LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13th Assembly

SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Youth Justice and Related Legislation Amendment Bill 2019

11.00 am, Monday, 1 April 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:

Brent Warren: General Manager Youth Justice, Territory Families

Kelly Cooper: Senior Director Youth Justice Programs, 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

Territory Families

Madam CHAIR: Good morning 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 briefing on the Youth Justice and Related Legislation Amendment Bill 2019. I ask everyone to make sure that your phones are switched to silent. I also acknowledge my fellow committee members in attendance today: the Member for Spillett, Lia Finocchiaro; Sandra Nelson, the Member for Katherine; and Robyn Lambley, the Member for Araluen on the phone.

I welcome to the table to give evidence to the committee from the Territory Families: Brent Warren, General Manager Youth Justice; Kelly Cooper, Senior Director Youth Justice Programs; Seranie Gamble, Director Law Reform; and Luke Twyford, Executive Director Strategy, Policy and Performance.

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 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. I will ask each witness to state their name for the record and the capacity in which they appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions. I will ask each witness to state their name for the record and the capacity in which you appear. I will then invite you to make a brief opening statement before proceeding to the committee's questions.

Could you each please state your name and the capacity in which you are appearing?

Ms COOPER: Kelly Cooper, Senior Director Community Youth Justice Programs.

Mr WARREN: Brent Warren, General Manager Youth Justice for Territory Families.

Ms GAMBLE: Seranie Gamble, Director Law Reform for Territory Families.

Mr TWYFORD: Luke Twyford, Executive Director Strategy, Policy and Performance.

Madam CHAIR: Thank you very much. Mr Warren would you like to make an openings statement?

Mr WARREN: Thank you for providing the opportunity to talk to you and committee today about the Youth Justice and Related Legislation Amendment Bill 2019 which was introduced to the Legislative Assembly on 20 March 2019.

With me—on behalf the CEO, Ken Davies—Luke Twyford, Kelly Cooper and Seranie Gamble. They are here with me today to answer any questions that the committee might have. I would like to start by acknowledging that this public briefing is being held on the land of the Larrakia and I pay my respects to Larrakia elders past, present and emerging. I also acknowledge the members of the committee and thank them for giving us the time to talk about the bill today.

This bill marks the next stage of legislative reform to improve the youth justice system and delivers on the reform direction articulated in Safe, Thriving and Connected, which is government's response to the Royal Commission into the Detention and Protection of Children in the Northern Territory.

This bill has been produced in collaboration with a Legislative Amendment Advisory Committee which was formed in March 2017 and informally known as the LAAC. The role of the LAAC is to assist government with the identification of legislative solutions to implement reforms to the youth justice and the care and protection systems. The LAAC is a unique committee that has enabled stakeholders from outside of government to work alongside cross agency representatives and contribute to the development of this bill in the design stages through monthly meetings over the last 16 months.

Members of the LAAC include the: North Australian Aboriginal Justice Agency, NAAJA; the NT Legal Aid Commission; the NT Council of Social Services; the Law Society of the NT; the Criminal Lawyers Association of the NTT, the Aboriginal peak organisations of the NT; Making Justice Work; the CREATE Foundation; the Aboriginal Medical Services Alliance of the NT; Danila Dilba Health Service; Jesuit Social Services; the Human Rights Law Centre; the Department of Attorney-General and Justice, including representatives from the Solicitor for the NT; Department of the Chief Minister; Northern Territory police; and the Office of the Children's Commissioner.

In addition to regular meetings the LAAC has held technical workshops on the initial proposals and drafts of this bill. This bill seeks to amend the *Youth Justice Act 2005*, the *Bail Act 1982* and the *Police Administration Act 1978.* The Children and Families Standing Committee—comprised of the chief executive officers and the commissioner of police—in the children and family cluster of agencies, have also received regular briefings on this bill and provided their approval of each element ahead of its progression to parliament.

Before I turn to the specifics of the bill, I can provide the following contextual data about the youth justice system. As of last Friday there were 34 young people in detention in the Northern Territory. Of these, 25 were on remand awaiting an appearance before court whilst nine were convicted and sentenced. There were 33 male and one was female, 33 were Aboriginal and one was non-Aboriginal and 20 of them were in Don Dale whilst 14 were in the Alice Springs Youth Detention Centre.

Outside of the detention environment, 18 young people were in bail support programs and 9 were subject to electronic monitoring in the community. A total of 131 young people were subjects of active youth diversion case management during that period. Looking more broadly, in the first six months of the financial year 132 restorative justice conferences have been completed so far.

This bill complements the reforms underway within the youth justice system including continued investment in youth outreach and reengagement, bail support, Back on Track and early intervention youth programs. It is within this context that this bill seeks to make amendments across nine themes.

Firstly, the bill seeks to amend the *Bail Act* by introducing youth specific bail considerations for the purpose of making a bail determination and determining bail conditions. It creates a presumption in favour of granting bail for young people except in certain circumstances. The bill also removes breach of a bail condition as a criminal offence for young people. This amendment follows other jurisdiction such as Queensland and Victoria where breach of bail is not an offence for younger people. Under these amendments police will continue to have the power to arrest and hold a young person who breaches their bail conditions and existing court processes will enable the young person's original charge to be heard earlier or for bail to be reconsidered. These amendments to the *Bail Act* implement Royal Commission recommendation 25.19.

Secondly, the bill amends the *Police Administration Act* and the *Youth Justice Act* to introduce new limits on the time that young people can spend in police custody before and after they are charged. This implements Royal Commission recommendation 25.3 and more closely aligns the Territory with other jurisdictions.

In relation to improving access to legal assistance, the bill introduces the requirement that young people held in custody are provided access to legal advice and are entitled to have a support person present when being interviewed. The bill also confirms that young people can exercise their right to silence and requires a record of the steps taken by police in complying with this section.

Further amendments enable legal services to be immediately notified when a young person is brought into police custody. These amendments implement Royal Commission recommendations 25.4 and 25.6 and align the Northern Territory with other jurisdictions such as New South Wales and Western Australia which already have a custody notification scheme in operation.

Through amendments to the *Youth Justice Act*, this bill removes barriers to youth diversion by omitting the list of offences that automatically exclude a young person from diversion and by introducing a simplified list of prescribed offences where a police officer is not required to divert a youth. Additionally, the bill strengthens the reporting requirements to ensure that reasons for a diversion decision are recorded.

The reforms do not preclude police from exercising discretion and declining diversion on the basis that diversion is an unsuitable option. These amendments implement Royal Commission recommendations 25.9, 25.10, 25.11 and 25.13.

The bill confirms that arrest is to be used as a last resort for young people. This supports evidence that children should be treated differently from adults and aligns with other jurisdictions such as New Zealand and Queensland which have specific provisions around arrest powers in relation to children.

The bill proposes a new provision that all court proceedings involving young people must be held in a closed court. This intends to align the Youth Justice Court with the current operations of the Family Matters Court in the Northern Territory. A separate provision prohibits the publication of identifying details of a young offender, a witness or a victim.

The Royal Commission heard evidence that media reporting identifying young offenders can affect their prospects of rehabilitation, sense of identity and connection to the community. This implements Royal Commission recommendation 25.25 and is based on existing provisions in South Australia and Victoria. The bill provides that explanations to young people under the *Youth Justice Act* are to have regard to a young person's health to ensure that understand the decisions and procedures that affect them. This implements recommendation 11.1 of the Royal Commission.

The bill amends section 215B of the *Youth Justice Act* to provide that the time period to bring a civil action for harm or damage experienced in the care or custody of government agencies commences when a person turns 18 and extends for a further three years. This implements Royal Commission recommendation 22.7.

Finally, the bill includes other technical amendments including a proposed commencement that is on the date fixed by the administrator by gazette. It is intended that this day be six months following passage of the bill to enable robust implementation to occur.

In closing, I thank you for your time and confirm that the Territory Families representatives with me here today are all available to discuss each of these areas with you. We welcome your questions.

Madam CHAIR: Thank you Mr Warren, that was very comprehensive. I seek permission to have your opening statement tabled.

Mr WARREN: Certainly.

Madam CHAIR: That would be fantastic. I will now open it up to the committee for any questions.

Ms NELSON: What has been the consultation process with this?

Mr WARREN: We have framed our consultation around the Legislative Amendment Advisory Committee. That was formed in 2017 at the start of our law reform program. As I listed, there are a range of government and non-government organisations who are members of that committee.

Outside of that process we have had consultation in one on one environments with different organisations that work with Territory Families. The last piece of that process is the scrutiny process itself which includes the opportunity for the public to make submissions directly to this committee.

Ms NELSON: So you will be going out to stakeholders with the legislation now? Is this the process—you are going to go out to the stakeholders with this legislation to do further consultation, seeking input and insight?

Mr WARREN: I will defer to my colleagues about that program.

Mr TWYFORD: Member for Katherine, could you repeat the question?

Ms NELSON: Will you be going out to interested stakeholders and community members with this legislation to ask for their input? It is open to the public for submission and comments?

Mr TWYFORD: We are promoting the availability to provide written submissions to your scrutiny committee through our networks to our key stakeholders and on the Territory Families website. If it is not there already it will be this week—links to the opportunity that your process provides.

We have been conducting consultation for over 16 months on many of these amendments. In particular, the Youth Justice Advisory Committee which is a statutory body under our law, has been talking about things such as closed courts and prohibitions on publication for many years. People who provided evidence to the Royal Commission such as Russell Goldflam and other sector leaders were able to produce a wealth of evidence and information that we have drawn on in developing this bill.

We have been running monthly meetings sector partners and have involved them in a co-design around this bill. That has been conceptually achieved in two ways. The first is talking to them about their experience in the youth justice system and what the areas are for potential improvement. Secondly, as the Royal Commission's interim report and final report became available to us, how did they align with their views and experience, and what was the best way to proceed on each of those recommendations—whether it be accepting the technical wording of the recommendation through to whether it works operationally on the ground.

There has been extensive consultation. We are seeking to have those partners promote it within their communities.

Ms NELSON: Great, thank you. Based on your response, are we going to be getting any public backlash that we received over the last piece of legislation that went through parliament where there were claims that there was no consultation? Do not answer that.

The other question I have on consultation is—during the Royal Commission review before they came down with their report, there was extensive public consultation where they visited communities, held public forums, spoke to Traditional Owners, Aboriginal peak bodies in different regional areas and community groups—have we been doing the same with this?

Mr TWYFORD: I will ask Seranie Gamble to speak to that. In relation to your initial question it is important to note that there will be members of the community that think this legislation goes too far and members who think it does not go far enough, or too soon enough or not slow enough. We are balancing a range of opinions but what I can say is this legislation has been consulted with the experts based on the evidence. It is about ensuring we build a system that produces the outcomes we are looking for.

Ms GAMBLE: I will provide some extra detail about the members who form part of our Legislative Amendment Advisory Committee. They are representative peak bodies that have membership that extends across the Territory including some of those remote Aboriginal communities that were consulted through the Royal Commission.

In addition we have walked in partnership with those organisations to provide additional briefings to those members. For example, the law reform team from Territory Families was invited to speak to general members of the Central Land Council, the Northern Land Council and the Aboriginal Medical Services Alliance of the NT, to reflect on what they had presented to the Royal Commission and the way that the government had been implementing those Royal Commission recommendations.

Other examples of specific consultation we have done in a targeted way—as you said comprehensive consultation already occurred through the Royal Commission. We have sought to utilise our resources as effectively as we could so that we could focus on the technical detail within government and then speak out at the appropriate times.

We were invited to speak to the Crime Victims Advisory Committee and provide them with a detailed briefing about the bill. Members of that committee are also part of different advisory bodies like Victims of Crime NT. An additional type of consultations we have embarked upon is that Territory Families has its own clinical governance advisory committees that are made up of independent experts that were involved in presenting their own evidence to the Royal Commission including the former president of the Youth Justice Court.

Although we have not been on the ground on a daily basis running the consultation, we have continued the journey of what the Royal Commission began and focused on spending time with those technical experts and organisations that represent a wider group across the community.

Mrs FINOCCHIARO: I will follow up on the consultation question. You may have touched on it but I wanted to ask whether victims of crime or any other victims' organisations part of your LAAC or the consultation in developing the bill?

Ms GAMBLE: We were invited to provide a specific briefing to the Crime Victims Advisory Committee who heard a briefing about the bill and have welcomed us to provide further briefings through the parliamentary process of the bill which we anticipate can occur now.

The member organisations part of the LAAC are representatives of significant victims' groups as well. Many of those legal services represent victims through criminal and domestic violence proceedings in court.

Mrs FINOCCHIARO: Are victims of crime on LAAC?

Ms GAMBLE: They are not a specific member of the LAAC but we have provided a detailed briefing to Crime Victims Advisory Committee.

Madam CHAIR: Member for Araluen do you have any questions?

Mrs LAMBLEY: No I do not, thank you.

Ms NELSON: I have a question regarding access to legal services. As you know, community legal services have faced significant funding cuts since 2014. Tell me about the legal services you are talking about in this. Who are they? Are they NT Government agencies? It is community legal service centre or is it broader?

Mr WARREN: In terms of what we are to talk about today in relation to the bill, we are opening up the opportunity for young people to access existing legal services in the Northern Territory. Primarily we are talking about the North Australia Aboriginal Justice Agency and the Northern Territory Legal Aid Commission. Both of those agencies would take funding from a variety of sources based on the different functions that they serve. Does that answer your question?

The purpose of the bill is to increase the opportunity for young people who enter the youth justice system to access, particularly through the process of coming into police custody, to be able to access legal advice as and when they need it.

Ms NELSON: Yes it does. I need to reframe the question in my head because I am looking for a specific answer.

Ms GAMBLE: Member for Katherine I can provide some additional information as well. Some of those specific amendments around improving access to legal assistance also involve measures towards implementing a custody notification scheme. This is a significant program of work that Aboriginal legal services have been embarking upon across Australia and involves a significant component of federal funding because Aboriginal legal services are generally provided their funding by the Commonwealth.

What this bill does—in relation to moving towards a custody notification scheme—is enables the program support to operate. That is something that police and the Aboriginal legal services have been working on.

Ms NELSON: Thank you for clarifying that. That is where I am concerned in regards to access to legal services, outreach work and what we are trying to do with this piece of legislation. We have seen significant funding cuts over the last seven years from the Commonwealth to legal services and Territory government legal agencies. How are we going to deliver on this if the Commonwealth is not on board? If they are cutting our funding, what is going to happen?

Mr TWYFORD: One of the keys things this bill before us does is enable police to contact a legal service provider at the point of bringing the young person in. It therefore requires that that young person can have a legal service provider. It is generally our experience that each of those young people would have a legal service provider and that would not occur at the early point of the process. It may occur after or down the track, maybe even post interview.

The amendment is about making sure that services that are already working with these young people are getting earlier notification so that their work can commence earlier. To the point of your question, what we would see and what the sector is saying is that this is not about expanding the number of clients they are working with, it is about getting an earlier heads up that they have a client that needs a service.

Ms NELSON: I have one more question. This goes to the Raise the Age campaign, where is that in here? Are we talking about any of that here?

Mr TWYFORD: This bill does not deal with the age of criminal responsibility.

Ms NELSON: I know. As part of the Youth Justice and Related Legislation Amendment Bill, is that anywhere? If we are talking about bail and youth diversion, why are we not talking about the age?

Mr TWYFORD: This bill is placed in a multi staged approach to reforming youth justice. We have had three bills already during this term of government to amend the *Youth Justice Act*. This is another step towards this

government's commitment in Safe, Thriving and Connected to create a single act for children by 2021. That act would be a comprehensive review and rewrite of the legal structures supporting child protection, out of home care, youth justice, domestic violence and a range of other issues that touch on the vulnerability of children in this jurisdiction.

The process has been to look at what legislative amendments could be delivered now that align with government's investment, current programs in place and the reforms that are happening on the ground. We have been careful to ensure that the legislation is able to be operationalised and that the reforms are part of a continuous journey.

Ms NELSON: Thank you for that clarification.

Mrs FINOCCHIARO: I want to ask about the closed court decision. There are a number of ways to achieve that and it has been met with backlash from the Criminal Lawyers Association of the Northern Territory and the community in general. Why go to that extreme when in our society courts are supposed to be open processes unless determined otherwise? We have the functionality within the court system for parties to make applications and judges to make decisions accordingly. Why have we gone to the extreme of closing these courts?

Ms GAMBLE: This bill demonstrates the basis of comprehensive consultation through a number of stakeholders that have been heavily involved, not just through our committee to develop the bill but also in presenting evidence to the Royal Commission. Specific members of the Criminal Lawyers Associations of the Northern Territory, including the former president Russell Goldflam, lead evidence to the Royal Commission about the importance of closing a court.

We have two recommendations from the Royal Commission that set out how that could be done and this bill does two things. Firstly, it closes the court generally except for relevant staff and support people who would normally be involved and required to be in proceedings, including parties, victims and witnesses to the proceedings. If any member of the public or the media wanted access to those proceedings it is up to the court to determine that access. Leave can be sought for that member of the public or media to seek access to the court.

This bill also introduces a new restriction on publication of information that could lead to the identification of a young person. Generally information can be released about youth justice proceedings, it is the information that could lead to the identification of a young person that will be restricted. There is significant evidence that was given to the Royal Commission about the basis for that. Naming and shaming of young people and putting stigma on a young person can lead to further offending behaviour and create a danger to society.

Mrs FINOCCHIARO: That can also be dealt with through suppression orders and other mechanisms. When we make laws we have to think about the flipside. The flipside being that it erodes transparency and means Territorians and the community are not understanding the full extent of issues that youths are up against, experiencing or perpetrating. It has a larger implication. Reversing that onus—it is alright to say that judges can open it up if they want to, but you have now flipped it so it is closed unless otherwise required. That is a large change.

What other states or territories have moved to this model?

Mr WARREN: I will ask Ms Gamble to look that up and provide an answer for you Member for Spillett. The Family Matters Court in this jurisdiction, our child protection court, is a closed court except by leave. In many ways the decision to close a court ahead of a single court for children is to bring those two processes together.

The basis for closing a court both in a child protection or a youth justice sense, from a policy perspective, would be to enable that court to have a much greater depth of information about that child's life circumstances, the family history and cognitive and disability issues. Laying that before the decision maker, what the root cause issues of offending may be and they can be deeply personal matters as much as in child protection as they can be in youth justice. The intent is to enable the decision maker to make a decision that will address future reoffending. The more information the decision maker can have and the more a child, young person, mum or dad, is able to be open about their story, we believe that will lead to a better decision by the judge or magistrate.

Ms GAMBLE: These provisions were modelled off of other jurisdictions. The provisions around closing court proceedings are similar to section 24 of the *Youth Court Act (SA)*. The provision in the bill relating to the

publication of material that could lead to the identification of a young person is modelled off of section 534 of the *Children, Youth and Families Act (Victoria).*

Queensland's children's court is also closed to the public, including specific provisions section 20 of the *Children's Court Act (QLD)*.

Mr TWYFORD: New South Wales excludes the general public from the children's court, however does allow media as an exception. That is section 10 of the *Children (Criminal Proceedings) Act.* The ACT, section 72 of the Youth Court Procedures Act closes the court to the public, however has an exception for the media.

Ms NELSON: Are those same restrictions applicable to the average punter that posts stuff on social media? Like photos of kids that broken into a house?

Ms GAMBLE: There is a general restriction to any publication of material that could lead to the identification of a young person. That applies across the board.

Mrs FINOCCHIARO: The decision to reverse the presumption of bail is a significant one. It has Territorians talking about it. What is the rationale of that?

Ms GAMBLE: I will speak generally about a raft of measures that have been implemented through this bill. This bill seeks to improve the general application of bail for young people through three things: it changes the presumption in favour of bail for a young person in accordance with strict provisions; a series of youth specific considerations in determining whether a young person should be on bail and what those types of conditions should be that are youth specific; and decriminalises breach of bail conditions.

These amendments have been worked on for a considerable amount of time prior to the Royal Commission releasing its report with representatives from our Legislative Amendment Advisory Committee including representatives from the Department of the Attorney-General and Justice who have responsibility for the *Bail Act* as a whole. This government has made a significant commitment to review the application of bail for young people. The rationale is in the way we treat young people differently to adult offenders and looking at the way that specific measures can be made in treating young people throughout the system based on their individual circumstances and tailoring what the responses are for those young people.

The presumption in favour of bail is something that has been agreed to through detailed consideration with relevant stakeholders. It changes the way that young people can be dealt with because we are seeking to shift that and impacts on new offenders coming into the system and reduce the amount of young people who are unnecessarily put through the system. The Royal Commission heard a lot of evidence about the more young people are put through the system, the worse the outcomes the community as a whole will have.

The earlier young people are dealt with through the system leads to further criminal behaviour. The more emphasis there is on diverting young people away from that system through an individual and tailored response to their specific circumstances, the better off the community will be.

Mrs FINOCCHIARO: That is the issue. It is one thing to say that we want less youth put in remand so we will bail them. What happens to that young person from that point?

Ms NELSON: And the support for the family?

Mr WARREN: Territory Families has already invested a significant amount of resourcing and collaborated with partners around the issue of bail and diversion options for young people. In the current term of government Territory Families has created the youth outreach and reengagement network which in part is required to provide support and case management to young people who are on supervised court orders in the community. We are also the administering agency for kids who are subject to court ordered electronic monitoring and have been in that role since the start of last year.

We have implemented a supported bail accommodation program which is already in place and has seen increasing uptake over the last 12 months. As of last Friday there are 18 young people in the Northern Territory who are using supported bail as an alternative to being on remand. As that system has spun up to full effect, and as confidence in the system grows, we are seeing more young people being referred there and are seeing successful compliance with their orders whilst they are there.

There is already an existing and growing framework for supporting young people who are not in detention. We are doing that in parallel and are finding better ways to support young people inside the detention space.

The purpose of this bill is around reducing hurdles that prevent young people from accessing those supports straight away rather than at the moment, they are coming to those supports through a detention experience first.

Mrs FINOCCHIARO: Will courts be putting conditions on bail if they cannot breach a youth on them?

Mr WARREN: I will have a go at this and then pass it to Ms Gamble. The bill that we are talking about today does not change the acute responses available to police and therefore the opportunity for the matter to be reheard by a court. What does not change is the fact that police can make a decision to arrest a young people who might not be complying with a bail condition and can have that matter brought on immediately before court.

Mrs FINOCCHIARO: So you think the courts will still put bail conditions on even though they will no longer be an offence?

Mr WARREN: Prior to the current framework, courts could and did use conditions on bail as part of the bail framework. Police could and did arrest young people for breaches of bail and bring the matter back before court.

Mrs FINOCCHIARO: To use an example, if you have breached a curfew time by an hour and the police find you and say you have breached your condition, it is not an offence to be an hour late but if the police believe that young people was committing an offence, on a slippery slope or at risk, they could bring that matter back before the court?

Mr WARREN: That is correct but I will use that example to highlight the purpose of some of these amendments. It is around strengthening the likelihood that we deal with those kind of breaches, if they are not associated with other offending behaviour, with other kinds of responses.

We have seen examples where young people are being arrested for their breach of a bail condition, a curfew condition, with no other behaviour associated with that. Essentially a young people is presenting back before a court having a fresh exposure to the youth justice system for what was only proven to be failure to comply with a curfew. The system that I talked about in terms of our youth outreach monitoring means that we are providing an active case management response to young people who have curfew conditions.

We can intervene and figure out what might be causing the failure to comply with that part of a court order and if we can, take steps to change that scenario. A case scenario we have talked about is a young person who can no longer stay in their bailed address because they are no longer safe there or a young person who is engaging in work, education or sport and because of that commitment is delayed in getting back to where they are supposed to bed.

Mrs FINOCCHIARO: So this will also remove the requirement for Territory Families to report breaches to police because they be a 'breach'?

Mr WARREN: If a young person is on police issued bail then we would continue to notify police about the breach of police issued bail. If a young person is subject to a court ordered bail then as we do now, we would exercise case management and if necessary have a matter listed for a fresh hearing before a judicial officer to make an updated decision about whether bail is still appropriate.

Mrs FINOCCHIARO: How do you know if that young person, through the breaches of their bail, is or is not offending? If someone has breached a curfew, how does Territory Families know what that person was doing in that period?

Mr WARREN: That is the purpose of active case management—to be having conversations, engaging with a young person, being aware of the circumstances that they are living in and how they might or might not be complying. An example of where we will have other knowledge about a young person's behaviour is if we have a suspicion that a person is using substances. Sometimes we know that they are continuing to use a substance and we may not have other specific evidence about offending in the sense of victim offending but we can use that information to make an informed decision about what comes next.

When we share a concern with police about the risk of a young person in the community, we are not prohibited from sharing that information with police so that they can take other action as well. That happens at the moment.

Mrs FINOCCHIARO: That intelligence could be very important to police for a range of reasons that we would not understand because the police are juggling many things at once. I would have thought that police would at least know that information so that in their travels it may or may not form part of the broader picture that we are not privy to. The fact that Territory Families are not sharing that information could present a missed opportunity for police to respond more appropriately.

Mr WARREN: I acknowledge that the bill we are here to talk about today does not prohibit or constrain Territory Families from any sharing. There are a number of frameworks under which we do share. At the strategic level the Territory Intelligence and Coordination Centre is a joint initiative between police and the Territory Families' cluster agencies. We have a full time intelligence officer committed to that.

In the Alice Springs context we have just committed a full time intelligence officer to work inside the Alice Springs police station ensuring that we share information with police and vice versa around at risk youth. We are working on collocation model for the greater Darwin and Palmerston area to do the same thing. Outside of those collocations—where we are sitting next to each other and sharing in the room—we still have a commitment to crossover families or youth at risk joint agency meetings where we meet regularly with police, housing, the Department of Health and the Department of Education to talk about young people and share intelligence about where they may or may not be complying with any aspect of what you would expect of a young person.

That could include school attendance, failing to engage with the mental health system if they have a mental health issues as well as youth justice issues around court orders.

Mrs FINOCCHIARO: Could you step us through another example and what would ordinarily happen or should happen? If someone was five hours late after curfew but Territory Families had no reason to believe there was anything happening during that time—the young person might be at the movies—is there a point that triggers a contact to police? Do you have guidelines if it is around two, three or 10 hours?

Ms NELSON: How late is late?

Mr WARREN: I will give an overview to answer quickly and will pass to Ms Cooper to provide some more specific operational insight. A young person might be subject to police bail direction for which the police are the only agency that can respond to that…

Mrs FINOCCHIARO: Sorry, for court bail.

Mr WARREN: For court bail our option is to bring a matter before a court and have a judge make a fresh decision. Our officers do not have the power of arrest but police can take that action. We are not prohibited from sharing any information with police about the behaviour of a young person. There is a level of discretion around whether it is a case management response because of the young person's circumstances or whether it is acute, new offending or whether there is some other risk to the community that the police need to be aware of.

Mrs FINOCCHIARO: So it might be that you send out the youth engagement outreach officers to try and find the person rather than notify police? Even if it is not to say to the police to go and find the young person, but just so that they know.

Mr WARREN: I will pass to Ms Cooper to give some examples of how we do things in parallel and to talk about the fact that we might be responding whilst also notifying police.

Ms COOPER: There is no intention for us not to be sharing information with police where it is deemed necessary to do so. In practice there are a range of conditions that are placed on an order for a reason. It may be that if someone is not meeting a curfew, we need to return it to the court to look at a different case management tool. That could be recommending electronic monitoring which is another case management tool to be able to know the whereabouts of a young person. Police could then request electronic monitoring data if they were concerned that a particular young person was in a location. That already happens now.

There are a range of tools to be able to manage somebody in a case management approach without it being a chargeable offence. If they have not complied with attending an alcohol and other drugs course and are not turning up to that, it is about working with the young person. Is it because they have transport issues? What are the prohibiting factors for them to attending the things that have been prescribed in their court order?

Madam CHAIR: Thank you. Member for Araluen, I am just checking to see if you have any questions?

Mrs LAMBLEY: No questions, thank you.

Madam CHAIR: We have time for some more questions, I will open it back up to the committee.

Mrs FINOCCHIARO: I want to ask about reversing the presumption in favour of bail. Usually legislation attempts to fix a problem or make something better. Were we having a situation where bail was being refused or was there a problem with the function of it?

Ms COOPER: What we are seeing now is that we are often taking back breaches before the court but it is not being upheld or translating into a fresh charge. If a young person has fresh offences they may be charged with their fresh offences but a breach of bail—whilst it gives you the option to go back and look at the conditions and vary them if necessary—is not necessarily translating to that. There is also the reduction of the administrative burden on the already busy courts. I will hand over to Ms Gamble to speak to that side of things.

Ms GAMBLE: In decriminalising breach of a condition, the burden on the court is reduced. Every new breach of a condition—every time a young person has been picked up for coming home late—that constitutes a new file being created a court. There are associated related to that as well. The idea of getting rid of the breach of bail condition means that some of that administrative burden through the courts will be removed.

Mrs FINOCCHIARO: What about the fact of reversing the presumption for bail? Were a lot of youths appearing in court with their legal team was saying they should be bailed and that was being rejected?

Ms GAMBLE: The recommendation around changing the presumption in favour of bail is something that has been considered through part of a review on jurisdictional analysis of other legislation across Australia. The specific provisions that this had been modelled off comes from Victoria where dealing with young people differently and having the presumption in favour of bail is deemed best practice.

Mrs FINOCCHIARO: So it is about approaching this differently rather than fixing any problem? It may be that just as many youths are bailed under the new scheme as they were under the old. It is that government wants to be able to change the way bail is approached?

Mr TWYFORD: From a policy perspective the Royal Commission was clear in the evidence that it heard and received and presented back. Young people in detention were going on to commit further crimes, more serious crimes and crimes more frequently. A big theme within that report was about finding alternatives to detention. In the data that Mr Warren presented between 70-80% of young people in detention are there on remand. A presumption towards bail is part of a suite of reforms to ensure that we are putting in place programs that will deal with young offenders in a timelier, tailored and specific way.

We want consequence to be as close to offending as possible. Making sure that a young person who has committed a crime could go into a bail supported accommodation, be required to undertake corrective actions—whether it be community orders or alcohol, other drugs or school reengagement—and each of those are attached to their original offending. Bail is there to drive change in behaviour. That is where this bill is seeking to shift. You have identified one clause but it is part of the package which is a multistage reform.

Mrs FINOCCHIARO: So you would expect the remand numbers to go down? That must be an aspiration.

Ms COOPER: Eighty percent of young people will complete bail without incident. Since bail support accommodation has been available 121 young people have been supported through that service across the Territory and this translates to 4231 bed nights that would have otherwise seen those young people in detention (on remand).

Mrs FINOCCHIARO: Is bail accommodation collecting information on recidivism? I asked this a while ago and it was not something happening at that point in time. To see if the program is working you want to know if the youth is engaging with the justice system, they are being bailed to bail support and being supported through various programs. Are you seeing that youth again? How many times are you seeing them? Are you able to measure that this is having an impact on recidivism?

Mr TWYFORD: The complex answer to that question is that we are collecting that information on a client's file. Territory Families, with our responsibility for the program, can have our staff and NGO partners recording against a client's file what is happening in that time period. We can undertake heavy and manual process to

go through client files, see dates of entry and exit and future reoffending. We have an investment from this government to build a data warehouse within Territory Families. We are one of the few government departments to not have our own data storage area.

The information on reoffending would require us to access both police and court data. We can access those upon request and they do provide us data but it then goes to linking it. To answer your question we would need to know the young person's identity in all three systems, the date of entry and exit from bail support programs and the time periods for charge related to a date of offending. It becomes a complex process but it is something we are invested in doing.

We have new staff that came on board this year and are currently working on the design of a data warehouse for youth justice. We will be taking information out of IOMS and other systems in order ensure we can do that analysis. We agree with you, that is what we need to demonstrate the success of our programs more clearly and publicly.

Madam CHAIR: We will take one more question.

Ms NELSON: Thank you. How does all of this fit into mandatory sentencing and paperless arrests? You are talking about reducing the time young people spend in police custody. Are we making changes? Have you made recommendations to change other legislation in regards to police custody and the ability for police to pick people up off the street?

Mr WARREN: This bill seeks to make amendments to several acts. In terms of your question about police practice, it makes changes to the *Police Administration Act*. The two key changes that are relevant to your question are around enshrining arrest as the action of last resort when police are responding to crime. That was already established in their general orders but is now being lifted to legislation to make sure it is given premier status.

The second change that is relevant to your question is around the time periods that police can hold a young person in police custody before and after their charge. This bill seeks to increase the level of management oversight of the custody periods of young people who have been arrested by police and creates a scheme where after 24 hours, they need to get a judicial officer to approve an extension. Does that answer your question?

Ms NELSON: Yes it does, a little bit. I am thinking about regional and remote areas, Katherine for example. They go to the watch house when they are picked up.

Ms GAMBLE: I will add detail on the way in which young people as alleged offenders would come to police custody. This bill creates an entirely different system to the way adults are dealt with. There are specific provisions around arrest and enshrining what is already in police policy through their general orders in relation to young people—putting that into the legislative framework for young people through the amendment to the *Youth Justice Act*. When a police officer is dealing with a young person it is specifically in the legal framework to determine whether that is a measure of last resort.

In addition, there are specific measures around the way that a young person is interviewed and dealt with once in custody including the steps towards a custody notification scheme and alerting of their legal representatives that that young person is in custody. This bill introduces specific time limits for the way that young people are held in police custody. Currently under the *Police Administration Act* under section 137, police can hold any person for a reasonable period of time. In order words, there is no time limit.

That puts the Northern Territory out of step with all other jurisdictions in Australia. This bill introduces a time limit so that when a young person is held in custody before being charged, there is a time limit of four hours. That can be reviewed by police internally through a senior sergeant up to a maximum period of 24 hours when they would have to bring an application to the court to continue to hold that young person without charge. It is in the hands of a judge to determine if that young person should be held for more than 24 hours without being charged.

Once that young person is charged there is a limitation in the *Youth Justice Act*. Currently a young person can be held in custody after being charged for up to seven days. Again, that puts the Northern Territory far out of alignment with all other jurisdictions in Australia that have other time limits to bring a young person before a court. This bill introduces a time limit so that after being charged that young person should be brought before a court within 24 hours or on the next business day. There are some constraints we have in the Northern Territory around distance and geographical factors and there are some exceptional

circumstances—distance, emergency situations like a cyclone—that could be dealt with. Those provisions have been designed in partnership and co-design with members of the police.

Ms NELSON: I was just about to ask that. My other concern is the liabilities for the police and other people involved in this. My big concern is the youth but I am also looking at the police, correctional officers and all of it.

Ms GAMBLE: I can address that specific point. The Royal Commission recommended a strict four hour time limit for holding a young person in custody. This bill strays around that recommendation because police and other stakeholders made it clear that the four hour time limit may not work in practice in the Territory.

The four hour time limit for internal review is being proposed in this bill with up to a 24 hour review by judicial application to determine them being held in custody before being charged. In addition to the amendment around bringing someone before the court after they have been charged, there is an exception where police can make an application to the court if there are circumstances outside the person's control upon who they are holding in custody. They can make an application to the court for that to be extended.

Ms NELSON: Madam Chair, I have one quick question. I can put it on notice if we are running out of time.

Madam CHAIR: Yes. This is a comprehensive bill and I thank you for allowing us to run a bit overtime. It is clear we have a number of questions we will not get to today and we will be in contact with the department in the lead up to the submissions coming in for the bill.

Ms NELSON: I ask this every time we are looking at youth justice legislation. I want some more information and detail about family support. It is not enough for me to just be talking about the youth. I want to know—in relation to this legislation—what we are putting in place to support the family and networks for that particular youth in addition to introducing everything else for the youth. We do not have the time, can they respond?

Madam CHAIR: If it is a very short response.

Mr WARREN: We will have a go at a very short response. The agency has invested and continues to invest in things like intensive family and youth support. There are contracted providers who deliver intensive case management for young people and their families in the community. It is our clear intent and we have already started to operationalise this, that those services form part of our response to kids who are coming in as 'at risk' or who have entered the youth justice system.

We are working with providers like Saltbush and (inaudible) who provide our supported bail accommodation. The case management they provide is very intensive with the young person but also connects with the family of the young person to make sure we are thinking about a repatriation back into the community.

We have been working closely with NAAJA in relation to the expansion of their Throughcare Program. They have recently been successful in getting Commonwealth support to expand that down to Central Australia. That is about making sure there is a wrap around for kids who enter the system and slowly make their way out again.

Madam CHAIR: Thank you for that comprehensive and short response Mr Warren. On behalf of the Social Policy Scrutiny Committee I would like to thank our guests for appearing before us today for these important public briefings.

Thank you.