the community in the process.

**Mrs LAMBLEY:** The fourth proposed amendment that came through to us yesterday, could you explain that? Is it about allowing a reporter to attend closed courts? Is this a complete backflip to what was originally proposed or am I reading it wrong?

**Mr TWYFORD:** I would not categorise it as a backflip. The bill as proposed seeks to make two amendments. One would be to close the court, except for the people listed within the bill and anyone

else a judge might authorise to be in the room on that day. It was reversing it from an open court, where anyone could attend and the judge could currently ask someone to leave to be the opposite, a closed court except for those individuals listed in the bill or those with explicit approval of the judge.

The second part is around protecting the identity of offenders, or the privacy I should say of offenders, through both the publication and dissemination of information ahead of and in regard to their appearance at court.

We based those provisions in the current bill on the Victorian and South Australian legislation. Again, we reflected on what the Royal Commission presented and the recommendations it made and took into account our own jurisdictional circumstances and looked across the country at how other jurisdictions were managing this. In basing it upon Victoria, the question that your committee put to us around the recent developments in Victoria to move to an open court foreshadowed to us that in relying on a Victorian provision, within this bill, that was no longer in place and in fact had been repealed a month ago, required us to come back and, as we informed you, reconsider our current position.

In amongst that, there was quite clear commentary from the press council, the Information Commissioner and others around finding the correct balance between having a closed court which recognises the importance of those private conversations and the fact that, that empowers behaviour change and appropriate sentencing and consequences for the young person, but not taking away a transparency or an accountability of the court and the judicial system.

For that reason, balancing those two, we have flagged with you that we come back and look at whether a reporter is explicitly listed in the act or the bill as someone who would not need the judge's approval on the day and could attend, noting that the judge would maintain discretion to ask any party to leave.

**Mrs LAMBLEY:** That is just one, as in a reporter?

**Mr TWYFORD:** Anyone who identifies as a reporter, would fit within that category. There is no proposal from us that there would be a quantum attached to that. You have heard testimony today around what form of words to use, whether it is a reporter, a member of the media and we are currently looking across the other jurisdictions as to the form of words they use. There is no clear single use of the word. A lot of jurisdictions are using words differently so that is one of the things we will be asking the LAC to look at, at our next meeting.

**Mr PAECH:** That would then insinuate that a blogger would be allowed to be there because they are essentially seen as a media person.

**Mr TWYFORD:** That is why we need to consider it and we have not presented a solution to you. It is something we need to think about.

**Mrs FINOCCHIARO:** I want to make more of a statement than anything else. It is important when developing legislation that agencies have that inter-agency co-ordination and discussion around how things work and perhaps the department coming back with this proposed change to use section 16 of the *Youth Justice Act*, as an example, you would hope if you had your time again something like that could have been nipped out a lot earlier in the piece rather than down the track. It is good through that through this process we are able to at the very least pick up on it and have a look at it going forward.

**Mr TWYFORD:** If I could very briefly add to that. This is a complex bill. It is reforming three different pieces of legislation owned by three different departments. It is unusual in that respect and your points are taken on Board.

**Mrs LAMBLEY:** The confusion for me is that that is almost a policy change rather than an amendment to the words. That would normally come from the government rather than the agency, I would have thought, a departure of that significance.

Was it not a recommendation of the Royal Commission that the courts be closed with virtually no reporting? To hear that it has come from the agency rather than the minister is interesting.

**Mr DAVIES:** The context here is that all of the other jurisdictions have grappled with this issue and it is featured in other acts. Clearly, they have found some challenges here as well in terms of transparency and making sure that the judiciary and the decisions it makes around young people can be reported if it is necessary.

The role for the agency is to prepare advice and give advice to the minister. What we have done here is put together some advice based on the feedback we have had. When it came up and when we initially put it in we assumed that that it was not something that we flagged as necessarily being a controversial item. It clearly became pretty controversial very quickly. We have had to re-look at it and part of our job is to provide advice to government so that is what we are doing.

**Mrs LAMBLEY:** It is, however, our job is to scrutinise the legislation. Your advice needs to go to the minister and the minister needs to come back and tell us what—that would be my understanding of the process.

**Ms NELSON:** Before we go. Two last things please. The restriction of publication now that we are talking about it. My concern with that is it is definitely in the line of with what the NT Legal Aid Commission has presented in their submission, and that is that they have encountered hurdles in getting access to information and that is why they are not particularly supportive of that part of the bill.

**Madam CHAIR:** Was that in regard to the court lists?

**Ms NELSON:** Yes, it is in regard to the court lists. They said in their submission that they acknowledge that it is part of one of the Royal Commission recommendations but that there have been some hurdles that they have encountered. Things like representing interpretation of section 308 of the that act, titled Confidential Information which is refusing to provide NT Legal Aid Commission other relevant legal services with un-redacted copies of daily court lists—that sort of thing.

That is where I am coming from. I understand both sides of the argument about having closed courts and the impact that those negative stories have on youth. I understand all of that but then I go back to the principle of an open court system. Embedding that in legislation ...

**Mr DAVIES:** These issues have been hot topics.

**Mr TWYFORD:** Absolutely. If you go back to Youth Justice Advisory Committee's annual reports over many years, decades even, you will find recommendations within that independent statutory body regarding the need to decrease the publication of youth justice proceedings and the outcomes of criminal matters for youths.

There are a couple of issues in amongst that. The bill seeks to restrict or prohibit the publication of court proceedings for youths. That is being linked to, but is separate from, how the court workings occur where the lawyers within the youth justice system are briefed and advised of what matters are before the court. We can separate those two things in an operational and administration of court process. We do not necessarily need to address that in the statute books.

The care and protection matters that have been raised, and the concerns drawn on to discuss this bill, are a known issue. They relate to whether the duty lawyer in the court on the day can be informed of the care and protection proceedings that are on that day, where there is no legal representation already aligned to that family, or whether it is the publication of the full list to all legal service providers who may be interested or able to show up to the courtroom.

It is about finding the balance between finding the whole publication of private matters within the courtroom versus informing only the selected responsible party of those family members who need representation. It is an operational matter, one we are alive to and want to address in both situations ...

**Ms NELSON:** It is an operation matter but we are embedding it in legislation, so I am concerned about that.

**Mr TWYFORD:** To correct that, the publication to the public of what is occurring in the child care and protection field is currently prohibited, and it is proposed to be prohibited in the youth justice field. That

is the intent and what we recommend. We have put that to government as the preferred model following Royal Commission and consultation.

The operational matter of which lawyers in the courtroom are informed of which matters are occurring in the courtroom is an operational matter that we can tease out.

**Ms NELSON:** We have heard from every submitter about the age of criminal responsibility, and that has been omitted from this—with the amendments you have presented, it is still omitted. I understand there is a piece of legislation that we are working on but ...

**Mr DAVIES:** That is correct, Member for Katherine. Again, it goes to the operational and support overloads we have regarding young people in the 10 to 12 age frame. It had not been included. There has been a lot of discussion on it but we do not think we are ready for that. This is advice from Territory Families and the police perspective—we need programs with an evidence base to support young people who are working. It is too early to make that step for the broader system at this stage.

The last thing I want is for groups of young children—eight, nine, 10 or 11 years of age—late at night, with police driving past and checking what they are doing—saying they are someone else's responsibility.

There is a lot of play operationally in the system. Whilst it is being delayed it will be looked at in a single act. We need more time to make that step. We would be the first jurisdiction in Australia that has done it. All other jurisdictions have the age set at 10. We cannot even check how other systems have managed in that space. We have a layer of complexity that means it is a bit step to take. We do not want any unintended consequences from doing that.

The number of kids who are incarcerated in that 10 to 12 age frame is low. We take this issue very seriously—keeping a good eye on those young people. It is a challenge.

**Ms NELSON:** It is a challenge. I appreciated the frankness of your response.

Kids are being driven past now. I do not want to be aggressive about it but that does not fly with me. I want to see a national campaign. We have been asking for this for years, and this is a perfect opportunity to do it. I understand the practical—I know you guys are in a difficult position, but ...

**Mr DAVIES:** We need the Back on Track program and those programs that are aimed at the eight- to 12-year-olds—we need the programs working and ready and to give public confidence that young people and families will be dealt with appropriately. They are not there yet. If we will not have that kind of legislative framework to enable that—we have to take the time to do it properly and have support mechanisms in place for the younger children.

It is a timing issue—it is not that it is off the agenda at all. It is a timing issue.

**Mrs FINOCCHIARO:** Did you say that in every other jurisdiction the criminal age of responsibility is 10?

**Mr DAVIES:** That is correct.

**Mrs FINOCCHIARO:** We would be an outlier?

**Mr DAVIES:** We are dealing with a Royal Commission and a set of recommendations. At the end of the day, the government makes the policy decisions around the Royal Commission recommendations. That is where it sits.

**Mrs FINOCCHIARO:** I just wanted to make sure I had that right in my mind.

**Mr DAVIES:** This is anecdotal, but I understand there is a broader discussion at COAG about raising the age of criminal responsibility. My personal view on this is that this is a national issue which needs to be looked at in that context. You need support programs that are properly articulated and evidence based. At the moment it is 10 in all jurisdictions.

**Madam CHAIR:** Thank you very much for appearing before the committee this afternoon. It has been a very informative hearing from all witnesses today. I take the opportunity to thank you again for all your hard work. The Royal Commission had 227 recommendations. We have heard from everyone and their testimony is that we have a broken system. I appreciate your efforts and look forward to deliberating further and giving our report to parliament.

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The committee concluded.

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