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Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

Reference: Crime in the community

MONDAY, 9 SEPTEMBER 2002

MELBOURNE

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
Monday, 9 September 2002

Members: Mrs Bronwyn Bishop (*Chair*), Mr Murphy (*Deputy Chair*), Ms Julie Bishop, Mr Cadman, Mr Kerr, Mr Melham, Ms Panopoulos, Mr Sciacca, Mr Secker and Dr Washer

Members in attendance: Mrs Bronwyn Bishop, Mr Melham, Ms Panopoulos and Mr Secker

Terms of reference for the inquiry:

To inquire into and report on:

The extent and impact of crime and fear of crime within the Australian community and effective measures for the Commonwealth in countering and preventing crime. The Committee's inquiry shall consider but not be limited to:

- a) the types of crimes committed against Australians
- b) perpetrators of crime and motives
- c) fear of crime in the community
- d) the impact of being a victim of crime and fear of crime
- e) strategies to support victims and reduce crime
- f) apprehension rates
- g) effectiveness of sentencing
- h) community safety and policing

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Committee met at 10.01 a.m.

CHAIR—I declare open this public meeting of the House of Representatives Standing Committee on Legal and Constitutional Affairs' inquiry into crime in the community: victims, offenders and fear of crime. Today marks the first day of public hearings for this inquiry. To date the committee has received about 90 submissions and there are indications that it will receive many more. This inquiry will allow the committee to look at different aspects of crime within the Australian community: how people are affected by crime, support mechanisms for victims, motivation of perpetrators, demographics as well as issues such as effectiveness of sentencing and the way in which perpetrators are dealt with by the law.

There are a lot myths in the community about crime in Australia and we need to separate the fact from the fiction so that we can find out what is really happening and do something about it. It is also time to start looking at the increasing impact of IT fraud and e-crime on the community, which is on the increase right across Australia, as well as sexual assault crime, where the committee will have a particular focus.

The committee have been asked to examine the extent and impact of crime in Australia and ways in which the Commonwealth can work towards a holistic approach which includes all levels of government. Today we will hear from a wide range of organisations and we will commence with the Victoria Police. Our second witness was to come from Crime Prevention Victoria but will be replaced by Carol Bennett from the Victorian Alcohol and Drug Association.

The committee has received the following submissions: submission No. 64, which is a replacement submission from the General Manager Policy, Australian Federal Police and submission Nos 77, 78, 79, 80, 81 and 82 from, respectively, the President of Families and Friends for Drug Law Reform, the Chief Executive Officer of the Western Australian Local Government Association, the Public Safety Coordinator from the Caboolture South Public Safety Project, the Chief Executive Officer of Alcohol and other Drugs Council of Australia, the Chief Executive Officer of the Council of Small Business Organisations of Australia and the Director of Caxton Legal Centre.

The committee also received submission No. 83 but, as they wish that to be a confidential submission, I will not say from whom we have received that. Submission No. 84 is from the Secretary of the Department of Family and Community Services. Submission No. 85 is from the community education lawyer for St Kilda Legal Service Co-operative Ltd. Submission No. 86 is from the Chairman of the National Crime Authority. Submission No. 87 is from the Community Development Officer from the Great Lakes Council and submission No. 88 is from the First Assistant Secretary of the Office of the Status of Women.

Resolved (on motion by **Mrs Bishop**, seconded by **Mr Secker**):

That those submissions be received as evidence to the inquiry into crime in the community and authorised for publication, with the exception of submission 83, which is confidential.

[10.05 a.m.]

DICKINSON, Acting Commander Ashley Michael, Operations Coordination Office of the Deputy Commissioner Operations, Victoria Police

READ, Mr Robert Bruce, Manager, Victim Advisory Unit, Victoria Police

CHAIR—Thank you very much for being with us this morning. We appreciate that your commissioner gave a submission to this inquiry, which we believe is of utmost importance if we are to find the ways ahead. Obviously, the question of crime is very much in the minds of Victorians—as I found from this advertisement in this morning’s newspaper. What do you see as some of the key crime issues in Victoria? Which of those crimes do you see as particular to Victoria? Are you sharing information across borders? Do you want the additional papers you have given us this morning included as part of the submission?

Cmdr Dickinson—Yes, we do.

Mr MELHAM—I am happy to move that they be received into evidence.

Mr SECKER—Seconded.

CHAIR—Carried.

Cmdr Dickinson—I am slightly unfamiliar with the process this morning. I had prepared that document to speak to in the first instance, and then I was going to perhaps take questions from the committee.

CHAIR—We would be happy to do that. If you would like to make an opening statement, that is fine.

Cmdr Dickinson—I am referring to the document of the overview and comments additional to the Victoria Police submission. In relation to the terms of reference, I wish to add the following. With regard to the types of crimes committed against Australians, although no response was provided in our original submission, I would draw to the committee’s attention the extract from the *Victoria Police 2001/2002 Provisional Crime Statistics* report, page 30. It forms part of the second parcel of documents that I also tendered this morning and reports the most frequently occurring offences recorded by police in 2001-02. Referring to perpetrators of crime and motives—the second term of reference—I wish to add the following comments. There is little information available on the motivation of offenders for committing offences. Some of the items are noted in paragraphs A, B and C. I will not repeat them at this point but I refer them to you for attention.

In respect of the third term of reference, related to the fear of crime in the community, we would add the following. The last Victorian Crime Victimization Survey for the Department of Justice was conducted in 1999. As such, it is dated, but some points of interest are that: 47.7 per

cent of victims of robbery reported the offence to police, which was up from 39.3 per cent from the previous survey in 1996; and 29.9 per cent of victims of assaults reported the offence to police, which was up from 22.2 per cent from the previous survey. Also, the reasons people gave for not reporting offences to police include: the offence was not important enough; the offence was inconvenient to report; police could not do anything; police would not do anything; it was a private matter; and, fear of retribution.

A national survey of community satisfaction with policing is another survey that we would refer you to. That was conducted in the 2001-02 fiscal year by the Australasian Centre for Policing Research. There are a number of points of interest in relation to that; I will mention only the first two. Firstly, 76.3 per cent of respondents were either satisfied or very satisfied with police service in Victoria. This compares with a national average of 69.9 per cent. Furthermore 94.3 per cent of respondents felt safe or very safe at home by themselves during daylight hours in Victoria. Again, the national average in relation to this was 91.3 per cent. In all of the categories mentioned in this report Victoria was higher than the national average.

In relation to term of reference (d), 'the impact of being a victim of crime and fear of', I would draw your attention to the following comment: there is very little readily available material on why offenders commit crime. The following points may be of assistance. The number of male victims aged under 17 years for robbery offences increased by 51.7 per cent. In the year 2000-01, it rose from 352 to 534. This is an indication that young people, particularly males, are increasingly becoming the target of robberies. This is particularly the case for offences that occur in the street or on public transport. Often the amount of cash involved in these robberies is minimal. These robberies can be categorised as a form of victimisation by youths of around the same age as the victim to exert power over the victim. There is no indication that drugs motivate these offences and there is anecdotal evidence that young people are reluctant to report these offences, due to either a fear of retribution or a belief that police will not be able to respond adequately.

I have also included a table that relates to a comment made in our earlier submission as to why some victims are unwilling to pursue matters. In particular, I would draw your attention to the category of complaint withdrawn. This is in relation to recorded offences for rape and non-rape offences by result type for the previous three financial years. In 2001-02 there were 555 cases reported and in 7.7 per cent of those the matter was withdrawn by the complainant.

In relation to term of reference (e), 'strategies to support victims and reduce crime', I would like to add additional information that illustrates one Victorian Police strategy to reduce crime. This strategy focuses on six identified crime areas with strategies being developed under the direction of individual acting assistant commissioners to best manage crime reduction in these areas. The areas that are laid out include: vehicle watch, investigation and prevention of offences in relation to robbery and burglary offences. Remaining categories are still to be developed. These include property damage, theft, other and deception. In relation to term of reference (f) 'apprehension rates', I would refer the committee to page 7 of the *Victoria Police 2001-02 Provisional crime statistics* report. That is included in the second parcel of documents tendered this morning. In relation to term of reference (g) 'effectiveness of sentencing', Victoria Police makes no response to this term of reference. With respect to term of reference (h) 'community safety and policing', we rely on the previous written submission. Those are all the comments I wish to make by way of an opening introduction.

CHAIR—Thank you. Mr Read, do you have any comments that you would like to make?

Mr Read—No, I will leave it there and come in with the impact issues, if I may.

CHAIR—In your supplementary statement you say that strategies to support victims and reduce crime are focused on six identified crime areas, which you have just read out. But those seem to leave quite a few out; notably the question of rape, which we are going to hear quite a number of submissions on in the course of this inquiry. I wonder why that is so. You have also left out murder.

Cmdr Dickinson—They have not been left out in terms of investigation; they are obviously investigated, as with any other offence that is reported to us. These six areas that are identified are ones in which the police may have significant impact, based on the number of offences in relation to the numbers of victims that come into contact with the police as a consequence of their offence. In no way is that to diminish the offences of rape or anything like that.

CHAIR—No, but we had a problem in New South Wales where a similar exercise was undertaken with regard to Cabramatta, and former Commissioner Ryan identified certain things against which police would report. It just did not happen to be really relevant to what was going on in that community. We have submissions from rape support organisations which say that there is not enough emphasis given to the importance of what happens, particularly in the domestic arena—and I note domestic violence is not on this list either—and I wonder how you went about choosing the six identified crime areas, as distinct from the ones which are clearly important to people because they have made submissions to us.

Cmdr Dickinson—Our focus on crime is in no way meant to diminish the seriousness of how we see sex offences and, in particular, rape in the community. It is designed to endeavour to have a major impact on crime in these sorts of crime categories. None of the focuses that we have put on these have detracted from the effort that we make in relation to the crimes that you have mentioned—in particular, sex offences. I might ask my colleague Mr Read to respond to that, because he works in the area in relation to victims of sex offences. Do you want to add some comments, Robert?

Mr Read—One of the issues that might be of interest to the committee is the issue of family violence. The department is working very hard on that area, and Commander Gassner is leading a task force in the development of strategic approaches for police to deal with those issues. I think it is one of those issues that has been around for many years in terms of the victims' perception of policing, the difficulties that are involved and so forth. We have a specialist office called the Family Violence Project Office which works with police members in a planning capacity and in an advisory capacity and works in with support groups and so forth. I believe it constantly monitors and, where necessary, makes recommendations to Command on improved service delivery. I think the work of Commander Gassner is very important in that regard. I am not too sure when that might be released, but it will not be too far away.

CHAIR—I guess this has got a political connotation to it but, in this morning's paper, as I said, there was this advertisement. I wondered, in the light of what these statistics are, whether or not you would like to comment on them. It says, for instance, that there has been a 32 per cent increase in homicide, an 8.5 per cent increase in rape, a 26 per cent increase in assault, a 14

per cent increase in kidnap, a 30 per cent increase in arson, a 29 per cent increase in aggravated burglary and a 33.9 per cent increase in weapons and explosives. I wonder, if I let you have a copy of it, if you would like to comment on those statistics.

Cmdr Dickinson—I guess there are a number of comments that can be made about them. I am not sure exactly what sort of comment you are seeking from me in relation to that.

CHAIR—I will begin by asking: are those figures accurate figures? Are they what your understanding is?

Cmdr Dickinson—I see the source is our own source of statistics, so I am hoping they are accurate!

CHAIR—You say specifically, in relation to strategies to support victims and reduce crime, that the areas that you look at are Operation Vehicle Watch, Embona, burglary response, property damage, theft and deception, but you completely leave out rape, murder and aggravated assault. I want to know why, particularly in light of what happened in New South Wales.

Mr Read—On the homicide side of it, it is because we take culpable driving into account. That has an impact on those figures and, certainly to my knowledge, there has been an increase in homicides. It might be of interest to the committee that my unit works closely with the Homicide Squad. Many years ago we identified a need to help families in those circumstances. I firmly believe we need a structured response to various crimes. It is very difficult to come in with a broad brush and say, 'We have a victim support structure, so now everybody's happy.' It does not work like that. Certain crimes have certain issues that need to be addressed. That is what we tried to do back in 1992.

My unit receives requests from the Homicide Squad immediately so that we can get involved and work with families to help them on the road to some form of recovery and to get them linked in with various court agencies. For example, we were the first police organisation in Australia to get crime scene cleaning up and running. That is fully paid for by the Victims of Crime Assistance Tribunal, which is administered by our magistrates. Many years ago they agreed with us that that is a relevant expense arising from a crime. Therefore now, whenever there is a crime—be it rape, aggravated burglary, homicide, assault, stabbing or whatever—we can monitor and call in cleaners anywhere around the state of Victoria, and we know that those people with families are being looked after. We also obtained the assistance of the magistrates to assist families with funeral payments after homicides. We were able to make submissions to our tribunal with information from the Homicide Squad. In the majority of cases, the situation is that families do not pay for the funerals at all.

CHAIR—That is on the side of supporting victims, and that is good, but that does not seem to be helping with reducing crimes. Figures show that they are going up. To what do you attribute the rise in those rates of crime?

Mr Read—It is very difficult, because I have not reviewed each individual case. Some people will quote statistics that say that the majority of murders are domestic related and so forth. That is an issue, but what does it mean? Are we talking about within the family or are we

talking about people who know one another? I guess most murders are committed by people who know their victim.

CHAIR—I go back to the question: why don't you have aggravated assault, rape and murder as part of the specific strategy, as distinct from the ones that you have outlined? That is what I want to know, particularly in light of the New South Wales—

Cmdr Dickinson—In relation to the six categories that we are talking about? I am trying to understand your question. Are you asking us about the crime rates in relation to the strategies to support the victims and to reduce crime?

CHAIR—Yes.

Cmdr Dickinson—A number of those crimes are crimes of opportunity, and they are very difficult to prepare for. For instance, you will not necessarily know the state of people's relationships. Certainly I am not in a position to argue exact figures but, in relation to murder, we would all be aware that quite a lot of those murders are domestic related and often spontaneous. If they are not spontaneous, they may be the result of prolonged aggravation between partners. I do not know how you prepare for it.

CHAIR—I hope you are not telling me it is too so hard so we will not have a strategy.

Cmdr Dickinson—Not at all; absolutely not.

Mr Read—It is probably relevant that there are other strategies in place to reduce the number of offences with knives, for example. If you have a strategy that is designed to limit the use of knives within our community, it can be productive in reducing homicides because we are trying to remove weapons from our community.

CHAIR—Do you have legislation here relating to knives?

Cmdr Dickinson—Yes, we do. Under the Control of Weapons Act, you are prohibited from carrying a large number of weapons.

CHAIR—Are you permitted even one?

Cmdr Dickinson—A large variety of weapons are prohibited.

CHAIR—I see.

Cmdr Dickinson—But of course these are not foolproof methods. You have people in the community who want to carry concealed weapons and it is very difficult for us to search everybody.

CHAIR—That is why I thought you would have a strategy for dealing with that. I will leave my line of questioning here for a moment and ask my colleagues if they would like to ask questions.

Mr MELHAM—In terms of the provisional crime statistics, I see in dot point 5 you have categorised a number of offences where there were large decreases in the last year. Beneath that there are some where there were large increases. Do you have any views on what resulted in the increase or decrease? Does it have something to do with the economy?

Cmdr Dickinson—Some of the drug offences would be related to the movement of drugs on a broader scale, and that is a crime of opportunity partly. We would like to think that some of the others are specifically related to some of our strategies. For instance, there have been some strategies in Victoria to try to reduce the theft of motor vehicles. The figures on the handling of stolen goods may be attributable to the downturn in the drug trade. I am a little reluctant to be too specific about it because it is highly speculative in relation to some of the connections between various crimes.

Mr MELHAM—I accept that. Correct me if I am wrong, but, normally, comparing statistics is done on an annual basis rather than by taking a block of offences from three or four years ago and comparing them.

Cmdr Dickinson—Yes, that is right. These are the annual comparisons.

Mr MELHAM—I read here that Victoria seems to be consistently below the national average in a whole set of statistics.

Cmdr Dickinson—Yes.

Mr MELHAM—Is there any indication as to why that might be so? I notice that in every category you are under the national average.

Cmdr Dickinson—We would attribute part of that, obviously, to some of the strategies that we have put in place to deal with offences.

Mr MELHAM—I am wondering whether that is a recent thing resulting from strategies that you have put in place and whether you have a recollection of what it used to be like. Were there categories where you were above the national average? What struck me was that in everything I looked at—I think it is in your supplementary submission—sexual assault, physical assault, housebreaking, motor vehicle theft, credit card fraud and Internet based crime were all below the national average.

Cmdr Dickinson—I do not know that I can point to anything specifically—and I perhaps need to enter the disclaimer that I am not a force statistician so I am not overly familiar with all the statistics—but, over time, we seem to have done quite well in comparison with the national average, certainly from the COAG data and things like that.

Mr MELHAM—In relation to the ‘Summary of offences recorded and cleared’, which is in your supplementary submission—it is really the second page but it says page 4—I notice you have different categories. In relation to what the Chair was asking you, homicide and rape are recorded there, but crimes against the person have a high clearance rate but numerically they are much lower than other categories that are there. I am wondering whether the number of offences has played any part in the six categories that you have placed before us. Numerically, you have

a very high number of assaults, you have the property damage offences and the burglary offences. Is that how you formulated it? I am not asking you to guess.

Cmdr Dickinson—No, I do not believe that it was. I was not specifically involved in the selection of the six major topics, but I believe the rationale behind it was, at least in part, to try to have a fairly significant impact on crime as it was perceived by the community, and the relatively high level in some cases of some of the offences that were identified for additional treatment.

Mr MELHAM—Finally, I am fascinated in the variation in the clearance rate when you go into different categories of crime. I take it that, with crimes against the person, identification and being known to the victim helps the clearance rate; whereas with crimes against property—that second sort of range of offences—the clearance rate, apart from some that are listed, is very low. There is a very high clearance rate with respect to drug offences—98.8 per cent, it seems to me.

Cmdr Dickinson—A high clearance rate?

Mr MELHAM—I am just looking at the subtotals on page 4 and the totals on the right in terms of clearance—the last column. The subtotal for crimes against the person seems to be 74.3 per cent clearance.

Cmdr Dickinson—In relation to drug offences, generally they come to your notice with an offender attached.

Mr MELHAM—I was also wondering about clearance rates and telephone intercepts. On a lot of this stuff, you have known offenders or known suspects that are monitored on a regular basis. Does that help the clearance rate?

Cmdr Dickinson—It certainly does. They are generally used only in the more substantial cases, because of the procedures that are involved and the time and structure of the sort of investigation that you need to run to utilise those sorts of devices.

Mr MELHAM—Do you know if there is any correlation between hard economic times and the prevalence of particular crimes?

Cmdr Dickinson—I am sure there are, but I do not think I would be the person to draw those conclusions.

Mr Read—I am not aware of any academic work that has been done in that regard.

CHAIR—While we are on those figures in your supplementary document: you use the word ‘cleared’. Just so we are all clear as to what ‘cleared’ means in your submission, does that mean a conviction or does it merely mean a prosecution?

Cmdr Dickinson—I have a definition or explanatory note, if I can read it to you:

Offences cleared consist of those offences reported to police and recorded on the LEAP system—

that is, our prime reporting system—

that have been cleared within the reporting period. A clearance can mean that either at least one alleged offender has been processed, no offence has been detected, complaint withdrawn or the offender is known but for legal reasons cannot be charged. Offences cleared from the previous reporting periods are also shown as a separate column but are not included in the clearance rate.

CHAIR—So ‘clearance’ means no action is taken.

Cmdr Dickinson—It may mean that in some cases.

CHAIR—Could you read the first bit of that definition on clearance?

Cmdr Dickinson—It says:

A clearance can mean that either at least one alleged offender has been processed—

CHAIR—What does ‘processed’ mean?

Cmdr Dickinson—Charged.

CHAIR—Go on.

Cmdr Dickinson—It continues:

no offence has been detected—

so you may have had an offence reported and subsequently none detected—

complaint withdrawn or the offender is known but for legal reasons cannot be charged.

CHAIR—I might be so bold as to say that those figures, because of the way they are presented, are really not very much help. To have, as Mr Melham pointed out, a 98.8 per cent clearance rate for ‘Drug—possess/use’ really does not tell us very much at all, does it? It may in fact mean that not one charge was laid.

Cmdr Dickinson—Sorry, which part?

CHAIR—If we go to where you say, ‘Drug—possess/use, 98.9 per cent clearance rate’, that could well mean that not one person was charged, couldn’t it?

Cmdr Dickinson—You probably could arrive at an outcome like that. I think it is highly unlikely.

CHAIR—But you could, by your definition. This is one of the things we would like to know in the course of this inquiry. We have been given a figure that only 40 per cent of crimes are in fact reported. Of that 40 per cent that are reported, what I would like to know is: what percentage actually proceed to a prosecution; of those prosecuted, what percentage are found guilty; and, of those guilty verdicts, what percentage of people are imprisoned and what

percentage of people receive some other form of sentencing. Then we might get some handle on what is really happening to perpetrators of crimes, because at the moment I do not have any idea—and I do not think my colleagues do, either. We would be most interested in knowing whether or not you have any figures that could explain those figures.

Cmdr Dickinson—If I understand your question correctly, I do not know that I can answer that at this point in time. You may need some more specific advice—from a statistician, for instance. You also need to look at the category of crime, because it depends largely on whether or not you are starting with an offender and the sort of crime it is. It obviously varies a great deal between crimes against the person and crimes against property, as opposed to things like drug offences where you generally start with an offender in the frame. That is a different starting point entirely from the police side. I do not know that you can look across the spectrum altogether.

CHAIR—I do not have a problem with the figures being provided in exactly the same way as they are broken down in your submission. For instance, when we look at residential burglary, we see that there are some 46,000 to 50,000 incidences of burglary and yet we do not know the success rate of doing anything about it. This is the sort of thing that generates fear in the community. If people had an indication of a success rate—what I might call a clear-up rate as distinct from a clearance rate—I think they might get a better handle on it.

Cmdr Dickinson—We have a recorded clearance rate in 2001-02 of 11.1 per cent.

CHAIR—Yes, but the clearance rate does not mean anything. It could mean you let them all go because they fitted into one of these: no offence detected, the offence was withdrawn or the person could not be prosecuted for some reason. There is nothing to tell me how many of those people were actually charged. And then I want to know what happens after they were charged. There is nothing in there to tell me. There is no figure there that says, ‘I’ve related these crimes. The following number of people were charged.’

Cmdr Dickinson—They are certainly not presented here; that is right.

CHAIR—That is what we would like to know. Would it be possible to get another column that says ‘charges’ relating to all these figures?

Cmdr Dickinson—The documents you have before you are only highlights. I do not know that I can give you that information here today.

CHAIR—Would you like to take that on notice?

Cmdr Dickinson—Yes, certainly.

CHAIR—And, if the figures are available for those charged, after we get those figures, could we get the figures for who is convicted, who goes to jail and who does something else.

Mr MELHAM—I am interested to know whether they are multiple offenders, because some of those figures might be misleading if you have, for instance, an individual who might have

been responsible for hundreds of burglaries, but it took a while to catch him. I was wondering if there are statistics about multiple offences.

Cmdr Dickinson—Sorry, I am having a little trouble hearing you.

Mr MELHAM—I am wondering if we can get a comparison, because I am worried that the figures might be distorted. For instance, if one particular person commits 19 armed robberies and you capture that person, that will be different than if 19 different people had committed those 19 robberies.

CHAIR—It would be counted in the stats. If there were 19 burglaries by the same person and that person is charged on all 19 counts, then that would be 19 charges—because that one person would have all those charges.

Mr MELHAM—Whatever figures you can get would be interesting. I noticed, for instance, on page 7 of your supplementary document—and we have had a reference to the ad—some statistics on alleged offenders processed. When you look at the number of offenders processed in 1998-99 and compare that with 2001-02, the statistics are very similar. So it seems to have been fairly stable over that three- or four-year period.

Cmdr Dickinson—Yes. I am not in a position to give an explanation as to why they are stable. I am happy to make some further inquiries.

Mr MELHAM—That gives a different slant on events in relation to the ad, so to speak.

CHAIR—While I accept that, they are different, aren't they?

Mr MELHAM—Yes.

CHAIR—These are incidents over two years. I was really asking about those in relation to strategy.

Mr SECKER—In your overview today you mentioned that the overall drug offences have decreased by 9.4 per cent, largely due to the heroin drought, where there is a 47 per cent decrease, and suggested that the heroin drought was also a factor in the overall decrease in robbery offences, which was 13.1 per cent. Dot point 2 of your official release is lauding the fact that the crime rate in Victoria decreased by 2.8 per cent. You probably will not be able to do this on the spot, but I wonder if you could provide the committee with a comparison after taking those drug figures out of the overall number? It seems to me that with such a huge decrease in the figures caused by the heroin drought, if you took all the other crimes, it may not actually mean a 2.8 per cent decrease. In fact it would not, if you took those out, and it may very well say that there is quite an increase. If you look at some of the other figures, crime against a person increased by 4.9 per cent. Crime against property actually decreased, but figures in other categories were obviously way up. Could you provide the committee with those sorts of figures, taking the heroin drought factor out of it, because that is not always going to stay around? We hope it is, but it seems to me it is a one-off factor that is affecting the overall crime rate.

Cmdr Dickinson—I am happy to take the question on notice and, if we can do that, we certainly will.

Mr SECKER—I thank you for making your original submission—not everyone does; they come here on the day and provide stuff—but things do not gel in a couple of the documents you have provided to us today. For example, dot point 4 of the official release says that drug offences decreased by 10.7 per cent, yet the overview says that overall drug offences have decreased by 9.4 per cent. I am wondering why there is such a disparity between those figures. It happens again with robberies—and I have not had a chance to compare all of them; I have just noted a couple of them—where the official release says that they are down by 13.3 per cent, whereas the overview says 13.1 per cent. Why is there this disparity in the figures?

Cmdr Dickinson—I am sure that there is a very logical explanation for it. I am not sure that I can give it to you at this point in time, but I am happy to pursue that and give you an answer after consulting our statisticians, who put the report together.

Mr SECKER—Thank you. Dot point 8 of the highlights of your official release says:

While there is no change in the recorded rapes per 100,000 ... the number of offences increased by 2.7% ...

That does not make sense to me; if there is no change, how can there be an increase?

Cmdr Dickinson—Again, I would have to seek some clarification in relation to that statement.

Mr SECKER—One of our other submissions—I am not sure whether you have had access to it—is from Voices; are you familiar with the group called Voices?

Cmdr Dickinson—No.

CHAIR—Some of that is going to be in camera.

Mr SECKER—I do not think it would be a problem for me to raise this. It is a table, in which they have suggested that the Victoria Police said in 1996-97—

CHAIR—Is that a confidential submission?

Mr SECKER—Okay, I will put it this way. I have heard these sorts of figures from many different areas over the years—and it is a very disturbing sort of statistic—that fewer than 10 per cent of rape cases are reported. I believe the police force said so in 1996-97. Do you have a comment on that? Do you believe it to be the case that the vast majority of rape cases are not reported?

Cmdr Dickinson—No, I do not.

Mr Read—It is a historical fact that has always been raised: that that is the issue with sexual offences, in particular, because of the issues that surround them. The shame, the difficulties with going ahead with reports—there could be a host of reasons, but it has always been

acknowledged that not all sexual offences are reported. I guess it is very hard for a police department in that sense because a lot of these statistics would come from external areas like sexual assault centres and so forth, who could have clients coming to them to seek assistance, and they would be able to ascertain that type of information where we would not.

Mr SECKER—But the 10 per cent could really only be a guess.

Mr Read—I would assume so. One thing about child abuse came from a women's magazine some years ago.

Mr SECKER—It is one of my greatest concerns that there is still this very low rate of reporting in rape cases. Your own figures, in that dot point I raised, state:

the number of offences increased by 2.7 per cent (from 1,236 to 1,269).

If you believe the 10 per cent figure, the number of offences has increased from 12,360 to 12,690; that is a huge number of offences in a state like Victoria. So it is of some concern. On an overall basis, could you give us an idea of the greatest hindrances and concerns to the police force in terms of doing your job and being effective in what you do as a police force? What sorts of things hold you back from doing a better job? I know that is a big, open-ended question.

Mr MELHAM—Resources.

Mr SECKER—In the end, I suppose that is what it comes down to. But, in the end, we want to know how we can get better policing in Australia.

Cmdr Dickinson—I have not prepared anything in relation to a question like that, as you would imagine. It is a huge area of concern in a whole lot of ways. Certainly, resourcing is a problem; the way we interact with some other agencies—the courts and things like that—sometimes makes it difficult; and some of the legislation makes it difficult. I think you could almost cover the whole spectrum of our interaction with public and government agencies; the way we present and receive evidence and all sorts of things create problems for us along the way. I am not sure I can answer your question in a specific way.

Mr SECKER—But more resources would help you?

Cmdr Dickinson—Certainly, resourcing is always an issue. We understand, of course, that we live in a world of finite resources in terms of government budgets and things like that and we have to compete for funds. We have done a lot of work in Victoria on the relationships we have with other bodies and our LPP—our Local Priority Policing model—on how we interact with councils and other government agencies and bodies at a municipal level. We try to utilise resources in a more efficient way and be more mindful of each other's problems. We certainly try to have other agencies embrace our position in relation to some aspects to determine better results for victims of crime and things of that nature—that is, not just sex offences; it can be all sorts of offences. It is that whole community aspect that we are trying to build up with people in relation to those sorts of things. I am conscious that I am answering you in a very nonspecific way, but I do not know that I can be much more specific about it than that.

Mr SECKER—I was interested in what you call your Crime Causal Factors Project in your submission. An obvious one would be the fact that the heroin drought has reduced robberies by 30 per cent, I think. Could you explain that a little further and are you getting any positive results out of that program?

Cmdr Dickinson—I am really not an authority on that topic, but we would make certain assumptions about that. The heroin drought and obviously a lot of those crimes are crimes of opportunity or, in a sense, crimes of demand by the person who may be a victim of drugs as a user and may seek to influence their position by robbery. I do not know if I could be really specific about the question you are asking.

CHAIR—Going back to that question I asked you to take on notice about providing additional information, I have just been comparing some of the figures you gave us in your supplementary submission and in fact your processed figures are here. I will go through three of them to show you what sort of trend I would like to get and you could then tell me the outcome of the processing. For instance, in the year 2001-02, there were 1,269 reported rapes, 604 people charged; in property damage, 42,000 cases reported, 9,869 persons processed; burglary aggravated, 2,243 reported, 1,330 processed; and the last figure, theft of motor vehicles in that same year was 37,677 of which there were charges laid in 9,019 cases. Could you then do a further breakdown: of those persons charged, what happened? How many were convicted? How many went to jail? How many had something else happen to them? That motor vehicle theft one is pretty dramatic, isn't it?

Cmdr Dickinson—Yes.

CHAIR—The rape one is only about 50 per cent and so on. Again, those are the areas where I go back to that question of strategy. I know that Mr Melham has another question he would like to ask and I think Ms Panopoulos would like to ask some. But could you take that on notice?

Cmdr Dickinson—Sure.

CHAIR—Thanks.

Ms PANOPOULOS—Are the statistics available on a local government area basis?

Cmdr Dickinson—They are, yes.

Ms PANOPOULOS—Would we be able to have those statistics?

Cmdr Dickinson—You are talking about all of the statistics?

Ms PANOPOULOS—Yes.

Cmdr Dickinson—I am sure that we can make them available. I am not 100 per cent sure exactly how they cut the data but I know that they use them at a local basis and I believe that they do them by the local government areas now.

Ms PANOPOULOS—And on a comparative basis as well from, say, the last three years? You would have those statistics?

Cmdr Dickinson—You are certainly welcome to them if they are available. As I said, I am not a statistician and I do not work in that area, but if they are available you are welcome to them.

Ms PANOPOULOS—Thank you. Are any crime statistics available regarding reoffending?

Cmdr Dickinson—I do not believe that we keep those figures but I stand to be corrected in relation to that.

Ms PANOPOULOS—It would be extraordinary if there are not any such figures. I am also interested, if those figures are available somewhere, whether they are broken down into reoffenders who have been incarcerated and others who have received another form of sentencing.

Cmdr Dickinson—Again, I am not aware of them but that does not mean they do not exist.

Ms PANOPOULOS—A significant number of criminals are relocated into government housing. Do the Victorian Police work with the relevant state department of housing regarding the location of housing for those sorts of people?

Cmdr Dickinson—Not in any significant way that I am aware of. It may happen in individual cases but I am really speculating in relation to that. I would imagine that in some instances they might have sought information from the Victorian Police about that. I do not know of any established program.

Ms PANOPOULOS—So the sole decision making for the location of criminals into government housing is made by the relevant state housing department?

Cmdr Dickinson—I do not know if I could say that.

Mr Read—Clearly, that would fall within a correctional facility responsibility. I know that in Victoria they work very closely with the Victorian Association for the Care and Resettlement of Offenders, which is a government funded body—it is the old Prisoners Aid, if you like. I am sure those issues are discussed between corrections and that organisation to make the appropriate relocations.

Mr MELHAM—Mr Dickinson, how long have you been in the police force?

Cmdr Dickinson—It is a long time—too long; I hate to think. It is not one of those numbers I keep in my head, as you can tell. I joined in 1969.

Mr MELHAM—I suppose you have seen over that time a lot more paperwork becoming involved in the job of police officers?

Cmdr Dickinson—Yes, I would say that has probably increased rather than decreased. Part of that, I suspect, comes with the level that you work at, of course.

Mr MELHAM—One of the things—and this comes under the heading of community safety and policing—that was an issue in New South Wales was in effect closure of police stations and regionalisation of police and the impact that has on people's perceptions and the reality. Has Victoria gone through that phase of closure of police offices and regionalisation and the turmoil involved in that?

Cmdr Dickinson—I am, perhaps, not the best person to respond, but let me say that I know that closure of police stations at any time causes an enormous amount of angst in the community. Even if it is a closure that is related to what you might describe as a more centralised service, it still raises a lot of concern.

Mr MELHAM—Have there been any studies done in relation to the impact at a local level when a police station closes, including the resultant crime level in that particular community?

Cmdr Dickinson—I am unaware of studies, if they have been done. I know that, periodically, when police stations are closed for whatever reason—an amalgamation or a realignment or whatever—it invariably causes a considerable amount of public angst.

Mr MELHAM—Or the change in demographics of a region?

Cmdr Dickinson—People generally perceive that it is some sort of reduction in service for them. It may in some ways represent that to an individual but, in reality, it is based on economies of scale and things like that. We would certainly expect to deliver a better service overall.

Mr MELHAM—In terms of management structure and the paperwork involved, is it fair to say that there are less police on the beat now than there were in the old days—that there are a lot more within the management structure? I am not meaning that as a criticism; it is part of the problem of modern society.

Cmdr Dickinson—I do not know that there are a less police on the streets. In fact, I do not know if I am suitably informed to answer that question specifically. We endeavour, whenever we can, to put as many police on the street as we can, and we work very hard at that. Certainly, at the opposite end of the scale, we have worked to reduce the administration, obviously.

Mr MELHAM—Would it be fair to say, though, that there are more people involved in administration now than there were when you first started—comparatively?

Cmdr Dickinson—I do not know that I would be in a position to answer that specifically.

Mr MELHAM—Okay.

CHAIR—In the original submission, there is reference to the Crime Causal Factors Project. Are you familiar with that project?

Cmdr Dickinson—No, I am not. Do you know about that, Robert?

Mr Read—No.

CHAIR—Causal relationships is one of the things we are looking at—why perpetrators do in fact commit their crimes. Would you mind having a look to see if you have some additional information that you could let the committee have.

Mr Read—Are any correctional facilities having any input to the committee, because these sorts of studies may have been undertaken within the prison populations? Those would be the only places where they may have been undertaken. I can certainly hear where you are coming from—trying to get that lineal progression of what happens at the beginning and what happens at the end and what impact that can have on people's perception of being safe and so forth. I am personally only aware of two such reports that have attempted to do that. One was in South Australia some time ago where a longitudinal study was done from the time a victim reported a crime. It actually followed the population of victims through the criminal justice system. Some dropped out because no offenders were apprehended; some kept going because they were; others dropped out because there were no convictions or whatever. It followed that course.

CHAIR—Commissioner Nixon, in her original submission, said:

In July 2001, Victoria Police established a Crime Causal Factors Project, which allows Victoria Police to record information that classifies existing crimes by causal and associated factors. Victoria Police uses the crime information to measure the amount of reported crimes against a person which are motivated by factors such as prejudice, including sexual gender identity; physical/mental illness; political beliefs or status; race; ethnicity; religious beliefs; and road user violence. It is recorded for both crimes against the person and property crimes. The data collected is subjective data based on the perceptions of the victim and the evidence available to the member attending the scene. It is not designed to represent cold hard facts but rather possible indicators.

How is this information being used and what impact is it having? I realise, being only about a year old, it is new, but it is certainly a very interesting initiative.

Mr Read—I was going back to your earlier comments; I was not talking about that particular issue.

CHAIR—I wonder if we could have some more information as to how that is proceeding and what is showing up.

Cmdr Dickinson—I am not familiar with that specific project in the way it is described. I would be happy to follow it up, if you would like me to do that.

CHAIR—I would. It is put on the LEAP Program, and I would be most interested to know. I take it that the concept of profiling is one that you use, and that is the sort of information I would imagine you would feed into such an exercise.

Cmdr Dickinson—Yes.

CHAIR—Thank you both very much for coming this morning and for giving us your testimony, which will be most useful to the committee. When we get such information it starts

to open up whole new lines of questioning. We thank you and we would be grateful to receive the additional information that you have undertaken to let us have.

[11.13 a.m.]

BENNETT, Ms Carol Joan, Executive Officer, Victorian Alcohol and Drug Association

CHAIR—Welcome. Would you like to make an opening statement?

Ms Bennett—The Victorian Alcohol and Drug Association is the state funded, peak body representing alcohol and other drugs services in Victoria. The reason we prepared this briefing paper or report is that we in Victoria are in election mode. A number of media and political debates are occurring, and they are centring on the need for increased criminal justice sanctions. This runs counter to the evidence and research that we know of about what is most effective in dealing with people who commit minor drug related offences—and we are talking about early intervention and treatment for people with drug problems as a way of addressing those problems in the longer term and of benefiting those individuals and the community.

In Victoria, we are in the context of an election. We have seen this year, as part of the budget, an increase in funding for 600 additional prison beds; we seem to be spending more and more on prisons. This is the fastest rate of increase in Australia in the number of prisoners. Most prisoners have drug related problems: conservatively, the estimate would be that 60 per cent do and the highest figure would be that up to around 80 per cent of people do. Most of these offences are minor—that is, they are incarcerated for less than 12 months—and most of them relate to property crime. We know that, if intensive drug treatment is provided, it benefits not only the offender but also the community in terms of reduced recidivism, reduced crime and reduced cost to the community in terms of helping families and reducing other costs such as insurance costs. So what we are seeing is a more costly and less effective option taken, and it tends to be very much public and media driven. That is the reason we prepared this report.

We have joined a number of other community and social welfare groups to form the Victorian Criminal Justice Coalition, which is about trying to get some rational debate into the election campaign and talking to both sides of politics about what the research and the evidence tells us about the most effective management of people who commit minor drug related offences. That is the context in which we have prepared this report.

I will give you a run-down of some of our findings. Over two-thirds of all prisoners committed their crimes while under the influence of drugs or to obtain money for drugs. The prison beds cost at least double that of even the most intensive, long-term drug treatment beds and achieve much worse outcomes in terms of all indicators. The most intensive long-term drug treatment beds cost a maximum of \$30,000 per person per year. We know this is far less than a prison bed costs. Victoria's prison population is increasing faster than that of any other state in Australia—which is the basis of our concern—having risen by around 33 per cent in the last five years. The average occupancy rate in Victoria's prisons has exceeded capacity by 100 per cent and continues to increase. This has led to a range of temporary accommodation options which are less than adequate responses. Over 50 per cent of all Victorian prisoners are serving sentences of 12 months or less, and this is mostly—as I said—for minor property related crime and tends to be about money for drugs. International studies show that comprehensive drug treatment programs for offenders reduce recidivism rates by over 30 per cent. While in-prison

treatment is an effective option, the evidence suggests that community based treatment options are far more effective. They are the general trends that we are aware of from the research literature.

I might just walk you through the report. In terms of the key issues from the literature, we have outlined a number of factors on the front page of the report. Specialist drug treatment is one of the most effective ways to reduce crime and crime recidivism. As I said, most offenders commit their crimes to obtain money for drugs or while intoxicated or using drugs. Victoria's property and personal crime rate was the lowest in 1998. Its prison population, however, is growing at a faster rate than any other state or territory. There has been a 52 per cent increase in the prison population Australia wide over a 10-year period, and governments around Australia have moved to try to avert this by implementing diversion programs and other strategies as a way of curbing this increase. As a result of this, we are seeing a one per cent increase in the prison population nationally. But in the five-year period to June 2000, Victoria's prison population increased by 27.8 per cent. In the 12-month period, March 2000 to March 2001, we saw an eight per cent increase in the rate of incarceration in Victoria. They are the main trends.

CHAIR—Thank you very much for coming this morning and for preparing this for us. Thank you also for telling us that you are part of the political process and that you have a political message to get across as well, because I think that makes some of the questioning transparent. I begin by saying that one of the reasons that we are having this inquiry is to separate some of the myths from the facts. One of the things we often hear about is the part that drugs play in the incidence of crime. What is the origin and the basis for that figure of two-thirds? Did you say that that figure was for people in jail or for crimes committed?

Ms Bennett—It is the number of prisoners who have a drug problem.

CHAIR—No, that was not what you said. You said that two-thirds of crime of prisoners was caused by people either stealing to get money for drugs or committing an offence under drugs. Firstly, what is the origin of the two-thirds figure? I will then ask about the other two parts.

Ms Bennett—Its origin is Victorian prison statistics. I am happy to provide you with a reference.

CHAIR—How can the prison statistics tell me whether or not they were stealing to feed their drug habit or committing the offence under the influence? How can prison statistics tell you that?

Ms Bennett—You might need to talk to the corrections people about that. They do actually collect data on the nature of crimes committed and the context in which those crimes are committed. That is how we collected that data.

CHAIR—We have a lot of data that comes from the Australian Bureau of Statistics that will tell you that the number of people in jail for drug offences is 10 per cent of the population. That is at odds with your figure.

Ms Bennett—I would be happy to provide you with a reference for that figure.

CHAIR—I would be most interested in seeing it. I would also be interested in seeing the breakdown of that alleged two-thirds figure as to what percentage were actually under the influence of drugs at the time they were committing their offence and, secondly, as a separately identified figure, the number of people who presumably stated—I do not know how else you would know—that they were committing their offence for the purpose of feeding their drug habit.

Ms Bennett—I would be happy to try to locate that figure. Most of our figures come from the Office of Correctional Services Commissioner here in Victoria.

CHAIR—I would be really interested to know the basis of their collection of such material. Presumably, it would be something that would come from admissions in court.

Ms Bennett—I am not sure.

CHAIR—Otherwise, you are relying on the veracity of the prisoner, who has already established himself as not being terribly reliable. You say in your submission that a drug treatment alone provided in the prison setting is less effective than a combination of intensive in-prison and intensive post-prison drug treatment and family support programs. Is that saying that there is a large population of people in prison who are on drugs?

Ms Bennett—I think that is a fairly reasonable assumption to make, yes.

CHAIR—So how do they get the drugs?

Ms Bennett—I can only assume how they might get drugs in prison but we know that there is a capacity to obtain drugs in prisons, and this is a problem. There is some anecdotal evidence that people who are incarcerated, for whatever reason, particularly if they already have a drug related problem, do tend to end up with that problem being exacerbated as a result of that incarceration period.

CHAIR—It is only anecdotal evidence at this stage, but I am told that the prison population, which is largely male—I think 96 per cent of all prisoners are male—has a high incidence of AIDS and hep C. Do you have any stats on that?

Ms Bennett—Certainly not at hand. That seems like a very high figure. But if that is the case—

CHAIR—I do not have a high figure. I said that 96 per cent of the jail population is male and, of that population, I am told that there is a high incidence. I cannot tell you what the figure is.

Ms Bennett—A report released this week by the Hepatitis C Council of Australia indicates that hepatitis C rates generally are increasing. If the prison population has a high number of people with drug related problems, you can only assume that that would also translate into a high rate of hepatitis C and other communicable diseases.

CHAIR—We all hear anecdotal stories of how drugs are smuggled into the prison system, but I would like to know if there are more sinister sides to it. Perhaps we will have to ask other people that question. To go back to the first question I asked you, you said two-thirds of all people go to prison because of crimes connected to feeding their drug habit or being under the influence of drugs. Is it also possible to get the breakdown of the sorts of crime? For instance, we have figures showing that last year, here in Victoria, there were in excess of 37,000 motor vehicle thefts, of which there was a clear-up rate of only some 9,000. In accordance with your evidence, two-thirds of those 9,000 people would have been doing it for drug related reasons or would have been under the influence of drugs. I would like to know where the evidence for that is and whether or not you can break it down to rape, aggravated assault and car theft. If 9,000 people were apprehended out of the 37,000 incidents, even allowing for a double-up of one person committing more than one crime, that is an enormous number of people—some 28,000—out there who did it. Are they all supposed to be drug related crimes too?

Ms Bennett—Two-thirds of them are, at a conservative estimate. We do not prepare the figures, so I cannot give you intricate details of how those statistics are devised, but we did collect these statistics from the Office of Correctional Services Commissioner and the Australian Bureau of Statistics. All of these figures relate to current prison data, but I am not sure how that data is actually collected.

CHAIR—But you will see what you can find and let me know?

Ms Bennett—I certainly will.

CHAIR—You said that your organisation is a state government funded organisation.

Ms Bennett—It is.

CHAIR—Is your organisation in favour of harm minimisation from drug usage or are you in accordance with the federal policy of prevention from the use of drugs?

Ms Bennett—Our organisation represents a range of views. We have a whole range of services, from abstinence based models right through to youth outreach services and so forth, so we represent a range of positions in relation to drug use. The National Drug Strategic Framework is a harm minimisation framework.

CHAIR—The national policy these days is Tough on Drugs; it is not harm minimisation anymore.

Ms Bennett—I misunderstood that then, because the national drug strategic framework still has, as its basis, harm minimisation as a core principle on which it operates. Harm minimisation does not necessarily mean that it is okay to use drugs; it certainly does not from our perspective. Any kind of use of drugs, or no use of drugs, is an appropriate measure if it reduces harm to the individual and the community—that is the highest priority.

CHAIR—In New South Wales I am aware that the state department of health has a practice, which I find quite appalling, where groups go around and actually teach young people how to inject into their veins. I find this appalling. Is there any such practice here in Victoria?

Ms Bennett—Not that I am aware of, no.

CHAIR—I find it quite appalling that taxpayers' money is used that way in New South Wales, so I am pleased to hear that it is not here.

Ms Bennett—Not that I am aware of. There are services that do provide information about how you can minimise the risks associated with drugs given that there will be a proportion of the community who continue to use drugs whether we like it or not. There is information out there that aims to reduce the harm that might be related not just to that individual's use but to the community as a result of that use. As you mentioned, communicable diseases such as AIDS and hepatitis C really do pose a great threat to our community, and whatever we can do to reduce that threat we would see as being of great benefit to the individual and to the community.

CHAIR—With regard to the methadone program, have you seen any evidence here of trade in methadone, people injecting methadone and deaths relating from that?

Ms Bennett—Certainly, this report does not deal with that—it is outside the scope of this—but not really. Some of our services may report some incidences of that occurring, but that is not our focus when we are looking at this information.

CHAIR—The figure that I found interesting—and I think you said it twice—is that since 1998 the prison population is up but crime is down. Am I correct; did you say that?

Ms Bennett—I suppose these figures show that drug related crime, robbery and car theft have decreased over the last year but we have seen an increase in crimes such as harassment, assault, homicide, rape and those sorts of crimes.

CHAIR—So the prison population is up and drug related crime down. Most people would say that is a good thing, relating to an increased prison population.

Ms Bennett—I suppose it does indicate a slight difference but that depends on the extent to which people are using drugs when they are committing crimes to obtain drugs, and the extent to which that is reported. We believe that 60 per cent is a conservative estimate.

CHAIR—When you say 'drugs: 60 per cent', which drugs are you talking about? What drugs are they under?

Ms Bennett—All drugs.

Mr SECKER—Does that include alcohol?

Ms Bennett—Yes.

CHAIR—You are including alcohol in that?

Ms Bennett—Yes.

CHAIR—I will cede to you, Mr Secker; I was presuming you were talking about illicit drugs.

Ms Bennett—All drugs.

CHAIR—I would like to know the difference between legal and illegal because that is very important. Do you have those figures too?

Ms Bennett—I am not sure about the way in which corrections collect their data, but I can certainly check.

Mr SECKER—Thank you, Madam Chair, that was the clarification I needed. It would seem to me that a lot of crimes out there would be due to alcohol, which is a legal drug. As a committee, we probably need a clarification between the illegal drug use and the legal drug use, if you could get that for us. Obviously a lot of crimes such as stealing or assault—those sorts of crimes—are committed due to the effect of alcohol, so we need that clarification. Dot point 10 of your submission says that the prison population increases in 1999-2000 have meant that the average occupancy rate has continued to be in excess of 100 per cent of current capacity. If it is more than double the capacity, where do they go?

Ms Bennett—They are being housed in temporary accommodation settings. For example, the Victorian government has put into place some mobile prison vans to house people, and there is a bit of double bunking as well which creates space—

Mr SECKER—Mobile prisons?

Ms Bennett—Mobile prisons, yes.

Mr SECKER—It almost sounds like a pizza delivery or something like that.

Ms Bennett—That is occurring in Victoria.

Mr SECKER—I take it from your submission that you are strongly arguing for a greater role for drug rehabilitation programs in prisons. I think you noted that the Californian experience said that, for every dollar spent, you save \$7 in the long term. That would be very hard to do under the sorts of conditions you have outlined, I would have thought. If you have this doubling of capacity, mobile prisons and Lord knows what else, I would have thought that would make it even harder to do those necessary drug treatment programs within the prison system.

Ms Bennett—Certainly there is some drug treatment provided in prisons in Victoria, and the evidence is that prison drug treatment does provide some positive results in reducing recidivism.

Mr SECKER—About a third, isn't it?

Ms Bennett—Certainly a third for community based treatment—perhaps not as high for prison based treatment. That is certainly happening in Victoria. We also have diversion

programs. They are just starting to be implemented, so perhaps they are not yet providing good results about alternative options for sentencing. But they are certainly in place, and the Commonwealth has provided significant funding for diversion in Victoria.

Mr SECKER—Do you know how much offhand?

Ms Bennett—I cannot tell you offhand; I am not sure.

Mr SECKER—Could you explain the diversion program? From looking at dot point 6, it seems that this diversion program is almost based on the fact that they do not have any more room in the prisons, that they are using diversion programs in prisons not because they think it is a good idea but because they do not have the capacity to put more people in the prisons.

Ms Bennett—I am not sure that that is the case. There is good evidence to suggest that, if you get somebody at an early stage of drug use and minor offending, you may prevent significant problems down the track. I think the program is very much based on the research that demonstrates that to be the case. There are a number of programs in place that do aim to provide some sort of support and treatment that may prevent problems from occurring and becoming more significant once somebody is incarcerated.

Mr SECKER—I do not think there is much doubt that drugs, legal or non-legal, are the major cause of crime. Whether it is two-thirds, three-quarters or half, I do not think it really matters; it is a very significant problem. Would you be arguing that you need a greater role for rehabilitation in prisons and that, to do that, you would need better prisons and a greater capacity, because it is obviously over capacity now?

Ms Bennett—Given that we are housing so many people in prisons for minor drug related offences, it would make sense that there be provision for those sorts of treatment programs that may provide some benefits to the individual and the community. If there are opportunities for doing that, then that would certainly make good sense. All the research suggests early intervention is beneficial for people who may go on to have significant drug and crime problems.

Ms PANOPOULOS—What sort of social support does your organisation provide for illicit drug users?

Ms Bennett—Our organisation is the peak advocacy body that represents the services that provide support to people with drug problems; we do not actually provide services. Those sorts of supports are extensive. We have as members all funded agencies in the drug treatment area in Victoria, so there is quite a spectrum of treatment programs that are provided. There are all sorts of supports, from youth outreach services, where people go and provide support to young people in the community, through to supported accommodation, where there is one worker per five people housed in a community house—which is perhaps a low level of support. Sometimes we treat it as a high level of support for people with significant problems.

Ms PANOPOULOS—Which organisation provides that assistance?

Ms Bennett—Most of the major organisations provide supported accommodation treatment services in Victoria.

Ms PANOPOULOS—Would your organisation have a list of where all this supported accommodation exists?

Ms Bennett—Yes.

Ms PANOPOULOS—Would you be able to provide that to the committee?

Ms Bennett—Yes, absolutely. The support available also goes on to much more intensive support, which is perhaps less significant in terms of the funding and resources that are directed to it.

Ms PANOPOULOS—You mentioned recidivism in a brief paragraph in your report and you quoted Tasmania statistics. Do you have any Victorian statistics?

Ms Bennett—There is not a lot of data on this. We have got overseas statistics, but we do not have them on Victoria. That is perhaps an area that needs a little more attention. Most of our information comes from America.

Ms PANOPOULOS—Thank you.

Mr MELHAM—I think it is fair to say that you are disturbed at the political trend, in terms of where both sides of politics seem to be heading.

Ms Bennett—Certainly in terms of community opinion. The tough on crime approach seems to be receiving significant support.

Mr MELHAM—Is it your view that, in terms of the causes of crime, it would be more productive if we were to concentrate on that?

Ms Bennett—I am sorry?

Mr MELHAM—The causes of crime. In terms of drug treatment in the prison setting, everything you have seen at the moment, with intensive assistance, leads to a reduction in recidivism?

Ms Bennett—Yes.

Mr MELHAM—There are no studies that you are aware of that show minimal or nil impact when it comes to intensive treatment of people with drug problems?

Ms Bennett—I think there is some research that suggests—although I do not have it at hand—that there are a range of responses. Not everybody who goes into a treatment program will automatically benefit from that program. About 30 per cent of people will not benefit at all, 30 per cent will go on to have intermittent drug related problems, 30 per cent may overcome

their drug related problems altogether and another 10 per cent tend to fall within those categories.

It is not a simple solution. It does take a concerted effort. It is not a clear-cut problem to which there is a straightforward solution. But we do know from the evidence that early intervention can provide significant hope in addressing drug problems, particularly when we are talking about very early stages of problematic drug use and crime. For people with significant problems, you get those variations in results and sometimes it takes people several treatment programs and different types of treatment before they can overcome their problem—if they do.

Mr MELHAM—The studies and assessments you have seen also would show those programs to be cost-effective in terms of the bean counters.

Ms Bennett—Very much so. Certainly if you compare it to incarceration. We are looking at the most intensive drug treatment, which is long-term residential rehabilitation in most cases. Then you are looking at a \$30,000 per person per year figure as opposed to a minimum \$60,000 to house somebody in a prison.

Mr MELHAM—Obviously, you concede that in some instances it is not appropriate. I notice the figure you cite on the bottom of page 2—92.7 per cent of all prisoners in Victoria were sentenced for two years or less in the year 1999-2000. So it would seem to me that those people were suitable candidates. They are going to come out and they are going to come out quickly.

Ms Bennett—Yes, that is true. If we could provide some sort of alternative prison in the first instance, it would make sense to be doing that. For minor and first-time offences, in particular, putting someone in prison may exacerbate the problem.

Mr MELHAM—As you see it they need ongoing management when they come out of prison, to be more effective.

Ms Bennett—Absolutely. Just providing prison treatment is better than providing no treatment. But providing prison treatment and ongoing support—and that may be a counselling session once a week or whatever is needed—is far more effective than just releasing somebody and not providing any kind of follow-up.

CHAIR—We have been concentrating on criminal offenders who are in prison. In the recent publication by the Australian Institute of Criminology *Facts and Figures* they point out that, of criminals who are charged and convicted, only 26 per cent go to prison, 72 per cent are in community correction programs and two per cent are in periodic detention. That is only available in New South Wales and the ACT. You talked to us about people who are in prison. What about the offenders—equally criminals—who are in community detention of one form or another and who represent nearly three-quarters of all sentenced criminals? What programs and what statistics do you have about the vast majority of criminals who do not go into jail?

Ms Bennett—I find those figures surprising. What sorts of programs are they referring to?

CHAIR—I will read to you from this publication:

... there are a variety of sentencing options available to the courts. Corrective service authorities manage the offenders placed under the sentencing options of imprisonment, community corrections and periodic detention.

- Seven out of 10 offenders managed by corrective service authorities were placed in community based programs.
- Twenty-six per cent of offenders served a sentence in prison. Seventy-one per cent of prisoners were held in secure prisons.

That is, of those who go to jail. Then we get the break-up, which is why I told you only 10 per cent are there for drug offences. These are the statistics of the Australian Institute of Criminology. We have a lot of prisoners out there who are doing something else. I wonder what your programs are doing with them.

Ms Bennett—We certainly are working with people under those circumstances. I have not got access to those figures at hand. The speaker after me will be able to provide you with some more of those research statistics. But that is in line with diversion options and other options that you would have to assume provide some early intervention and some other ways of dealing with drug related crime that are likely be more beneficial.

Mr SECKER—I am just wondering why you have headed your submission ‘Tough on crime versus drug treatment’. It almost sounds like it is the Adelaide Crows versus Essendon and there can only be one winner. There is no reason why we cannot have both, I would have thought, and the fact that being tough on crime and tough on drugs has perhaps brought on a heroin drought which has actually had an effect on the total number of robbery cases, especially at convenience stores, due to the fact that there is no longer that desire to get the money to feed their heroin habit because they have probably changed to something else—amphetamines or something like that. Did you mean it to be like that or is it more a plea that being tough on crime is okay but please let us spend a bit more money and look at drug treatment as well?

Ms Bennett—When we refer to being tough on crime, we are talking about being tough on minor drug related crime. Certainly being tough on crime that is significant is not something that we are looking at here. We are talking about offences of less than 12 months that tend to be drug related. In terms of being tough on crime in those circumstances versus drug treatment, all the research evidence suggests that that is not the way to go. We are an advocacy lobby group and we are referring to current political debates around being tough on crime. That is what we are referring to: being tough on crime around minor offences.

Mr SECKER—So you are advocating that we actually have fewer drug offences or lesser penalties?

Ms Bennett—Where somebody has committed a first time offence for a minor property crime that is perhaps related to drug use or a drug problem, those people should be given another alternative option.

Mr MELHAM—Other than a custodial sentence?

Ms Bennett—Yes. They should be put on some sort of special prison release program and given another option that will provide them with some treatment and some support that may address the issues that seem to be becoming a problem for them and that will eventually become a bigger problem for the community if we do not provide some sort of treatment and support.

Mr SECKER—But isn't that happening now with the diversion programs?

Ms Bennett—It is starting to happen but—

Mr SECKER—I think your own figures say that there has been an increase in diversion programs.

Ms Bennett—There has been an increase in diversion across the country and in Victoria. We have seen the opening of drug courts here as well, which is also a very good measure. But I guess at the point at which the Victorian government is implementing 600 new prison beds as part of its budget, it does pose the question of what is the balance here. If we are expanding at a rate of eight per cent in Victoria, and that is way out of whack with other states and territories, then obviously we do have a significant issue here in terms of where our priorities are being directed.

Mr SECKER—So you are suggesting that rather than on a political reaction of 600 more prison beds the money could be better spent on drug rehabilitation to have a greater effect.

Ms Bennett—For minor offenders, yes.

CHAIR—I point out to you that really you only seem to be looking at one side of the coin, because although the prison population has increased on average by five per cent since 1983—these are the year 2000 figures—and we now have 21,714 people in prisons, on any given day we have 58,979 people who are serving community correction orders, which are non-custodial sentences. That has grown at a rate of seven per cent on the previous year.

It seems to me that, whilst we are talking in generalities, what we really need are some specifics, like who the people are that go to jail, who the people are that go onto the community corrections programs, which include diversionary programs, and what the basis is on which those decisions are made? Clearly, judges and magistrates are making those decisions daily. Do you have in your research any trends as to why a decision was made about someone who actually goes to jail? Of that 21,000, 80 per cent of them are convicted and the others are on remand—and that has been increasing—but on what basis do you have any evidence as to why a decision is made to put what seems to me majority of people into non-custodial sentences? The smaller proportion are going to jails, which tends to make you think—unless there is evidence to the contrary—that it is the nasty people who are going to jail.

Ms Bennett—Our focus is really on the increase in prison beds in Victoria, and that is the context in which we undertook this exercise. The basis of our concern is the election campaign and the focus on an increase in prison beds as a way of dealing with relatively minor offenders.

CHAIR—Would you like to comment on today's ad that says that homicide, rape, robbery, assault, abduct/kidnap, arson, aggravated burglary and weapons and explosives have all increased dramatically? If there is an increase in that type of crime, one would expect there to be an increase in the conviction rate and, presumably, an increase in the prison rate. Do you think those are the sort of people who ought not to go to jail?

Ms Bennett—No, but I was not talking about those sorts of crimes. I was referring to minor property offences and so forth—those sorts of offences that are not what you are referring to.

CHAIR—Except that what we have not had is evidence of those people going to jail. You have asked us to presume that they are going to jail but without giving us the evidence that they are in fact the ones going to jail, because we have got a lot of people who are not going to jail who are convicted. My commonsense would tell me, if we have got a half decent judiciary and magistracy, that they would be putting those people who are committing offences that are less dangerous to the community into non-custodial sentences and programs.

Ms Bennett—The figures suggest that we still see most incarcerated Victorians sentenced for less than 12 months. Those are people going to prison, so we are still seeing a very high proportion of people being imprisoned for minor drug related offences.

CHAIR—The stats we have do not seem to bear that out. Daryl, didn't you point out that the average sentence is two years?

Mr MELHAM—In her submission at the bottom of page 2, Ms Bennett says, in terms of the profile of the current Victorian prison population—

Mr SECKER—92.7 per cent got two years or less.

Mr MELHAM—That is at the bottom of page 2 of VAADA's submission. Ms Bennett adds orally that 52 per cent receive less than 12 months. I think that is the basis of a lot of her evidence; that those people who are getting that range of sentencing in property offences and other stuff are the ones that we should be having more concentration on in terms of alternatives to imprisonment. She has specifically been saying that.

CHAIR—On the other hand, I think it is important to know, as from those other figures, that there are a hell of a lot of people going somewhere else. Presumably, they need help too.

Ms Bennett—That is not the focus of this particular report.

Mr MELHAM—She has focused on a particular section.

Ms Bennett—I must say I am sorry. I was informed of coming along to this presentation this morning at the last minute.

CHAIR—Yes, I realise that. We are very grateful that you came.

Mr MELHAM—You have done well. Do not worry; you do not have to apologise. It is a good submission.

CHAIR—We are very pleased that you did come. We realise that we originally had someone else scheduled for today, and we are very grateful that you were able to come. As no-one else has any questions that they would like to ask, we would like to thank you very much for being with us and thank you for your testimony.

[12.00 p.m.]

FREIBERG, Professor Arie, Professor of Criminology, University of Melbourne

CHAIR—Thank you for being with us, Professor. Would you like to make an opening statement before we begin questioning?

Prof. Freiberg—I do not have a prepared statement but I was listening to some of the previous testimonies. Perhaps I could clarify some of the points raised and then take the discussion from there.

CHAIR—Thank you. That would be very helpful.

Prof. Freiberg—Obviously there was a concentration there on alcohol and drug related offences. I think that is clearly a major issue. The data that the previous speaker referred to comes from the Office of the Correctional Services—I am concentrating on Victoria here—and is based on entrance interviews, observations and assessments of people who come into prisons or community corrections and also the evidence from the drug policy expert committee in Victoria, the Pennington committee, which did a tremendous amount of work in the 1990s. The figures vary depending on how one asks the question, but there is an indication from self report studies that something like 41 per cent of male prisoners and 50 per cent of female prisoners admitted to committing their crimes under the influence of alcohol or drugs or to support a drug habit. Some of the other data shows the figures to be much higher. The indications are that in Victoria something like 63 per cent of offenders on community based orders were identified as having a drug or alcohol problem. As one of the members said, alcohol really is a significant problem and, although it is a licit drug, it ought not to be overlooked. The Victorian Drug Court, which I was involved in establishing, deals with both alcohol and drug related problems. I think that is a key issue because many of the offences of violence are alcohol related rather than drug related.

Other evidence you might be interested in, in regard to the drug-crime link—and I think it is very complex; I do not want to simplify it—is Toni Makkai's work for the DUMA project, the Drug Use Monitoring in Australia project. I do not know whether you have had information about that but it is a multisite project in Queensland and Western Australia. It is based on an American model—which the DUMA project is linked directly to—of taking urine samples of arrestees at the moment that they are taken into the watch-house. That is probably a useful barometer of the drug-crime link for the more serious offences; that is, for those who are arrested—not everyone is arrested, but many are proceeded against by summons. That is showing figures up in the 50 per cent range in Australia, although it differs between different cities; it differs between Queensland—at Southport and one other place—and Western Australia. It differs in the percentage of people who show some drug in their bloodstream and it differs in the kinds of drugs as well. That is one issue that you can pick up at the primary level. That is just showing that they had it in their bloodstream; it does not show that that is the reason that they committed a crime. But it is one of the methods that we use to triangulate this drug-crime link. The other issue I think—

CHAIR—Are those figures published?

Prof. Freiberg—Yes, they are published every six months. You get them through the Australian Institute of Criminology, on the web site. It is a very well-known, well-published and, I think, very important piece of work. The other point Toni Makkai is at pains to make is that the link is complex; that is, there are many people who have commenced a life of crime or crime-related activity, and then alcohol and drugs become part of their life; they may continue or desist. There are people who get into drugs and then commit offences to support a drug habit. There are those who have a drug habit who do not commit any crimes. There is no simple relationship. Although there is a very strong case to be made, it is not a one-to-one issue, so I would recommend that the committee have a very close look at the kind of work that Toni Makkai is doing on trying to explain what I think is in danger of being overly simplified.

Can I pick up a number of other points and then I am happy to respond to questions. On the question of diversionary and non-custodial options, I am basing my comments on a report that I submitted to the Victorian government on sentencing reform, called *Pathways to Justice*, published earlier this year. I think it has been circulated. You have a copy in front of you of one of the charts in there. That indicates a proposed—I hope it comes to pass, but it is not the current situation; it is similar to it—range of interventionary options. Can I also stress that I have a very strong view about the use of ‘diversionary options’ as an alternative term to ‘imprisonment’, to take up the chair’s point.

The vast majority of sentences imposed are non-custodial. In Victoria and most other states, imprisonment is a sentence of last resort. In Victoria, something like 95 per cent of sentences imposed in the lower courts are non-custodial; in the higher courts, something like 50 per cent are sentences of immediate imprisonment; and some 25 per cent are suspended sentences of imprisonment—and we can have a debate about whether they are truly custodial. The vast majority of sentences imposed in the magistrate’s court are fines and bonds; there is no supervision. To take up the chair’s point again, in Victoria the community based orders, CBOs, including intensive correction orders, make up something like nine per cent of orders imposed, but, as you pointed out, the people under sentence are a different matter. There are three times as many people on non-custodial orders than there are in prison, and that in fact fits into the overall sentencing policy, which is imprisonment as a last resort. So they are not diversion programs, in my view.

That drug related chart only shows drug related options. The early ones are pre-arrest, and some of them are funded by the Commonwealth. There are cannabis cautioning programs and diversion programs. The CREDIT scheme is a bail option for short-term interventions. I have recommended a deferred sentence to allow the courts to have a close look at an offender—it is not just a drug option—to undertake programs under their own steam and then come back to court. Then we have conditional adjournments, like bonds, where courts can put conditions on orders. We have the community based orders, which have a drug and alcohol condition. And then we have various other options all the way up to the drug court. In Victoria we also have a combined custody and treatment order, which is a minimum of six months in jail followed by treatment in the community. My own view is that that is a dramatic failure, and its use is dropping. In fact, most have great problems about treatment in prison and its effectiveness. There are serious problems, to pick up on your points again, Chair, in providing adequate treatment services.

I was in Adelaide recently, at a judges' conference, where they explained the kinds of treatment people got on community based orders. You are talking about eight or 12 hours of some anger management program or drug program. These are derisory, not for want of trying. The reality is that, when magistrates and judges put people on these orders, the service delivery is intermittent, it is delayed and it is basically inadequate. While we believe—and we hope—that we are providing services for people who have not only drug and alcohol problems but also anger management problems, intellectual disabilities, mental disorders and the like, the reality is that the support services are not really there. It is no wonder that we have very high recidivism rates—something like 60 or 70 per cent in the prisons.

CHAIR—What is the recidivism rate like for those 59,000 people who are in noncustodial arrangements?

Prof. Freiberg—Yes, I can give you those figures. Again, one has to be careful about the language one uses. Recidivism is usually measured by the kind of activity afterward and the length of time against which you measure it. Usually, it is measured by a conviction perhaps over a two-year period following, if you are in jail, release from prison not from the conviction, of course, or in noncustodial, following the imposition of the sentence and depending on whether you take the supervision period. In Victoria, we have figures relating to breaches of conditions and those by further offending. When you are on a conditional order, there are a number of conditions: to be of good behaviour, turn up, all of those things. Concerning the breach rates we got from an Arthur Andersen report on community corrections published in 2000—and these are found in my own report—for community based orders, overall there was a 45 per cent breach rate for community based orders. Half of that, that is 26 per cent, were breaches of conditions; about 12 per cent were further offences and other conditions; and only about six per cent were purely by further offending. For parole, the breach rate was about 38 per cent and again, about half of that were by conditions. This is not surprising in the sense that, if you are under close supervision, you are likely to be picked up for not turning up for your appointment, telling the parole officer where to go, not taking your treatment. For intensive correction orders, the breach rate was 37 per cent; for community work only, it was about 30 per cent, so we have those figures.

CHAIR—What was the figure for a new offence rather than a breach of condition?

Prof. Freiberg—For the community based orders, which are the majority of orders, it was 6.1 per cent just by further offending.

CHAIR—Would the average age—we are told that most prisoners in jail are under 35.

Prof. Freiberg—The average is about 28 now.

CHAIR—And the most intensive period of committing crime is young males, 17 to 25s. Do those figures with the noncustodial sentences tell us that the recidivism rate is really quite low?

Prof. Freiberg—No, they tell us that the recidivism rate is unacceptably high, because you are looking at the combination. The other one is the combination of breach of orders and further conditions—they often come together. That made up about half of all the breaches.

CHAIR—But even if they breach those orders and they get into trouble for that, do they go on to become perpetual criminals?

Prof. Freiberg—No, not necessarily.

CHAIR—So you could say that because of the nature of who goes into the noncustodial programs rather than into a jail situation, rehabilitation programs and the like are more likely to be successful with that group of people.

Prof. Freiberg—It is very difficult to say. My understanding was that I was asked to speak on effectiveness of sentencing and this is one of the most fraught issues. The studies that one has are very equivocal in the sense that you cannot directly measure the outcomes of prison against the outcomes of community work or community based orders—you need to control for the differences of seriousness of the crime and the number of prior convictions. Here, I would like to differ from the previous speaker in the sense of the make up of the jail population.

In Victoria, we have the lowest imprisonment rate in Australia and we have a low crime rate. There are, again, complex relationships—which you hinted at, Madam Chair—between imprisonment rates and crime rates. I would have to argue that those links are reasonably tenuous for reasons which I am happy to explain. The requirement that imprisonment be a last resort has meant that, in most jurisdictions—although they vary in how closely they use those rules—you find that people who are getting even minor short-term sentences have prior convictions and have usually failed on every other order; that is, they have gone up the ladder—there is a sentencing hierarchy set out in many acts—because everything else has failed. The question really is: is it because they are wilfully contumacious of the law or are there other reasons which lead them to be in jail? As facetiously commented in one of my reports, it is very hard to get into jail in Victoria.

CHAIR—Yes.

Prof. Freiberg—That may or may not be a good thing, depending on your viewpoint about the role of jail. The profile of the people who finally end up in jail is one of high unemployment; a high incidence of mental illness and disability; especially for women, drug related offending, which is very closely related to previous sexual abuse; and other various long-term issues. So, effectiveness requires (a) an identification of the needs and risks that are involved in people, (b) the delivery of programs and (c) an understanding that the programs alone probably are unlikely to make a significant difference where the people who are committing the crime have problems which are fundamentally deep seated. This is what you find when you open drug courts—the major problems are not the drug problems: they are housing problems; they are employment problems; they are, if you like, personality and mental illness related problems; and family problems. Unless you provide the package of services, you are not going to make a large difference.

CHAIR—You are saying that those underlying problems are ones that lead to the drug dependency.

Prof. Freiberg—That is right. Drug dependency is not an issue in and of itself.

CHAIR—It is what is happening underneath there.

Prof. Freiberg—I have sat in on drug courts—I have been involved, as I say, in their establishment here and have been closely watching the experiments in other jurisdictions—and, unless you can provide the housing and other supports, people walk straight out into their cohort and take the drugs again, because they are available and they relieve a lot of the symptoms of whatever it is they are suffering. So the drug-crime nexus is not a really great foundation to build it on, because even if you solve the drug problem, there are at least half-a-dozen problems—when you get to the seriousness of the drug court—that you have to attend to. That is true to a lesser degree with the community based orders, and I have recommended a specialised community based order stream for drug offenders, because I think we are failing dramatically on that.

CHAIR—Can I ask you about that group of people who are sometimes called mentally impaired. Are those people who are in the system—and we are still looking for good evidence as to what percentage of the population in jail are illiterate and innumerate—that way because of low IQ or some actual disability or is it because they have slipped through the system: they could have been hyperactive or whatever and have missed out on getting those skills? Do we identify those people like that?

Prof. Freiberg—You can. There are numerous studies. Certainly, you may get it out of the annual census data plus the various specialists who work in the field. The disability issue is a difficult one. I do not have the figures it at my fingertips, but I would say somewhere between 8 to 15 per cent of people have got a disability problem, and disability services are provided all the way through the non-custodial options in Victoria. We have things called justice plans, which can be attached to non-custodial orders, which require disability services to provide those services. However, they simply do not have the resources to deal with the number of people.

The whole issue of deinstitutionalisation has meant that people are dealt with in the community and are provided with those supports. We do not have enough secure facilities. We have some at the new hospital—the Thomas Embling Hospital—but there are dramatic issues and dramatic problems that I am aware of. In fact, on Thursday I am attending a seminar about what to do with people who have dual disabilities—a mental disorder and an intellectual disability—who are possibly dangerous and who are kept under some form of civil detention, such as guardianship. These are people for whom we really have no place in the community and we have no proper legal powers to hold them. We do not want preventive detention but we do want the facilities. There are groups of people who have fallen through many of our systems. Illiteracy deals with schooling, and a lot of the people we have gone to jail have dropped out of school early and have very poor skills, which makes it harder to get a job.

CHAIR—But if the people that I am talking about now—people who have missed out and are illiterate, and probably innumerate—had had early childhood intervention, could they have been kept out of that system?

Prof. Freiberg—To some degree, yes, I think so; and I applaud the Commonwealth's efforts and its programs on early intervention. These programs take a long time to work out, and we have to know how to intervene. There is some data that some of the strategies are counterproductive. An article appeared recently in the *Australian and New Zealand Journal of*

Criminology about a major experiment in the United States in the 1930s where they found that early intervention was counterproductive and resulted in more crime. We just cannot say that early intervention is a great thing. There are issues about identifying the right people and the wrong people, stigmatisation, follow-up and knowing the kinds of interventions. I do believe it would help if we had a larger range of family based interventions and tried to provide services to help with illiteracy, attention deficit, disabilities, mental health and family support. A lot of the families are criminogenic—you have generational problems. The community in which they live is dysfunctional. That is why you have to be careful about saying that the community is going to solve everything. It is not.

CHAIR—It has been put to me, by people who have put forward their ideas in an informal sense, that there ought to be a more forensic arm of the departments that work in the area of finding children who are at risk—a DOCS sort of situation. In other words, people would be trained similar to the way that police officers are trained, as opposed to only social workers, because the processes of finding out facts and figures are different in the different disciplines, and there really is a need for a more forensic approach to identify if there is in fact a problem. I have had families come to me, as their local member, where intervention by people who are welfare officers has caused the most appalling havoc for that family. You cannot help but have tremendous sympathy for the family, because some of the facts have basically been wrong. How would you then remedy it?—it is just terrible. Do you have a comment on that?

Prof. Freiberg—I am not an expert on child abuse, mandatory reporting and those kinds of interventions. I think we have swung, in terms of social policy, from a policy of ‘we must keep people in the family’ to a policy of getting people out of the family. We are pilloried on both sides. If you leave the child in the family and the child dies, you are in awful strife. If you take them out of the family and they die in an institution, you are in awful strife. We have had issues with Aboriginal communities as well, about keeping children in or taking them away. I do not know. There are clearly problems of underfunding and the right mix of skills for those kinds of family interventions, but it is outside my area of expertise. All I can say is that the earlier we get people and the more we know about effective intervention, the better it is, because, by the time you have people in jail, you are basically having a minimal impact on their future behaviour, you really are, because jails are not the places to deliver those services. Basically, I think there is a tenuous link between imprisonment rates and crime rates. I think the strongest claim you can make is the incapacitative value of imprisonment; not its deterrence and not its reformatory function.

If you go the American way—that is, if you have under supervision some six million people and lock up one-quarter of all the young black males you will have an imprisonment rate of 700 per 100,000 compared to Victoria’s, which is something like 70 or 80—you are going to have an impact on crime. You must. If you take people out of circulation for longer periods of time, which the Americans do, then perforce you must have some impact. The question is the degree of that impact, and there is a lot of debate in the United States at the moment on that.

CHAIR—So you are saying by having more people in jail you reduce the size of the criminal population at large?

Prof. Freiberg—To some degree, except to the extent that there is a substitutability of people who are committing crimes. I think that is very true in the drug area. In middle range and higher

range drugs you are going to get people providing that service because it is so profitable. But, for example, with violence and robbery offenders and various others, if you put somebody in prison for five years, the only crimes they can commit are against each other. If you put enough people in for long enough—five or 10 years—you might have some impact, but the evidence from the United Kingdom is that you need to multiply by five, 10, 15 or 20 times before you have a significant impact. That is very expensive.

CHAIR—There is also the population rate—the fact that fewer babies have been born since 1965—so you literally have fewer males aged 17 to 25 out there who are the main committers of crime. Has that affected the figures as well?

Prof. Freiberg—Yes. The British Home Office estimated that a 15 per cent rise in prisoners would produce a one per cent reduction in crime. I cannot stress to you too much—and I think you quoted the figures—that the people who commit crimes are not the people who are necessarily detected, reported, prosecuted, convicted and sent to jail. The clear-up rate for burglaries, which is one of the major crimes, is some 13 per cent. Of those, you might get 30 per cent or 40 per cent who go to jail. You are talking about 30 per cent or 40 per cent of the 12 per cent of the clear-up rate. Do you follow that?

CHAIR—Yes.

Prof. Freiberg—So the deterrent impact on those who are committing burglaries—

CHAIR—Is pretty small.

Prof. Freiberg—They know they have a one in eight chance of getting caught, a smaller chance of being convicted and a smaller chance of going to jail. The sentencing system is not going to solve that problem.

CHAIR—Thank you. I am sure my colleagues have questions.

Mr SECKER—I think you mentioned that Victoria has the lowest imprisonment rate. Would you care to say why that might be and what effects that has?

Prof. Freiberg—We are just nice people in Victoria! I have been studying this for 25 years, and something that has been a mystery to me is that since the 1870s or 1880s there has been a differential between New South Wales and Victoria—which I consider to be reasonably homogeneous populations—of 25 per cent to 30 per cent, both in the crime rates and the imprisonment rates. There have been lots of studies to find out why—is it that you commit worse crimes or that your population mix or demographics are different? I have come to the view that there is some notion of culture in different societies. It is different in Western Australia, which has a very high imprisonment rate.

Mr MELHAM—Is it your protectionist view in Victoria that has made you immune?

Prof. Freiberg—Your guess is as good as mine. It always amuses me that every police commissioner and every minister for corrections who comes in says, ‘We are responsible for

Victoria's low imprisonment rate and low crime rate,' but these differences have been noted in official reports for a century.

Mr MELHAM—It is a very high differential.

Prof. Freiberg—It is 25 per cent to 30 per cent. I do not have it in this report.

Mr SECKER—It is because they are all out watching football on Saturday.

Ms PANOPOULOS—They were freer settlers; just accept it.

Mr MELHAM—Or is it a situation where there is, given the physical location of Victoria, that sense of community?

Prof. Freiberg—I can only guess. In a completely different book that I have written looking at sentencing change in Victoria for a century and a half, this leaps out as a factor. I think some of it has to do with the heterogeneity of populations. Those populations with high Aboriginal populations have higher imprisonment rates. But even if you take out that factor, Victoria and Tasmania have always been low. It may be something to do with sentences of community; it may have something to do with judicial cultures. But you are talking about more than a century.

CHAIR—It is an interesting figure. If I remember correctly, about half of all crime is committed in New South Wales—certainly half of all drug crime is alleged to be in New South Wales, and half of that drug crime is alleged to be in the Cabramatta-Fairfield area.

Prof. Freiberg—I cannot comment.

Mr MELHAM—That is where they expatriated them to two centuries ago—the first professionals from Britain.

Mr SECKER—Getting back to the drug court and whether there is a cause and effect, do you have any figures to show that relationship? As an outsider, I would say that assault is probably more likely to be caused by alcohol but robbery might be caused by illicit drugs or the need for them. Do you have any figures that show that sort of relationship?

Prof. Freiberg—I do not, off the top of my head. It is true—a lot of the alcohol related crimes are either domestic violence or they occur in and around licensed premises. I think the Community Council Against Violence did some work on crime in and around licensed premises, about 10 years ago. Most of that relates to young people. It tends to be aggression-honour related, according to the work of my colleague Ken Polk. The drug crimes for women are usually prostitution, burglaries and small-arms robberies; for males, they are burglaries, armed robberies, thefts, credit cards—a lot of deception offences: you have taken a wallet, which is a theft, then you have used the credit cards to obtain goods. There is a whole package of those kinds of offences.

Mr SECKER—Would I be right in saying that you are arguing that we should be spending more money on the underlying causes of drug and alcohol dependence, such as unemployment, poor housing and so on—that governments need to spend more money in those areas?

Prof. Freiberg—That would be my preference. I take the point that was made before about the drought, which certainly reduced the number of deaths through heroin overdoses. The information I get is that there is an increasing amount of drug substitution—

CHAIR—Amphetamines.

Prof. Freiberg—Amphetamines and people shooting up all sorts of disgusting things. There are increasing amounts of gangrene related illnesses and other communicable diseases as well. So you will find that the people who are looking for some form of comfort through some form of drug use, whether it be alcohol or heroin, will substitute one drug for another. I do not know how elastic the market is. I would not prefer the heroin to be available, but I think that, even if you created a total drought there, you would still have some of the major problems, the personality and other problems, that people have.

Mr SECKER—You are saying that we should be spending more money in that prevention area? It is pretty hard for governments at the moment with unemployment—

Prof. Freiberg—I think the demand side is equally important as the supply side. I have seen, through watching the drug court up close, that if you can deal with some of those complex problems, and even if you substituted for some legal drugs like methadone—that is, if you bring it under control—what you are talking about, as the previous speaker mentioned, is harm minimisation. If you can reduce the level of offending even if you cannot eliminate it, if you can reduce the level of drug use or bring it under control, or deal with those problems while you are trying to deal with the other problems, you are better off in the long term because, ultimately, I think the drug drought will turn into a flood again—I do not think it is going to be successful in the long term. My own view, for what it is worth, is that a legalisation policy would do better in the long run to control it so that you can deal with the issues of criminality separately from the issues of drug use.

CHAIR—That is very brave, but I have to disagree quite violently.

Prof. Freiberg—I put that in gratuitously. I do not want to get hung up on that one. I do not want to debate that one; that is a different debate.

Mr SECKER—I am not saying you are wrong or right, but there would be those out in the community who would say, ‘We had no social workers for 50 years and the crime rate was lower in those days.’ Is this more a thing about society thinking government should fix up its problems rather than about people taking responsibility for their actions?

Prof. Freiberg—I think if you read the royal commission reports of the 1880s—

Mr SECKER—Do you mean 1980s or 1880s?

Prof. Freiberg—1880s—and you read that something like 60 or 80 per cent of all male and female admissions to prisons were for alcohol related offences, for problems of public drunkenness, public illness or lunacy, you would see that we have not changed all that much. What has changed is the type of drug that we are using. Alcohol is still a major problem. It kills thousands of percentage times more than heroin and marijuana kill. I think we would like people to take responsibility for their actions, but the truth is that many people do not and that many people have difficulty in that.

I am not saying the intervention of social workers is all that we need—as they are only one in a spectrum of interventions we need—but I am saying that there are significant control problems with people who have a range of problems. There is never a simple solution to a problem such as, ‘I am going to stop drinking,’ or, ‘I am going to stop smoking,’ or, ‘I am going to stop eating fatty foods.’ A lot of people could do that, but we still have obesity problems and we still have a whole range of other problems. I would like to think that dealing with the demand side is a better long-term investment. It is not much use throwing people into our prisons at \$55,000 a year and leaving them there to pass the time. That is effectively what you are doing. We have all these other interventions which are ineffective and we turn around and blame the people for failing. In fact, I had a principle in my report saying that the courts ought to take into account the extent to which the government failed to deliver the services it promised.

CHAIR—It is always somebody else’s fault, isn’t it?

Prof. Freiberg—I think the fault lies on many sides, and I think governments promise a lot or sentencers say, ‘I am going to sentence you to a particular kind of order and you’re going to get treatment and you’re going to get support,’ and the offender gets an hour or a week with somebody who says, ‘You’ve turned up.’ The programs may not be available for weeks. I heard that, in South Australia—and it quite shocked me—you might have to wait three months before you can even get onto a program because they only run them once or twice a year.

Mr SECKER—There has been a change of government.

CHAIR—But, in the interim, you have a whole cohort of victims out there who do not even get a look-in and they get a bit incensed because the perpetrators get some help and they, the victims, get none. That is the other side of the coin.

Prof. Freiberg—They are not mutually exclusive. Our department started a course on victims’ services because we recognise that all of these people—from both sides—are involved. I have argued strongly that the best way to protect victims is by longer term prevention of crime and not by locking up people for longer.

Ms PANOPOULOS—I was very interested in your comments about the underlying, deep-seated causes of drug use and drug addiction. You mentioned a couple of those deep-seated causes, one being housing, and you went on to talk about people belonging to families in which there had been offenders over generations. When we look at deep-seated causes, I would have thought something like housing is important to a degree but is subsidiary to other social causes like dysfunctional families. There are some statistics as to crime rates and drug addiction of people who come from particular socioeconomic backgrounds or from single-parent families

and the lack of socialisation that those people receive. I would have thought those sorts of deep-seated causes were more important than something like housing.

In my electorate, I have a lot of relocated criminals who have wonderful housing and resources. Yet, what that has produced is a new market. As we have discussed, if you relocate from Melbourne to a country town as the last resort someone who has been to prison and who is a hardened criminal and give them the housing, the only option they have is to bring their networks with them and to start a whole new industry. My concern is not looking to the physical causes—such as housing et cetera—but more to the social, psychological and emotional causes, because a lot of these problems—and that is why the drug problem is difficult—are emotional and mental.

Prof. Freiberg—I was not saying that if you provide someone with a house you then have a guarantee of a crime-free life. I was observing that, for many in the drug areas—especially in the drug court—a major problem is homelessness, especially if you are talking about the younger offenders.

Ms PANOPOULOS—In many instances, would that result from single-parent families?

Prof. Freiberg—I do not want to lay the blame on single-parent families. I think it is a question of family structures and relationships. A lot of these people have left abusive homes. It is no use talking about going back home if dad is beating the crap out of you and mum is on the streets or in jail. You are talking about highly dysfunctional people.

Ms PANOPOULOS—Let us take that point of dad bashing you up or sexually abusing you—that is more likely to happen if mum has remarried. It comes from the second father. A lot of the statistics and anecdotal evidence suggests that, doesn't it?

Prof. Freiberg—I am not an expert on that. That may require a broader inquiry into familial relations in Australia. If you are dealing at the high end—you are talking about imprisonment and various other top-end sentences—your interventions are unlikely to have immediate results other than incapacitation where the reasons for the commission of the crime are complex, multifarious and deep-seated. So short-term interventions are not going to deal with those other problems, whether it be housing, disability, literacy or the rest. Simply fixing the literacy in or of itself is not going to solve the problem. That is why you have high failure rates. The underlying issues are complex. Imprisonment only really deals effectively with incapacitation. A lot of those people who you are targeting a message to are not reading the newspapers or watching TV and noting that Bloggs got a five-year, a 10-year or a 15-year sentence. In fact, when you increase those maximum penalties, you are only talking about marginal deterrence, not absolute deterrence. That is another debate we can go into. They have to think about what is going to happen in the long term. Many of the people you are dealing with—your target audiences—are not long-term risk calculators. They are very short term and the deterrence message is not getting through.

Ms PANOPOULOS—What do you do with people who have come from families who have been criminals for two or three generations? How do we deal with those deep-seated causes? That is one of my concerns.

Prof. Freiberg—I wish I had the answer to that. But whatever it is, it would be long term and not take place in prison. There are a whole range of interventions that you could try but, again, just ask Rumpole—the interventions with the Timpsons. It is very difficult. Again, Don Weatherburn's work on intergenerational unemployment and its impact on crime I think is very important work. The remedy is not simply to keep locking them up. It is one solution. If you lock them up for five, 10 or 15 years, all you do is take them out of circulation. Do that, but be prepared to pay \$55,000 a year. I do not have the simple answers, other than what Mr Secker said of the social work interventions.

CHAIR—The community does seem to be prepared to pay the cost of keeping people out of circulation. They would like the money to be properly spent but I do not think the community at large considers that when they are putting in place an effective system. Indeed, the cost is probably much larger if you work out the cost of the social workers, the psychologists, the policemen, the attendants.

Prof. Freiberg—Interestingly, the drug court evaluation showed that it was about the same price for the drug court as for imprisonment. Then it comes down to other values such as the humanity of how you deal with people and what the longer term impacts are on their welfare. Prison lasts as long as they are in prison, frankly, whereas some of these interventions can pay you some returns.

CHAIR—But I do think that there is growing concern in the community—and we are going to hear some this afternoon—that victims have to be considered; that they have rights, too. Under our system the victim really does not feature, does he? It is an offence against the state.

Prof. Freiberg—That is no longer true; I think that has been out of date for about 20 years. We have victim impact statements and we now have the growth of conferencing programs to bring offenders together with victims. I do not think the answer to satisfying the victims' desires, feelings or emotions—and I recognise those—is simply to lock more people up. I think victims' needs for safety and protection can be met in a number of other ways.

CHAIR—Yes, but you said that it was very hard to get into jail in Victoria and that people who do go to jail are pretty hardened offenders; that is simply because of the way we work. As we have already established, we already have a lot more people outside the prison system. But I have to take up your point about drugs. There does seem to be some evidence—and I would be interested to hear your comments on this—that large groups, like the Triads and so on who have traditionally worked in heroin, are now moving to amphetamines. They are not subject to weather conditions, droughts and crop failures; they are much cheaper and easier to import. I think we have an unfortunate culture developing where the dangers of amphetamines are not known in the community, particularly to kids. We have phrases like 'recreational drugs', which I think is just appalling; nothing is taught about the psychosis that can result and nothing is taught about death, except when you have one that is highly publicised. I think this idea that it is okay to have recreational drugs is very dangerous.

Prof. Freiberg—I think that reinforces my point that what you are going to get is substitutability of demand. If you have a heroin drought and there is still demand you move to amphetamines, if you move from amphetamines you are going to go to ecstasy, you go from ecstasy—

CHAIR—But that is why I think we are going to have to look at this along the way; not today, but we are going to have to look along the way at other things that are affecting the drug trade.

Prof. Freiberg—Sure. The Tough on Drugs policy of supply size will choke off supplies of some, but the market—such as the Triads and those who deliver those drugs—will simply move to another form of delivery of the desired service, which is some form of drug taking. That is the point I am making here.

CHAIR—That is why we have to have policies to deal with that.

Prof. Freiberg—I am saying that those policies will ultimately fail—

CHAIR—I do not agree.

Prof. Freiberg—because you are going to get demand substitutability.

CHAIR—It was also put to me that, back in the twenties and thirties, we had a terrible drug problem in this country with cocaine. That resulted in the razor gangs, but the subsequently tough government policy got rid of them and this country was free of drugs for 3½ decades.

Prof. Freiberg—I will have to look into that.

CHAIR—Professor Freiberg, thank you very much for your testimony this morning.

Prof. Freiberg—We did not get a chance to talk about effectiveness in sentencing. Kate Warner's report on sentencing in Tasmania, which came out a couple of weeks ago, has a section on sentencing and effectiveness. I would also refer you to Home Office Research Study 187 on reducing offending and looking at various strategies for that, including sentencing. So there is quite a lot of work out there.

Mr MELHAM—The home office from where?

Prof. Freiberg—The UK Home Office.

CHAIR—Professor, if we can perhaps make appropriate arrangements we might like you to come back and talk to us again.

Prof. Freiberg—I would look forward to that.

CHAIR—Thank you.

Proceedings suspended from 12.50 p.m. to 1.30 p.m.

SMITH, Dr Russell, Deputy Director of Research, Australian Institute of Criminology

CHAIR—Welcome. Dr Smith has brought today report No. 129 of the Australian Institute of Criminology, which has been given to members. He has also made available to the committee two papers he has given: one to the British Society of Criminology Conference 2002: Crossing Borders and one to the Marcus Evans Conferences, Corporate Fraud Strategy: Assessing the Emergence of Identity Fraud, held in Sydney in 2002. The paper is on examining the legislative and regulatory controls of identity fraud in Australia. These are accepted as exhibits in this inquiry. Dr Smith, would you like to make an opening statement for us?

Dr Smith—I will commence by making some opening remarks about the problem of identity related fraud as it affects the various terms of reference. Before doing that, I thought I might mention briefly the relevance of fraud and identity crime issues to the Commonwealth. The primary relevance is that Commonwealth agencies are quite often the victims of fraud and identity related crime—principally agencies such as Centrelink, the Australian Taxation Office and the Health Insurance Commission, which all provide very large sums of money to members of the community and create large opportunities for these sorts of crimes to occur.

Secondly, there are a number of pieces of Commonwealth legislation that are directly relevant. The financial transaction reports legislation that provides the guidelines on opening accounts with financial institutions is a key area in which controls on identity fraud can take place. Other Commonwealth legislation, the Corporations Law to do with registering companies and the tax law to do with obtaining tax file numbers are also areas that have been targeted by fraudsters in this area. The Commonwealth also has a key interest because a lot of these offences are committed across jurisdictional borders and they take on a national importance and, indeed, an international importance in many cases.

The types of crimes committed against Australians are offences of deception, fraud, dishonesty and sometimes forgery of documents that are used to establish a person's identity. Computer crime is another area—a lot of these crimes are carried out using computers, such as scanning documents into a computer and altering them by changing individuals' names. As I mentioned, opening bank accounts using false proof of identity information is a major area of concern. The two principal ways in which identity crimes are committed are by individuals either stealing someone else's name and identifying information or alternatively creating an entirely fictitious identity using false names and identifying information.

Looking at the perpetrators of the crime, I see in the committee's background paper some reference to some well-known facts about crimes in the community. In this area, they are rather different. To begin with, there is a much higher incidence of female offenders than males who commit these sorts of offences. That is the case generally with fraud offences. Offenders tend to be employed and much older than your average street criminal who might commit drug related crime, for example. I think the motives for the commission of these crimes is sometimes different as well in this area of financial crime generally. Addiction to gambling, for example, often provides a key motivating factor, apart from the usual motivator of greed and the desire to improve one's station in life.

In terms of fear of crime, there are probably lower levels of fear of fraud offences in the community than other types of crime; although once a person has been defrauded there is a great apprehension about repeat victimisation. The other concern relevant to fear is that concerns about security of electronic commerce have tended to retard the development of electronic commerce and that is quite often fear driven. On the impact of these sorts of crimes on victims, sometimes there are very serious financial and personal consequences attached to victimisation. Individuals who are defrauded through theft of information about their identity sometimes have to go to considerable lengths to re-establish a credit rating and to have key proof of identity documents reissued, such as driver's licences. There is a very large impact on business, particularly in the area of electronic commerce where web sites have been stolen—the so-called mirroring of web sites in which an offender pretends to be a legitimate business and then acts deceptively. In terms of cost, I think we can be confident that certainly many millions of dollars, perhaps hundreds of millions—or even, using some estimates, up to a billion dollars—are lost each year through fraud offences. On current estimates, approximately 40 per cent of fraud offences may involve some element of misuse of identity, and so in Australia the financial impacts are very large.

In regard to strategies to support victims and reduce crime, there is a good deal of information already in the public arena about how to protect yourself against these sorts of offences. A lot of it is published on the Internet. I think the concern for the future is to make people more aware of what information is available and to persuade them to make use of it. There is also a range of technological solutions and new solutions such as biometric technologies, involving fingerprint scanning or retinal scanning, which will be good ways to solve the user authentication problems of electronic commerce in the future.

In terms of apprehension rates for offenders, fraud generally is an area of crime that is under-reported. In KPMG's recent fraud survey carried out in 2002, 63 per cent of the incidents of fraud reported by large organisations were reported to the police. The Australia Institute of Criminology's small business survey found that only 12 per cent of employee fraud perpetrated against small businesses in a very large sample were reported to police. We can be fairly confident that not all of these types of offences come to official attention. Police investigations of fraud offences tend to be slow and complex, particularly if there is an element of cross-border activity involved.

In terms of sentencing, fraud offences are often committed by what are called rational-choice offenders who tend to weigh up in advance of committing an offence the benefit and detriments of engaging in that course of illegal conduct. Whether or not imprisonment is likely to be a factor that is taken into account is conjectural. I think quite often imprisonment does not act as a great deterrent to these sorts of offenders, particularly if there is some motivation such as an addiction to gambling involved, in which case the offender is perhaps willing to take higher risks than in other situations. The research has also found that increasing maximum penalties for these sorts of offences is probably not likely to lead to greater levels of deterrence. I would suggest that a solution of simply raising maximum penalties probably will not achieve the desired effect.

In terms of community safety and policing, I think increased resources are needed in the area of high-technology policing. It is very costly in terms of the equipment that law enforcement agencies have to have and the level of training and skill that they have to conduct these

investigations. There is a need for some national coordination of law enforcement in this area. As I mentioned, many of these offences take place across jurisdictional boundaries and so there is a great deal of cooperation needed between law enforcement agencies. There is also a need for some cooperation between public and private sector organisations. And we can think of the area of verification checks involved in proof of identity documents in which agencies that issue documents need to be able to provide information to other agencies as to the validity of the information that is being provided by people when they open bank accounts or obtain other documents, for example.

CHAIR—Dr Smith, can you give us an estimate of how this incidence of crime is growing? Is it growing quickly, is it an area where organised crime is involved and is it a growing area for organised crime?

Dr Smith—Unfortunately, the way in which statistics are collected in Australia makes it very difficult to give a conclusive answer. A lot of the police information that comes out does not descend to a sufficiently detailed level to know whether an identity related crime is involved. The simple answer is that we are not really sure at the moment. Research is being conducted at the Australian Institute of Criminology and elsewhere to try to determine exactly how much identity related crime there is and whether it is increasing. There are certainly anecdotal estimates from police agencies and investigatory bodies that say that these sorts of crimes are increasing. There is certainly evidence from overseas, particularly from the United States, that identity crimes are increasing.

CHAIR—I have one example of where I know an alleged gang is involved. It came to me via a constituent who had been the subject of such an operation. It occurs where the people involved target someone as being an accountant and known to receive cheques through the mail. They take the mail, they open it, photocopy what is inside and build a whole dossier on that person. They know how many cheques have gone through and so on until the time comes when they keep the cheques. By this time they have built a whole identity which they can then take to the bank to get those cheques cashed. I understand another part of that operation is that they can then take credit cards and duplicate them. A lot of this goes on without the person even knowing, because all their mail is returned to them. It is something that has put enormous fear into these people as to what don't they know that has happened to them. Are you aware of this sort of operation?

Dr Smith—Yes. Certainly organised crime groups are involved in some aspects of offences like this, particularly in producing some of the documents that are used to open bank accounts—for example, driver's licences and passports, which have high levels of security features built in. It seems that some of the organised crime groups have developed an expertise in fabricating these documents and often they come from overseas as well. I agree that the organised crime element is involved. But, again, I cannot give you an exact figure or the extent of it, because the information simply is not recorded in that way.

CHAIR—Would it be a recommendation of yours that it should be recorded in that way?

Dr Smith—Yes. There are efforts being taken at the moment to change the way in which police record various types of offences around the country. In fact, if the initiative of the Model Criminal Code, enacted concerning theft, fraud and bribery offences in the Commonwealth,

were taken up by the various states, that would provide a much better means of recording offences in a consistent way across the country.

CHAIR—You said that fear of lack of security has impeded e-commerce. But there are many people who use Internet banking and readily use credit cards for purchases. Would you like to comment specifically on the security of Internet banking and whether or not there is a need for an upgrading of security? If so, who should be responsible?

Dr Smith—Internet banking seems to have been taken up very rapid by the community. It has been widely promoted by the banks and it certainly has a lot of benefits in terms of efficiency and ease of operation for those who have access to computers. The security systems that are used for Internet banking are very sophisticated in terms of preventing people gaining access to data as it passes along the telephone lines and also in preventing access to databases of information that are held in financial institutions. But I think the greatest level of concern exists at the very start of the e-commerce chain of activity, where people open bank accounts and register with financial institutions in the first instance. At the moment we are still using the so-called 100-point system of proving one's identity, which is able to be manipulated fairly easily. I think any reforms should be directed at that area.

CHAIR—Could we go back to that other scenario we were talking about, where somebody has built up a database on, literally, identity theft—thieving the identity—and then they go along and want to operate on that bank account because they have built up the information.

Dr Smith—There is usually a chain of activity. Offenders will start with a relatively simple document to counterfeit—for example, a birth certificate, a utility account or an electricity account—and then use that to obtain more secure documents, such as driver's licences or passports. Once those more secure documents are obtained, it is very difficult to prevent people from opening bank accounts and perpetrating this sort of fraud.

CHAIR—I think in your papers you talked about other countries introducing more intense legislation than perhaps we have here. Would you like to contrast the different legislative approaches overseas with what we are doing here?

Dr Smith—Australia certainly has adequate crimes in the statute book to be able to prosecute these offences. There is an enormous range of offences that are used to prosecute people who commit these sorts of crimes. In the United States there is specific legislation now that makes identity theft an offence, and that carries very heavy jail terms and financial penalties as well. I would caution against introducing a new offence. I think the circumstances in which these crimes take place are very specific and it is probably always going to be necessary to choose a very specific piece of legislation when you are mounting a prosecution. For example, some offences will involve gaining access to a computer network and it will be necessary to charge an offence of computer crime. There may be infringements of the telecommunications legislation in addition to straight offences of theft and obtaining financial advantage by deception, so even if we had an identity theft statute I think it would still be necessary to use other pieces of legislation to prosecute.

CHAIR—I was fascinated with two examples that you gave in your presentation. I have a question to ask about one of them. You say:

In Australia on 25 September 2001, a financial consultant formerly contracted to the Department of Finance and Administration was convicted of defrauding the Australian government by transferring A\$8.7 million electronically to private companies in which he held an interest. He did this by logging on to the Department's computer network using another person's name and password. He was also able to obscure an audit trail through the use of other employees' logon codes and passwords.

He took \$8.7 million: he was sentenced to seven years and six months imprisonment with a nonparole period of three years and six months. Did he keep the \$8.7 million?

Dr Smith—I understand that not all of it has been recovered, but I am not aware of the final result of that case.

CHAIR—The reason I asked that is because you said that the sort of criminal that does this is a 'more rational' criminal.

Dr Smith—They are rational-choice criminals.

CHAIR—Yes, someone who weighs up the pluses and the minuses—the likelihood of being caught. If he was a rational criminal and he reckoned he could do three years and six months for \$8.7 million, or even half or a third of that money, it seems to me that the penalty is not very satisfactory.

Dr Smith—Yes, if we look at the purely financial side of it, but there are other things that happen when a person is convicted of an offence. They lose their ability to hold various positions—if they are doctors or lawyers they will lose their ability to practise their profession or they may not be able to work in the Public Service again. There are also the social consequences of a conviction in terms of the publicity that it attracts and the effects on the person's life. There is certainly a range of other factors, other than purely financial matters, that are taken into account.

CHAIR—Against that, I have a recollection from some years ago, when I was doing an inquiry into the Tax Office, that they had, to my knowledge, 21 people who had been convicted of offences who were still working for the Tax Office. It was of some concern. But to go back to this, if you keep the money it does not seem to me to be three years work for \$8.7 million—or \$1 million.

Dr Smith—There is the possibility that the court will also make a confiscation order against any property that the offender has, and if the evidence is there that the financial trail can be followed then an order can be made that any money be repaid. In fact any other property of the offender up to the sum that was taken—including house, property, cars or other goods and chattels—can be confiscated, but there does need to be evidence to support that.

CHAIR—The second example you gave, which I found most interesting, was the 24-year-old Melbourne man who manipulated the share price of an American company by posting information on the Internet and emailing messages around the world. In fact, in May 1999 he sent in excess of three million email messages to recipients in the United States, Australia and other parts of the world containing a statement that the value of the company would increase from the current price of 33c to \$3 once pending patents were released. He said the price would go up 900 per cent within the next few months. The effect was that the share price doubled and

the trading volume increased by more than 10 times. He had himself purchased 65,000 shares and he resold them and made a profit of \$17,000. Seventeen thousand dollars may seem a small amount of money, but heaven only knows what it did to other people who were misled. For that, he got a 21-month sentence, suspended upon his entering into a two-year good behaviour bond and a security of \$500. It did not seem very satisfactory to me either.

Dr Smith—Yes, the sentences that are imposed in these cases are sometimes difficult to understand. This was a young person who had not committed a violent offence, but very large sums of money were certainly involved, and the effect on the company whose shares had been manipulated was devastating. But I caution against making a judgment on a sentence unless the full background is known in this sort of case.

CHAIR—The only reason I was asking those questions is because you say we do not need the sort of legislation that they have in the United States because what we have is adequate. On the face of it, the legislation we have that is producing that sort of outcome does not strike me as being very satisfactory. Is the built-in thought that, because he did not go out and bash somebody over the head to steal the \$17,000, the damage he did to the corporation and presumably thousands of small investors is not serious? It seems to me to be a strange way of looking at it.

Dr Smith—The maximum penalties that we have in the relevant legislation are in fact very severe—for example, 10 years maximum for theft. The question is whether the courts tend to use sentences in the higher range for these sorts of offences. Comparing cases of financial crime and cases of violent crime, it is often the lower sentence levels that come out in the financial crime cases.

CHAIR—I am sure my colleagues have questions they would like to ask.

Mr MELHAM—In relation to the case the chair raised, there was no appeal against that sentence, was there?

Dr Smith—No.

Mr MELHAM—So the prosecution authorities obviously felt it was within the range.

Dr Smith—For that sort of offence, for the age of the offender, the way in which the offence was committed and the fact that he obtained only \$17,000, it is not an unusual sentence.

Mr MELHAM—I have read your Australian Institute of Criminology paper No. 129—and I commend you on that; I think it is an excellent publication. In your conclusions, your summary is:

It might be possible to prevent all such forms of illegality, but the solutions may simply be too costly, unwieldy and authoritarian to be acceptable.

At the end of the day, we have to get the balance right.

Dr Smith—That is right. The risk management that banks undertake all the time involves a careful process of determining the level of risk of an activity and the cost of preventing it. Certainly, these offences can be stopped with very invasive forms of identification of people and elaborate procedures every time they undertake daily activities. I think that is unnecessary, and it may be unacceptable for the community. There are examples of the use of some biometric systems which have been tried. One example involved people being required to put a fingerprint on the back of a cheque as a form of identification.

Mr MELHAM—You cite that.

Dr Smith—That was not successful because the public refused to take up that idea. Certainly, the widespread use of biometric systems to identify people needs to take into account public acceptance of what is being proposed.

Mr MELHAM—The other thing that struck me in your paper was that, whilst all the warnings are put out there in relation to PIN numbers and people are asked to be cautious and a whole range of other things, people still tend to put the PIN number in a place that is readily accessible.

Dr Smith—Yes. There is a balance between convenience for people and security. Sometimes the pressures of carrying out transactions quickly and efficiently force people to compromise on the security involved.

Mr MELHAM—Following up on what the chair said in relation to the amounts of money involved, what also struck me from your paper—and I want to put this on the record—is that because of technological change, it is a lot easier now for a whole new class of people to engage in this sort of conduct, whereas before it required fairly professional criminals.

Dr Smith—Share trading manipulations are a good example of that—a young fellow working from home on his personal computer is all that is required to conduct a massive manipulation of the share market internationally.

Mr MELHAM—At the end of the day, you are saying that this sort of stuff cannot be fully eliminated and we just have to find the right balance.

Dr Smith—Education of the community about the risks involved and, as I said before, making people aware of the information that currently exists is a good starting point. ASIC and the ACCC both have excellent web sites with examples of these sorts of crimes and how to prevent victimisation. Whether the community knows about the existence of those agencies and reads the material is another question. So publicity is a very good starting point. There is also perhaps the need for increased training in ethics using computers in schools and in business. Instilling in young people the correct ethical views about using computers and not using other people's passwords is something we could look to in the future.

Mr SECKER—You said that about 40 per cent of these sorts of cases are caused through using false identities. Is there anything that state and federal governments can do to fix that up? I am not advocating it, but the immediate thought was going back to the old Australia Card set

up. Are you advocating that? I notice you said that there is a problem perhaps with authoritarian ways of fixing it up.

Dr Smith—We need to be very careful about introducing any single system that identifies people. Once you have one single card or technology that is used on all occasions and it is manipulated and security is breached, there are profound difficulties that would be much worse than we have at the moment.

An example of that is the extent of identity fraud in the United States, where the social security number is used essentially as a single identifier. That has led, a number of commentators believe, to the very large increase in identity fraud in the United States. My solution would be to have a range of strategies to identify people, extending from biometrics right through to information based identifiers—requiring people to reveal some password or piece of information that they know—and perhaps even to location based identifiers using technologies to know where people are located. If you have a range of strategies then if one element is breached there are others that will still be effective.

CHAIR—So in fact what you are saying is the development of this new form of crime means we made the right decision to not have an Australia Card at that time as it would simply make the stakes higher?

Dr Smith—Yes. It would have been compromised eventually, even with the most secure forms of security built into a card, such as holograms or other technologies.

Mr SECKER—What about Internet fraud? That is a different thing again, isn't it? That is going to be quite hard unless we come up with some policies to overcome Internet fraud. It is a completely different area of crime than what we are used to in traditional crime, shall we say.

Dr Smith—With respect, it is probably not a great deal different from what is happening already. An example of the share market manipulation is relevant there. Share markets have been manipulated for hundreds of years and that was simply by disseminating false information that the public read. This is able to be perpetrated in the same way now using the Internet and electronic mail but it is essentially the same crime. I think if you look at the vast bulk of deception offences they are traditional forms of crime that are committed using modern technologies.

Mr SECKER—But we will need special ways of trying to prevent that sort of crime, won't we, compared to the traditional ways? That is what I really meant. The crime might be the same but the way—

CHAIR—The crims are different.

Mr SECKER—that it is done is not. It was actually very interesting to hear—and it surprised me and might have surprised my colleagues—that these fraud crimes are done much more often by females than males, which is different from just about any other area of crime.

Dr Smith—I might come back to that point. The security solutions for electronic commerce certainly will be technological but they will also involve much more basic strategies about

identifying people. In the end, individuals who are using the electronic commerce system or buying goods and services on the Internet still have to identify themselves before they carry out that transaction. That is where most of the difficulties lie.

In terms of female offenders, I think the statistic that there is a higher proportion of female offenders who commit fraud offences is perhaps manipulated by the sorts of crimes that the police deal with. We can think of the very large number of frauds involving Centrelink, social security related frauds which are quite often perpetrated by women due to the circumstances in which they are living. So to say that women have a greater predisposition to fraud offences is probably not correct. It is the types of offences that are being committed.

CHAIR—Can I ask you to comment on one that has had some publicity in Sydney recently: two fraudulent ads placed in a newspaper, one looking like the Sydney Opera House ad, one looking like the rugby union ad for tickets. People legitimately used their credit card numbers and thought they were buying tickets and of course got no tickets.

Dr Smith—Yes. That has happened a number of times. The most elaborate form is one in which somebody reproduces a whole web site and a payment mechanism to steal funds. But it can be done much more simply just by using a slightly similar domain name for a transaction—perhaps changing a dotcom to a dotorg, for example. Those sites do exist and they are certainly increasing in prevalence. I think that the solution lies with educating people to be careful and to do some preliminary checks, including perhaps telephoning the site that you are dealing with to see if it really does exist or checking to make sure that it has a physical street address rather than a post office box.

CHAIR—Should the newspaper publishing that advertisement have an obligation to check that out?

Dr Smith—That would probably have to be dealt with using the usual provisions against misleading advertising. I think this is just another example of that. If newspapers have to check the legitimacy of advertisements that they place, this would be another of those situations.

Mr MELHAM—They now need to check the legitimacy of people who write to letters columns as a result of people fraudulently using someone else's name. It is the same principle.

Dr Smith—Yes, we are talking about the same situation.

CHAIR—I was just wondering what legal requirement there is presently for that. If there is none, then maybe there should be.

Mr MELHAM—There is none?

Dr Smith—To my knowledge there is no legal requirement for advertisers to check the backgrounds of the organisations they are dealing with. Perhaps if problems came to their attention they might then have to take further steps.

CHAIR—I would just like to go back for one minute to the other point. You say we do not need the stronger legislation. I take it that the legislation in the US is the act mentioned in your

circulated paper—the Identity Theft and Assumption Deterrence Act 1998. Is that the act you are referring to?

Dr Smith—Yes, that is the piece of legislation.

CHAIR—In here on the second page you say:

In the US in 1997, the Secret Service made nearly 9500 arrests in which so-called identity theft was an issue, amounting to US\$745 million in losses to individual victims and financial institutions.

You would have to do a lot of bank hold-ups to get that amount of money.

It has been estimated that 95 per cent of financial crimes in the United States involve stolen identities, with financial losses in respect of such crime nearly doubling in the two years preceding 1998 (Kyl 1998). In an attempt to improve knowledge of the extent of identity-related fraud, the Identity Theft and Assumption Deterrence Act 1998 (Title 18 USC 1028), which makes theft of an identity a felony in the United States, required the Federal Trade Commission to maintain a record of stolen identity reports.

That means that they are going to keep statistics which, as we established at the beginning, we are not keeping here.

Dr Smith—Part of that legislation does require greater measures to identify these types of crimes and to keep records. I think that is a very useful part of the legislation.

CHAIR—But we have no corresponding legislation here, do we?

Dr Smith—Not in the sense of keeping records across borders. That would be a useful reform. But the maximum penalties in the United States are 15 years maximum imprisonment and \$US250,000 maximum fine. The problem of identity fraud is increasing at a considerable rate in the United States, despite this legislation having been introduced in 1998. So I would again caution against introducing maximum penalties that are very great. I have doubts about whether they will deter this sort of offence.

CHAIR—Basically, you do not know, though, do you? If they did not have it, it may have escalated at a greater rate. That is always the unknown question.

Dr Smith—Quite possibly. There is a definite need for ongoing research on these sorts of crimes. Perhaps offenders should be interviewed to find out what is really motivating them and they should be asked whether in fact they would be deterred from committing offences if there were penalties like this. That research is long overdue in Australia.

CHAIR—Thank you for coming. I think that your evidence is only the start of what we are going to be hearing a lot about—what we could call ‘modern day crime’. Most people really do not think about it until they are touched by it. When they are touched by it the experience I have had from talking to people is that they become really quite nervous about every transaction that they make from there on in.

Dr Smith—Yes.

CHAIR—I liked your point very much about research. We obviously need better statistics. Thank you very much for joining us.

[2.24 p.m.]

CONROY, Ms Ada, Member, Voices

OLLE, Ms Elizabeth, Member, Voices

CHAIR—I welcome two witnesses representing Voices, Ada Conroy and Elizabeth Olle. We have received a submission from Voices, which we have treated as a confidential submission. I understand you want to keep the submission confidential because it contains stories of other people who want to keep them confidential. Is that right?

Ms Conroy—Yes and no. We wanted to keep it confidential because we printed it with names but, apart from that, it would have been fine.

CHAIR—If, subsequently, you let us have a copy where the names have been deleted, we might publish that submission.

Ms Olle—Yes, that would be fine.

CHAIR—We might make a note of that. I think that would be useful for the hearing. Would both of you like to make any opening remarks?

Ms Olle—To have it on the record, we are going to read to you what is already in the submission about the Voices group. We are a diverse group, a broad cross-section of the general community; Australian and international; Victorian, interstate, metropolitan, regional and rural; all levels of education up to and including postgraduate tertiary; heterosexual and lesbian; married, single and resolutely independent; parents and not; deeply religious, agnostic and atheists; labourers, unemployed, students and professionals; home owners, renters and homeless. Our ages range from early 20s to mid-60s.

Ms Conroy—The crimes against us have been committed both in Australia and overseas. We have variously experienced instances of sexual assault, rape, pack rape, intrafamilial rape and childhood sexual assault, kidnap, abduction, attempted murder, extortion, manipulation, gross humiliation and intimidation and physical, psychological and emotional abuse. We have been assaulted by men we know and by total strangers. The abuses perpetrated on us occurred from as early as three years old. Some of us have experienced a whole gamut of legal processes; some of us have not reported them to the police. Some of us have reported to the police, and no action was taken. Some of us have never spoken publicly about our experiences, and some of us have.

Ms Olle—Our experiences of sexual violation are not our only experiences of life. They grossly interfere with our lives, but they do not define us. We are gentle, wicked, funny, gregarious, witty, charming, boring, angry, funky, impertinent, professional, lazy, loud, studious, sassy, soulful, heroic, contemplative, daring, spiritual, wise, articulate, strong, trustworthy, courageous, profound, silly and cranky.

Ms Conroy—We swim, sew, pay tax, cook, study, ride motorcycles, grow, whistle, play, eat, pay mortgages, write, laugh, garden, play music, sunbathe, work, smoke, use public transport, farm, sing, raise families, go to the theatre, march in rallies, love our grandchildren, have never learned to love and have birthdays. We have a highly developed sense of the absurd and some of us are great dancers.

Ms Olle—We do not want pity; we do want recognition and access to justice. For some of us, this will be our only opportunity to have our experiences heard in anything like a legal forum. We want legal and other social systems to change to accommodate us and our realities.

Ms Conroy—Since the time some of the members of our group first experienced sexual violence, others of us have been born and grown to adulthood, and so little has been done to actively prevent and condemn sexual violence. All of us, younger and older, have been sexually violated. We are apprehensive that, by the time our lives are at an end, little will change and those who are not yet born will likewise be born into a culture that baulks at outright condemnation of sexual violence.

Ms Olle—We are all very angry about what has happened to us, about sexual violence and the legal response and that the prospect of ever achieving redress is remote.

Ms Conroy—We do not speak for all victims of sexual violence. We acknowledge that, whilst we can speak to such a forum as this, a great many others who have much to tell, much to contribute to this debate and much wisdom to give, cannot.

Ms Olle—Since the beginning of the Voices project, three members of our group have endured further sexual violence—one to the extent that she was prevented to contributing to this hearing.

Ms Conroy—We specifically acknowledge the assistance of CASA House—both the organisation and the individual workers of CASA who have supported, encouraged and resourced Voices without ever seeking to intervene, control or direct us. Without their help, this project would have been very much more difficult than it has been.

CHAIR—Thank you. In terms of how we should proceed, do you want to use an example of what happened with a particular case and where the problems lie in the way you see the law operating?

Ms Olle—I am happy to speak to my own experience in that respect. I have been through the full gamut of the legal processes, so I can speak from personal experience. I do not want to speak about anybody else's experience.

CHAIR—If you are happy to share with us, we would be happy to hear about your experience.

Ms Olle—It is part of the submission. It is perhaps going to be more effective for you if you ask questions, because I could go on for hours about it.

CHAIR—Perhaps you would like to say very briefly what happened to you and how you feel the system did not serve you well.

Ms Olle—I am talking about an experience that happened about 23 years ago. I was abducted from the street at gunpoint and raped by a stranger, which I now understand is a very rare occurrence in the overall scheme of things. He was apprehended some time later and subsequently charged, after a long series of court events, and spent some time in jail. The police at the time were—within the range of their knowledge, given that this was the late seventies, early eighties—actually quite helpful and did a fairly good job in terms of not retraumatising me. However, the rest of the legal process, from the start of the court process onwards, was a complete reliving of the experience. It fully retraumatised me and stays with me more to this day than anything else from that time.

CHAIR—What do you think was the worst part of the system and where did you see it breaking down? What is your opinion of what needs to change?

Ms Olle—The worst part of the legal process is becoming a piece of evidence rather than a person in court. I spent about two to three minutes with the Crown prosecutor before I went into court. My understanding at the time was that he was representing me; I was never given any advice to the contrary. I felt he was almost as bad as, if not worse than, the defence barrister at the court hearings in that he actively undermined me in court and seemed to have absolutely no understanding of how the process might impact on me and the other women who were there as witnesses as well.

CHAIR—So at that stage, you did not really understand the way the system worked, in that the crime was against the state and you were merely a witness?

Ms Olle—Absolutely not, no. Had I been told at the time that that was the case, I would have been as incredulous as I am now. In no way at all, in my comprehension or experience of it, was the crime against the state. The crime was quite clearly committed against me.

CHAIR—In the course of the hearing, were you subject to strong cross-examination?

Ms Olle—I was in the committal hearing, yes—so much so that I had to leave the room to be ill at one stage. It was a horrendous experience.

CHAIR—Did he plead guilty or not guilty in your case?

Ms Olle—Not guilty.

CHAIR—So you had very strong cross-examination.

Ms Olle—Yes. He was claiming that it was not him. There was never any doubt that the crime was committed; it was just a question of identity, which it so often is.

CHAIR—Having thought it through and discussed it with other people who have suffered, have you come up with ideas, as Voices, about the sort of thing that you think needs to be done?

Ms Olle—Lots of things. One of the things that is always thrown up is that there should be a presumption of innocence on the part of the defendant in court. The experience of most of the members of Voices is that there is never a presumption of innocence on the part of the victim-survivor, that we are always assumed to be in some way lying or being tricky or being dishonest about the experience or seeking to mislead somebody for some ulterior motive. The presumption of innocence is not afforded generally across the board; it is exclusively for the defendant or the accused.

CHAIR—What do you see would address that question?

Ms Olle—Dismantle the entire legal system and start again!

Ms Conroy—It's a big question.

Ms Olle—It goes to a broad social issue, too, about the public discourse about women who make claims of sexual assault. It is always regarded as being somewhat tricky. There is always some other motivation for making a claim of sexual assault; it can never stand on its own as a valid claim.

Ms Conroy—Also, one of the myths that victim-survivors of sexual assault have to face is that many women lie about experiences of sexual assault. That is something that comes out quite a lot.

Ms Olle—It is a legal myth that is of some 500 years standing. It has been recorded in British law for—it may be 300 years; I might be being a bit cruel. Over and over again, women are still—now—accused of lying.

CHAIR—If there were a system whereby evidence was taken differently, do you think would that assist?

Ms Olle—It could do. There are provisions, I understand, in legal terms for there to be ways of giving evidence where you are not actually being grilled, as it were. However, I also understand that, in the vast majority of times, people have to argue for those provisions to be used in court. Instead of survivors of childhood sexual assault being in the same room as the perpetrator, they can be provided with a screen in the courtroom or they can give their evidence by video link to the courtroom—but there is always legal argument about that. It is not the standard from which you must argue away; it is something that you must argue to be provided with. So the provisions are there within the existing legal system to make it easier for people to give evidence, but they are not used.

CHAIR—Does that apply only to children or does that apply to adults as well?

Ms Olle—It can apply to adults as well.

Mr SECKER—This is a subject of some discomfort, I know—even for me—but I will try to overcome this because it is a horrible crime. In your table, it says that 'less than 10 per cent report to police' and that '15 per cent contact service for support'. You might not be able to answer this. The ABS are saying that 34,000 women are sexually assaulted. If only 15 per cent

of them are reporting it to a contact service and less than 10 per cent are reporting it to police, how is it worked out that 85 per cent are not reported? How do they know that it exists?

Ms Olle—The top figure—the 34,000—applies to women in Victoria in a 12-month period. The Australian Bureau of Statistics did an extensive survey where I think they interviewed something like 3,000 women and extrapolated from that Australia-wide and then broke that down into state jurisdictions in terms of numbers. So the top figure—the 34,000—is from the Australian Bureau of Statistics. The rest of the figures come from various different reports, and there is some argument about what level of reporting there is. The figure of less than 10 per cent is fairly generous; there is some argument that it is actually less than three per cent, but most people will not even hear that.

Mr SECKER—So the 34,000 is the actual number of reported cases?

Ms Olle—No, that is the number of women—by extrapolation from the ABS survey—who reported to the Australian Bureau of Survey that they had been sexually assaulted in the previous 12 months, not the number reported to police.

Mr SECKER—So, you are not saying that there are 340,000—10 times the number—being sexually assaulted? You are saying that 34,000 were? Can you understand what I am saying? Just say 10 per cent reported to police, is that 34,000, the 10 per cent, or is it the 100 per cent?

Ms Olle—The 34,000 is the 100 per cent.

Ms Conroy—The 10 per cent is 10 per cent of 34,000.

Mr SECKER—That actually reported to police?

Ms Olle—Yes.

Mr SECKER—In regard to your recommendation for changes to sexual assault legislation and sentencing—and I am not a lawyer so some of these questions I am asking out of sheer ignorance—if you remove consent as an element to proving guilt or innocence, what other mechanism could be used?

Ms Olle—It is actually only in sexual assault where consent is an element; in every other crime some mechanism has been found to establish the guilt or innocence of the perpetrator. All that consent does is buy into the argument that a women might be lying about her experience, that she actually did not really mind and that she changed her mind later on. The element of consent is only provided for in sexual assault crimes.

Mr SECKER—Are you putting up an alternative?

Ms Olle—I do not think there needs to be an alternative. It simply needs to be removed from that particular set of legislation. The Victorian legislation gives nine examples of instances where consent cannot be used to prove or disprove anything and it includes things like when the

woman was unconscious—obviously consent does not play a part. In what instance could consent play a part?

I want to refer back to my own experience for a moment. After having given I do not know how many hours of evidence to the court about how I had been abducted at gunpoint, the Crown Prosecutor still asked me at the end of my evidence, ‘Now, Miss Olle, I must say to you, did you consent to any of this?’ At what point do you say that consent is not an issue? You have said you have been taken from the street at gunpoint and there is still the question of consent? In what instance then is consent not an issue in the court’s view?

Mr SECKER—I can see that argument. In regard to changing the terms, I probably do not have any great problems about terms because it is all about words, but I actually wonder why you want to change incest to ‘intrafamilial rape’? To most people that term would go straight over the top, whereas incest is accepted as a pretty horrible thing to be occurring. Why change it to something that some people would not understand the meaning of?

Ms Conroy—I think that incest is quite an ambiguous term; it can actually be consensual. There can be some element of consent with incest; it does not necessarily mean rape. Intrafamilial rape is actually calling it what it is because it is rape.

Ms Olle—The etymology of the word itself is actually a consensual arrangement between a minor and an adult.

Ms Conroy—Of the same blood line.

Mr SECKER—Incestual rape it seems to me would have more effect than intrafamilial rape.

Ms Conroy—It means within the family.

Mr SECKER—You are suggesting a minimum seven-year sentence; are you basically saying mandatory sentencing for this sort of thing?

Ms Conroy—That actually came from another member of the group who cannot be here today. I think that her motivation for saying that was because she sees that it is very rare, that minimum sentences or sentences at all are given. You can see that there are two per cent convictions, so it is mandatory sentencing.

Mr SECKER—Just down a bit further, it says, ‘the provision of a specialist DPP barrister experienced in the practice of feminist jurisprudence’. Again, I am ignorant: what is ‘female jurisprudence’?

Ms Olle—We are talking about somebody who is actually familiar with, in this instance, the consequences for the victim/survivor of sexual assault, rather than somebody who is necessarily highly practised in all legal aspects—though, if they have reached the stage of being a barrister, they are going to have that anyway. We are talking about somebody who has a much more intimate understanding of the consequences for the victim/survivor in court. It is really common for women to report that their experience in court is a complete retraumatisation; so somebody

who is actually acting with some sensitivity to the issues could make a huge amount of difference.

Mr SECKER—So you do not think that could be alleviated by one of your other recommendations about priority or services for rape victims?

Ms Olle—I think it is a different issue.

Mr SECKER—Support services?

Ms Olle—Support services is one thing. You can see by the graph that a lot more women access support services than access the legal system—and they are complementary rather than one in place of the other.

Mr SECKER—Thank you very much for giving evidence on what is a very awkward subject for many people.

CHAIR—Going to your chart again, it shows figures of five per cent charges to court and two per cent conviction rate. Do you have an explanation as to why the conviction rate is so low?

Ms Olle—A little bit of it is to do with the public perception of that whole matter of women making vexatious claims of sexual assault—so any injury is necessarily going to be hindered by that kind of understanding. A lot of it has to do, though, with women's reluctance to actually report to police in the first place. As I said, my own experience of reporting to the police was quite good, but for the vast majority of women it is horrendous.

CHAIR—I am really relating to the figure of five per cent. Let us take it this way: less than 50 per cent of charges brought are successful in gaining a conviction. So you cannot put that down to non-reportage. That is to do with the actual—

Ms Olle—Yes, once it has been reported. I think there is a lot to be said for the judiciary's understanding of what is going on as well. They, of course, also bring that public prejudice to bear in court. There is that really famous case of Justice Bollen who said 'rougher than usual handling'. Where the hell did that come from—it is 2002, isn't it? That is an ancient understanding—and it was wrong in the first place. To be still repeating it at that level of authority in the courts now is heinous.

CHAIR—Some people say that women judges could make a difference; yet we had in Sydney the case of those pack rapes, gang rapes, where the judge in the first instance was a woman.

Ms Olle—It can do. It should not really be assumed, I do not think, that women judges will automatically make a difference. They are still coming up through the same training processes as judges always have. It is not necessarily in and of itself going to make the difference. I think it would help, but we are still talking about a very—

CHAIR—What do you think it is going to take to change those prejudices?

Ms Conroy—It is such a broad issue. It needs to change in all levels of society, and that takes a lot of education, retraining and relearning about things and challenging the myths around sexual assault—being aware that there are myths and challenging those.

Ms Olle—One way for that to happen could be through really comprehensive education for the judiciary. When they speak they speak with an authoritative voice and that lends weight to contemporary understandings of what is going on in the world. It cannot of itself change the way people think in the broader community, but it can be really supportive to people who think that what is going on now is not right. It is really hard to get judges to agree that they need any kind of retraining or re-education.

CHAIR—Have you done any analysis of the nature of the cases that are in fact prosecuted and whether the nature of the cases on factual bases differ? Is there any trend that you can discern?

Ms Olle—I cannot say that I have done any analysis, not in the technical sense of the word. We both work in women's services now and a lot of the anecdotal stuff we hear from women is that there is in common currency a much greater understanding of the prevalence of childhood sexual assault, and that is starting to be taken somewhat seriously at a legal level. There is just such a vast gulf between the occurrence of sexual assault and what gets to court that it is really hard to determine any trend without having to recognise that you are excluding a lot of women from that discussion because they do not ever get recorded or reported anywhere where any analysis can be done.

CHAIR—I was wondering whether there was a trend. At the end of the day, if there is a failure to convict, the jury or the judge is deciding that they do not believe the woman's story beyond reasonable doubt. That is what the result is. I am wondering whether there is any type of offence where the prejudices, in your terms, manifest themselves and say, 'In this sort of circumstance I am not going to believe, but in this sort of circumstance I am more likely to believe.' In your case, once the person was identified, he was convicted. How long did he spend in jail?

Ms Olle—He spent 11 years of a 17-year sentence in jail. In terms of convictions, that type of offender probably represents the majority of those who are sentenced, whereas in fact the majority of the criminal offences are occurring in private homes by people who are related to the victims. They are pretty well unheard in court. I am not sure about the rest of Australia, but I think it was in the mid-1980s before the very first rape in marriage was successful.

Mr SECKER—In South Australia.

Ms Olle—Yes. It is really recent in terms of our legal system. The recognition of that as a crime by the legal system was late and the conviction was much later again. It is still not an easy thing to prosecute.

CHAIR—Where it is a straight contest of word on word it is still very difficult.

Ms Olle—Absolutely.

CHAIR—And you feel that being put through it again penalises you doubly, as it were.

Ms Olle—Yes indeed. And it is interesting to note that the legal system and the judiciary themselves do not have a way of debriefing from the experience of a sexual assault trial, which must have an impact on them, one would think—one would actually hope, really. If it is not having any impact on them they are probably all dead. There is not a way for them to debrief themselves. There is not a way for victim survivors who have come out of the witness stand to get adequate debriefing at that level. They have to go off and find another service somewhere else unrelated to the court.

CHAIR—It does not happen then and there?

Ms Olle—No. There is no provision for it that I am aware of.

CHAIR—Would it help if there were?

Ms Olle—I would think it would. The vast majority of women report that being believed and being able to talk about the experience is a great deal of help at the time, rather than putting it off for 10, 20, 30 or 40 years.

CHAIR—What if you were in a position of not having a criminal prosecution but bringing some sort of civil action? Two things would occur: one, you are part of the proceedings—not merely a witness in the proceedings; and two, the standard of proof is balanced probabilities rather than beyond reasonable doubt. Have you thought about those sorts of things, where you sue the perpetrator?

Ms Olle—I have. I understand that it happens in the States quite a bit and it has a lot to recommend it. The big barrier for people involving themselves in that process is the cost. You have to engage somebody to go in to bat on your behalf and that can cost an awful lot of money. Sexual assault victims are not chosen on the basis of how much they have in material terms; it is a random and arbitrary act. A lot of people would miss out on being able to prosecute that kind of proceeding because they simply would not have the resources to do it.

CHAIR—Ada, do you have something that you would like to add?

Ms Conroy—I have not had any experience with the court system. The only place that I fall in this spectrum is at the top. I did not contact any services and I did not report to police. I have not done any of that. The reason that I did not do any of that is that I did not know there were services when I had been assaulted. I did not report to the police for a number of different reasons, so I have not actually gone through any of these processes. I do not understand the court system and it frightens me. I have had the opportunity to think about whether I would like to do it and I have decided not to. I think that is very common—I am one of those victims or survivors of sexual assault who do not go through any of these processes or do any of this.

CHAIR—Are you aware, though, because of your involvement with Voices, of the types of support services that are currently available?

Ms Conroy—Absolutely. I work at three of them.

CHAIR—You obviously think that you are providing a good service and you have success with people who are victims?

Ms Conroy—Absolutely, yes. I was assaulted eight years ago and since then I have seen private counsellors. I did not actually contact any services that are specifically set up for this, like CASA or any of those sorts of services. I actually work at CASA, but I did not contact it as a service user. It is very unfortunate, because I do see the way that women react to that sort of service provision and the different experiences they have, compared to what I had and what many other women have.

CHAIR—Elizabeth, is there anything you would like to add at this stage?

Ms Olle—Yes. On the subject of services, I would like to have it on record that I think it is perpetrating a further abuse for women to be encouraged to come forward and report sexual assault and for there to be inadequate services to pick up the pieces once they do. It is not a small matter to talk to anybody about sexual assault. If you are going to a public service provider and making those kinds of disclosures and you are then being told that you have to wait six weeks, six months or two years on some sort of waiting list to get to speak with somebody, the trip is being made a whole lot harder. Given that reporting is increasing and that people are starting to talk much more publicly about the incidence of sexual assault, it is absolutely imperative that the services be bumped up and resourced to the point where they can actually provide the service.

Mr MELHAM—To what do you attribute the fact that there is more reporting and that people are starting to speak up more than ever?

Ms Olle—It is probably because within an element of the community there is starting to be an understanding that you can go and speak to someone who will help, not necessarily the police, and that does not then cause you to have to go and report to the police.

Mr MELHAM—And is it important that it be done in a sympathetic and understanding way?

Ms Olle—It is. It is incredibly important to be believed. If you have worked yourself up to the point where you are actually prepared to tell somebody and then somebody says to you, ‘Come on, that can’t be right’, it is like having the rug whipped out from underneath your feet. It is a very simple thing to want to go and tell somebody. It is a very simple thing to be heard and to be believed and to then be able to talk about the experience without being disbelieved. It is a really good thing to be able to do.

CHAIR—Did you have a reaction to what happened in Sydney with those young girls who had been gang raped?

Ms Olle—Yes, I feel very strongly that the public outcry about the level of sentence that was handed down is an indicator of how far we have got to go. If a maximum sentence cannot be handed down for that kind of crime, then for what can it be? If the community does not

understand that as being something like the upper level of what a maximum sentence can be handed out for, then what the hell is?

Mr MELHAM—But the public reaction seems to be overwhelmingly in support of the sentence, not against. Certainly there has been some commentary from some sections, but my reading of it—I was away at the time—is that there has been overwhelming community support.

CHAIR—I agree with you.

Ms Olle—Maybe we listened to different sources.

Mr MELHAM—Yes. I am talking as a Sydneysider. I also need to declare an interest: I know the judge personally—he is a friend.

Ms Olle—I heard an interview on, I think, ABC radio on the evening program—I cannot remember what it is called—

Mr MELHAM—There has certainly been some strident commentary within sections of the community—

CHAIR—I think she has listened to a program that was not in step with what most people thought. Most people thought it was right.

Ms PANOPOULOS—One of the stories in the submission related a woman from a non-English-speaking background. There has also been significant commentary by some feminists that there should be some sort of cultural awareness and cultural sensitivity to crimes, and that includes sexual crimes. I would like to know your view on whether you think we should have one objective standard of acceptable behaviour for everyone, irrespective of what their background is, in regard to sexual crimes.

Ms Olle—I would be really interested to know who the feminists are who were arguing that there should be different standards. I think it is entirely appropriate for there to be a standard in a jurisdiction.

Ms PANOPOULOS—I agree with you.

Ms Olle—It is pretty difficult to split that up; and where there are cultural differences in the way people carry out their day-to-day behaviour, I do not think any of it ever exempts anybody from having to come under the force of the law when they have committed a crime.

Ms Conroy—It comes down to the fact that no woman wants to be raped, regardless of what culture she comes from. There is no culture that says it is okay. There is no woman anywhere in the world who says, ‘It is okay for me to be raped because this is my culture.’ So it would not be fair to have separate sentencing or separate anything for perpetrators.

Ms PANOPOULOS—Thank you.

CHAIR—Thank you very much to both of you for coming to share your experiences, and the fact that you are now working helping other women who have had that experience. It is not easy to do. I was very sorry to hear that one of your members who was going to give evidence was unable to do so. She is obviously still having a lot of problems.

Ms Olle—It is not an uncommon experience.

CHAIR—No. Thank you both very much for coming.

Ms Olle—Thank you for hearing us.

CHAIR—We will redo your submission, if we may, so that we can take the names out.

Ms Olle—That would be fine.

[3.08 p.m.]

HEALY, Ms Sue, Chairperson, Older Persons Action Centre

MORGAN, Mrs Edith, Committee Member, Older Persons Action Centre

CHAIR—Welcome. We are delighted that you are able to join us today. Would you like to make an opening statement?

Ms Healy—The question of safety and security for older people has been one of the issues that we have explored every so often over the last few years. We are often concerned that the emphasis in the media tends to be a shock-horror approach, which tends to make older people much more fearful of doing anything. We have, at different times, had people come to us to discuss the problem. We are a bit ambivalent about that because, while we realise that older people are less likely to be the objects of attacks than other people, we feel that one of the reasons for this is that we try to take care not to put ourselves in frightening situations. So there is a bit of: do we keep ourselves in our houses too much because of our fear, or is this just a sensible thing to do? That is our dilemma.

Mrs Morgan—I would agree with that, but I think there are also reasons why you have to have freedom for older people. I used to be on the state guardianship board and there was one case in particular where a woman of about 85 and fairly incapacitated became friendly with a young man who had been a very kindly neighbour or who used to walk down the street for her. Eventually it became a concern that he was doing it for his own motives because she gave him the right to use her bankbook. It eventually came before the board but, to me, it was a very difficult case because she had very few friends and relatives who were not accommodating to her. I thought it was rather tragic she had got this strong association and I wondered what the point of the exercise was.

Ms Healy—Protecting her against her only friend.

Mrs Morgan—He was stopped from seeing her. They are complex situations.

CHAIR—So what you are saying is he then defrauded her—he took her bankbook and defrauded her?

Mrs Morgan—He did, yes.

CHAIR—One of the points you make in your submission, and that you made again today, Ms Healy, is that older people tend to keep themselves inside, behind grille doors, rather than make themselves available on the street where they could be attacked. Is it more likely that people do that if they have had a fright, or does it just happen?

Ms Healy—It is partly a question of temperament, partly a question of age and partly a question of having had some episode. Certainly there are quite a lot of people who move

towards a more supported environment because they have become fearful. Whether that fear is justified or not, it is sometimes hard to tell. I know of one woman who started hearing noises outside in the evening and became so fearful of being in her own home she moved into a retirement village because she no longer felt that she was safe, but nobody could prove that there was any such activity outside.

CHAIR—But it was very real to her?

Ms Healy—Yes.

CHAIR—What action do you think can be taken to alleviate some of that fear and to take up Mrs Morgan's point that freedom for older people is very important too? What sort of action or what sorts of things can government do to assist in this way?

Mrs Morgan—One of the things that has happened for a while is that the policemen who used to be on the streets now just go around in cars and they are unavailable or difficult to contact. An association should be built up so that people feel confident there is someone they can relate to or will relate to them. It really is a community attitude that needs to be fostered. With some of the stuff that has gone on we have looked at older people a bit as though they are freaks that are all under some sort of threat all the time—and that, of course, flows on to them. I have a sight problem, but I must say that on Sunday when I took the train and went to the end of one of the lines, I found everybody was just wonderful, especially young men. I have to use a pusher to get around, and twice the train doors nearly closed on my trolley because there are no guards on the platforms. One young man made sure the doors would not shut on me by putting his two legs apart and just holding them. It was quite scary, but without exception, wherever I was, there was a young man that would come and help me. I think we need to talk about the more positive things that people do. We tend to talk more about the things that are a worry. We have to build up confidence. I think very often we blame young people, but I have found young people to be absolutely wonderful.

Ms Healy—I think Edith's point about public transport is a valid one. Most people over the age of 75 do not have access to a car—everybody tends to say they do, but they do not—and so public transport becomes a vital thing in their lives. I have noticed public transport as being a supportive environment. The tram culture can be a really positive thing where everybody— young people as well as middle-aged people—looks around to see who is the oldest person so they can give their seat up for them. I think it would be a great help if people in public places were encouraged to use public spaces and public transport. I do not quite know how governments do this but I think it is really important that we develop that kind of feeling.

CHAIR—But you are saying, Mrs Morgan, that your experience is that it is pretty good.

Mrs Morgan—It is pretty good. You just wish that you were able to contact those who live with the fear and take them out with you to experience some of the more friendly attitudes towards you.

Mr SECKER—That is wonderful.

Ms PANOPOULOS—What is your organisation's membership?

Ms Healy—It is small—about 100.

Ms PANOPOULOS—Are those members based in Melbourne?

Ms Healy—No; we have quite a few country members. They tend to be people who want to make an impact and who have always been interested in ideas and want to remain so. Our oldest members would be in their 90s and our youngest full members would be aged 50.

CHAIR—I have just written down here that you think there is a need to get people out to experience freedom and not be imprisoned by fear—because that is what it does, doesn't it? It imprisons people.

Ms Healy—Yes.

CHAIR—I know I asked this next question right at the beginning. I said, 'Do they do it because they have had a scare or do they do it because the media writes about it and they think that it will happen to them?' What do you think is the main reason that older people succumb to that fear?

Mrs Morgan—Could I answer that as I was one of the initiators of the Older Persons Action Centre?

Ms Healy—Yes.

Mrs Morgan—We were very concerned to see people developing confidence in themselves to continue to live out there in the community. I think that is really the point of the exercise if we really want to effect change in the attitudes of older people and also in younger people's attitudes towards older people. The point was also for us to run our own organisation and not to be seen as a charity—you have something to say; you are concerned that people develop with confidence in themselves. One of the reasons I went on the train yesterday was to go to the end of the line and see what I could do and what would come out of it. What I came out of it with was that I could not read the names of the stations. It would be a very simple exercise for governments to make sure that each station is identified.

Mr SECKER—By voice.

Mrs Morgan—It would be a very simple thing. They all have talkback and they should just use it. I went past my own station and ended up at Clifton Hill and then had to come back.

Mr MELHAM—So for you, Mrs Morgan, the important thing is that you do not want to be hiding under a bushel; you want to actually come out and continue to experience the joys of life.

Mrs Morgan—Yes.

Ms Healy—I go back to the question: are they scared or is it the media? It is more than that; it is a belief that older people are done with. I think it is going to turn around because we are going to be a majority.

Mr MELHAM—You have the numbers, you reckon.

Mrs Morgan—There used to be this idea that you finished your working life and then you fell apart, which is changing. I think a lot of people—particularly women—having lived in a marriage, find themselves on their own and find it hard to adapt. That goes for men, too, when they leave work: they find it hard to adapt. For some of them it is a disconcerting experience. I think almost everybody finds the change from being at work to not being at work difficult to take to, until they find that it is the first time in their lives that they are being paid for doing exactly what they like doing and so it is a positive time. But it takes time for people to come to that understanding and they do feel disenfranchised and disempowered.

CHAIR—There is also a lot of evidence around that depression becomes a factor, too. In the period when men, in particular, give up work they feel they have lost their place in the world, and depression can feed into that fear as well. I think there has been a lack of understanding about depression in older people and the need to pay attention to it. If you could have a wish list of things you could change, what would you do?

Ms Healy—Better transport is one that always comes up. For some people housing is a real problem—people on low incomes living in places they would rather not be, places where there are problems as well as housing difficulties. Health is third. But crime is not one of the primary things. If you are talking about just the crime part of it, I think they would like to see populated places and the kinds of things they like to do put on at a time when they feel comfortable going out. I think it is not just the question of fear in the evenings; people feel comfortable at home, and we tend to find that things put on in the evenings are less patronised by older people.

Mrs Morgan—Also, we have to realise that one coat does not fit everybody.

Ms Healy—Yes, that is right. We are just as individual as the rest of the community, even though it seems easier to put us under one umbrella.

CHAIR—I couldn't agree more. Is there anything you would like to add to what you have told us today?

Ms Healy—I suppose the only other thing is what we mentioned: when I talked to people they did not want more severe punishment. We do not feel that that improves the situation. In fact, better services for young people in difficulties would be more likely to stop things happening, rather than waiting until they have committed a crime and then putting them into prison for long periods.

Mrs Morgan—We would have to say that, at the Older Persons Action Centre, we do not get many complaints about people in the street doing things; it is more around the service level—proper transport—so that they feel safe out in the street.

CHAIR—Have any members of your organisation been victims of crime?

Ms Healy—Yes. In fact, when we had the meeting, just about everybody had had some episode. Most of the ones who come to the meetings live in the inner suburbs. They were

mostly burglaries—not violent, but just break-ins—and I was surprised that the feeling was much more irritation at the annoyance rather than fear.

Ms PANOPOULOS—Out of your 100 members, do you know what percentage would have experienced a break-in?

Ms Healy—No; we have not done a survey of this. We have meetings regularly, at which we discuss issues of concern to us.

Ms PANOPOULOS—Did you have a meeting to discuss this?

Ms Healy—Yes. As I say, it is the ones who come to the meetings who discussed it. We have not actually done a survey of this. We did a survey of public transport, and safety and security was one of the issues brought up by people then. We had about 450 responses and about a quarter, about 100, said that it was one of their concerns.

Ms PANOPOULOS—At the meeting you held to discuss this particular inquiry, how many people turned up?

Ms Healy—There were only eight of us there. They wished us to make a submission because they felt that the way in which things were reported was not the way they wanted it to be presented to you.

CHAIR—It might be interesting if you conducted a survey of your members and see what they might report to you.

Ms Healy—Yes, it might be. We usually do one survey each year but that has not been one of the issues that we have thought of.

CHAIR—Your organisation has 100 members?

Ms Healy—Yes.

CHAIR—But you got 450 submissions.

Ms Healy—That was a public survey that we did during Senior Citizens Week. We had a caravan in the Bourke St Mall and we asked older people to fill in a survey form for us.

CHAIR—You might do that on this issue; that would be very good. Thank for putting in the submission and for coming to speak with us. We have to think of ways that we can free people from that fear so they can live fulfilling lives, as they are entitled to do.

[3.33 p.m.]

STEPHAN, Mr Adrian Cecil, Managing Director, Logistics Pty Ltd

CHAIR—Welcome, Mr Stephan. Thank you very much for being with us today. I notice that you have given us an additional paper which is really a supplementary submission.

Resolved (on motion by **Mr Melham**, seconded by **Ms Panopoulos**):

That the supplementary submission from Logistics Pty Ltd be received as evidence to the inquiry into crime in the community.

CHAIR—Would you like to make an opening address, particularly with regard to this additional document?

Mr Stephan—I do not wish to create any more paperwork than is necessary for parliamentarians or bureaucracies generally; however, I submit some of these papers to show you how this very simple problem has become so complex. This problem started its life several years ago with the variation of an ‘s’. I wanted to change my domain name from logistic.com.au to logistics.com.au. This issue over an ‘s’ has been resolving itself for over three years, and what started out as a simple issue has actually unravelled a very complex scenario. As I will explain later, as we speak it is probably creating victims of crime, or potential victims of crime, in many forms.

Just to make a poignant point about it, tomorrow morning at nine o’clock my company name goes up for auction as a domain name. At 11 o’clock on 11 September I will know whether I have to start a new company or I have my old name back. It depends on who has the most money in the bank and who can write the biggest cheque. So I may be sitting here in my second last duty as managing director of Logistics Pty Ltd making a presentation. Come the morning of 12 September I may have to have a new company.

CHAIR—Why?

Mr Stephan—To avoid the risks and so forth that are associated, as I pointed out in my submission, with crime, trade practices issues, identity theft, privacy, adverse reaction. The key points I would like to make relate to that very old proverb, ‘Good fences make good neighbours.’ As we all know from our experience, good fences protect our property and reduce the possibility of crime against the property and its owners. In a business sense, we have some good fences. The ACCC has some good fences, as does the Australian Securities and Investments Commission. They have rules to ensure that the overlap, the confusion or unacceptable conditions or actions between business properties are defined and minimised. In fact, a very interesting fence was put up by the Prime Minister when he introduced the regulation to protect the name of Sir Donald Bradman against inappropriate commercial exploitation. It is interesting to note that the government felt it was fit to protect the name of the cricketer but did not feel it was fit to protect the name of the 1.2 million small businesses or the 3.2 million people employed by them.

If I can use the fence analogy, the domain name policy we have is much like a stile that a third party owns and sells out to other people to cross between the fences. The domain name policy is essentially an anticompetitive model. How is it competitive for one company to be able to deny another company the right to use its name to promote its company? Are we victims of some anticompetitive company?

I use in the sample I have given you a case that took me three minutes to sort out from the Web. I made up this fictitious company called Western Spares. I assumed I sold spare parts on the east coast; I wanted to start up business on the west coast and I wanted to call myself Western Spares. When I checked the ASIC database I found there was a little company in Mudgee called Western Spares, so that as a company name was denied. I decided to call myself Online Western Spares. That name was available. Because I was now called Online Western Spares Pty Ltd I could get two domain names: westernspares.com.au and ows.com.au. Western Spares is a legitimate company name and OWS is an incorporated company. But under the domain name policy I am now able to get those two names and I deny the original owners of those company names the right to have their name as their domain name on the Internet. I have wiped them out—gone. And there is nothing these people can do about it.

Mr MELHAM—What they could do is buy them off you if you sold them.

Mr Stephan—Yes.

Mr MELHAM—Is that a common practice that you are aware of?

Mr Stephan—It is becoming common. The problem is: why should this happen?

Mr MELHAM—Yes, I know.

Mr Stephan—The problem is that they did not know they are victims. When I rang Western Spares at Mudgee and said, ‘Are you aware of this?’ the usual story of how well small business is supported was another thing. We are creating all these victims, and it affects just about every small business. I think there are issues to look at in the auDA constitution regarding what is the sovereign control of the Commonwealth. It says there is sovereign control of the Commonwealth, but what is it? The understanding is that ICANN owns globally the domain name system. They have delegated that to the Australian system. Minister Alston has limited control over it—only when it falls apart can he do anything. Who actually exercises sovereign control? It talks about ‘for the benefit of the Australian community’. Exactly what does that mean? Is it of benefit to the Australian community that you could deny small businesses the right to use their names as domain names whenever they want it? All those sorts of things do not make sense. I will quote from the ASIC rules for directors:

Any information you get through your position must be used properly and in the best interests of the company. It is a crime to use that information to gain, directly or indirectly, an advantage for yourself or for any other person, or to harm the company. This information need not be confidential; if you use it the wrong way and dishonestly, it may still be a crime.

It raises a lot of issues. The way that is written, it is assuming you are using insider trading type information. But if a company goes and takes the company name of another company to use as its domain name, is it causing harm to that company in terms of bad faith registrations, the code

of ethics the company may have or the risk that the company then runs at law for passing off trade practices regulations? So there is a dual in this ASIC regulation which we need to explore. But I guess the bottom line is that all that is lawful is not honourable, and that is where we need to look at it. It is actually a very simple situation that we have, but it has such sinister implications that are long lived—forever. It all depends on how big your chequebook is. There is no logic to this—there is no rationale; it all depends on how much money you have got.

CHAIR—To go back to the origin of the domain name concept, my understanding is that, when the World Wide Web was invented in the US, they decided they would establish a company owned by the Congress which would own it, and it established a single computer—in West Virginia, I think—

Mr Stephan—Yes, something like that.

CHAIR—on which all domain names in the entire world are kept. They then franchised different companies in different countries to allocate domain names to citizens of that country.

Mr Stephan—That is right.

CHAIR—Are you familiar with the Absolut case?

Mr Stephan—I am not sure anybody is. You scratch the surface—you do not scratch too deep—and you find the US Department of Commerce. I do not think people know it very well.

CHAIR—This is a case where a small Australian firm called Absolut Beachwear had registered its domain name and then proceeded to do some business in the United States and in the United Kingdom. The sales were quite small—maybe \$20,000 or \$40,000. They were subsequently sued by the Swedish government, who owns Absolut Vodka. They were sued both in the UK and in the United States, but not in Australia because, in Australia, they would not have succeeded. The people who owned the firm initially defended and ran out of money. A default judgment was gained against them and they have lost their name.

They said that one of the important aspects of the case was that, in the United States, the judgment actually said that a different spelling of ‘absolute’—that is, with the ‘e’—could be covered by the Absolut Vodka company, so that they got a further ownership of what is otherwise a generic term. They lost their business. Their problem arose because they did business internationally. If they had continued to do business just in Australia and had that company sued them in Australia they would not have succeeded, but once their name is taken off that computer in the United States, that is it, because that is where all the records are. You said the name of your company is being auctioned tomorrow.

Mr Stephan—Yes.

CHAIR—Is that Logistics with or without the ‘s’?

Mr Stephan—With the ‘s’.

CHAIR—With the ‘s’.

Mr Stephan—The background story is: in 1994 I applied for logistics.com.au and was denied on the grounds that ‘logistics’ was a nine-character word and only eight-character words were being accepted. In 1999—getting older in years and a bit slow—I eventually worked out we could have long names. I then approached my Internet provider at the time—UUNet—and said, ‘Will you put an ‘s’ on ‘Logistic’ and make ‘Logistics’ my company name?’ It sounds a very simple thing to do. That fell foul of Melbourne IT, which was the registrar of names, who said, ‘No, “logistics” is a generic word.’ I said, ‘That might be true or might not be true, but that is my company name.’ I was told that that did not matter; it was a generic word. I was educated by Melbourne IT about the meaning of generic words and how they applied the word absolutely. I can show you that that is all trash. In fact, they actually approved reliability.com.au. If ‘logistics’ is generic, ‘reliability’ has to be.

I waited a few months and I specifically went out and registered the business name ‘Dependability’ and got a domain name—dependability.com.au. Melbourne IT’s logic, which they cannot explain to me, is that ‘reliability’ and ‘dependability’ are not generic words but ‘logistics’ is; yet there is an international standard on dependability management which calls up both ‘reliability’ and ‘logistics’. So I do not know. When the Australian domain name administration took over, they were trying to work out how to dispose of all the words that were rejected as generic words by Melbourne IT. There was no test given as to what people might have in terms of intellectual property. The rule—because I think it was a simple one—was: ‘We’ll just auction them off’, and that is what happened.

In some of the information I have given you is an email I sent on 31 January to both Melbourne IT and AuDA saying, ‘I want to take this to arbitration and go to an arbitrator and let an arbitrator sort this mess out—to put the whole sorry saga in front of an arbitrator.’ Both declined. It was in a cross-jurisdictional time, but if Melbourne IT were responsible at that time, then under their policy I had every right to go to arbitration. If AuDA were responsible at that time, then under their constitution—where they describe that they have to have a dispute resolution processes to seek conciliations, redresses and all that—AuDA had a responsibility to do this. But both declined. There is no logic in this at all. This is simple—I think it is power. No amount of discussion, argument, convincing, persuading, cajoling or whatever will convince them that this should have gone to arbitration.

Mr MELHAM—So it is now up for auction tomorrow. Why is it up for auction tomorrow?

Mr Stephan—That was the simple rule. My understanding—and this is hearsay; it was described to me—is that the domain name policy in AuDA was organised in such a way that if there was a clock in the wall, the sun was up, it was daylight and the clock was chiming 12 and it looked about 12 o’clock, they could not agree that the time was about 12. There was that much division of ideas.

Mr MELHAM—So you have to go and bid tomorrow?

Mr Stephan—Yes, I have to bid tomorrow. But this affects businesses, like the example I gave with Western Spares. You could go to any small business—say, a little irrigator in Cunnamulla. He has a little business that has been running for 20 years without a problem. In

five years time he determines that he should go and do this and all of a sudden he finds his domain name is gone or he is trading under that but somebody else has come along and swiped it and the next thing he is being sued for trade practices violations.

Then there is the most sinister one of the lot—I do not know whether you are aware of it. Say, for argument's sake, I lose logistics.com.au. That does not stop anybody setting up email addresses adrian.stephan@ or adrian@—my previous staff, my current staff of one or my future staff—and trapping all the mail that goes in. I teach a course in reliability engineering and I have students all over the world. They send me their reasons—some of them are very personal—why they cannot do their assignments or why they are late in assignments and all that sort of information. Somebody could trap this information because of the difference between 'logistic' and 'logistics' and the privacy of these students could be violated.

I do not know what the scope of your committee is, but somebody has to call a halt to this process and say, 'Hold the bus.' We are going to generate a whole range of victims of crime here that we have never seen before through Trade Practices Act violations, inadvertent though they may be. Talk to Hungry Jack's up on the Gold Coast. You mentioned the Absolut case. Sometimes it is done very simply: on the Gold Coast, there was a restaurant called Bat Cave, I think, and when Movieworld opened they walked in with their lawyers the next day and shut it down. The Tasmanian government had to spend a truckload of money to stop Warner Bros trademarking the words 'Tasmanian devil' because they happened to have a cartoon character called the Tasmanian Devil. There is a whole range of these things. That is why I am sitting here saying that we have 1.2 million small businesses out there that need help. They need this to be prevented—they need to know that you guys are actually interested in small business and in looking at ways to prevent this. My case is probably lost; I am history unless somebody picks up the phone this afternoon.

Mr MELHAM—Do you think someone else is in the market for your name?

Mr Stephan—Absolutely. I have had some pretty intelligent people look at this over the years, and I had one person look at this about two years ago. They came away from discussions with the quite clear impression that Melbourne IT was told under no circumstances to give that name to Stephan; they wanted it. A more cynical person would have looked for some ulterior motive in this, but I am not that cynical.

CHAIR—What is the status of Melbourne IT?

Mr Stephan—It is just another registrar, unfortunately.

CHAIR—Is it a private company?

Mr Stephan—Yes, it is still a private company of Melbourne University.

CHAIR—Yes, that is what I understood. But anything it does is therefore not subject to any review.

Mr Stephan—No, and this is the problem. The constitution of auDA talks about the sovereign control of the Commonwealth of Australia. Exactly how much sovereign control does

the Commonwealth of Australia exercise? And ‘for the benefit of all Australians’—what does that really mean? Is it to the benefit of Australians that a company that has been going for a number of years is denied the use of its legitimate business name?

CHAIR—As I understand it, it is even worse than that.

Mr Stephan—I am giving you the good story!

CHAIR—I go back to the Absolut case or, let us say, one like it. If, having been struck off, they continue to trade, they can be subject to that identity fraud legislation that I talked about before—we were discussing it with the previous witness.

Mr Stephan—It is like the Tool Drool example that I gave you. I have no idea who I am bidding against. I could be bidding against somebody who is actually the front for a paedophilia organisation. Do you understand that you do not have to have the word ‘logistics’ in your name? There could be a company in Charleville called Howard’s Goat Float that ships goats around the joint. Transportation is a part of logistics. We are in logistics and we have the biggest chequebook. That is it—it works.

CHAIR—Does that mean you are not allowed to keep ‘logistic’, as you have now, if they buy ‘logistics’?

Mr Stephan—I can keep that, but then we wind up with two companies: some company with www.logistics.com.au, which may not even have ‘logistics’ in its name, and my company, Logistics Pty Ltd, with www.logistic.com.au. The legal and business advice I have is that, immediately www.logistics.com.au goes to another entity, I have to shut down trading of that entity. I cannot afford to run the risk of accruing any possibility of passing off, identity theft, privacy issues or adverse relationships. What happens if the company who gets [logistics.com.au](http://www.logistics.com.au) does something that comes to the notice of the cops? The cops are going to sit there and say, ‘This is a pretty close association.’ It is a nightmare.

CHAIR—We really have no say over it, do we?

Mr Stephan—I do not think so. My appeals to Minister Alston and Minister Hockey have been a total waste of time.

CHAIR—Under the act, do they have the power to intervene?

Mr Stephan—I am not sure that they do. I would assume that Minister Hockey, as the Minister for Small Business and Tourism—which I think he is—is responsible for protecting the interests of small business. Why he is not jumping up and down and protecting his 1.2 million charges, I do not know.

Mr MELHAM—Isn’t the situation arising because Melbourne IT is a private company? Isn’t that why there is no review and no power to intervene?

Mr Stephan—That is right. Now it has been taken over by auDA—and auDA is a limited company—but it has links back to ICANN. But you are right: it is still a private company.

CHAIR—Let us go through it. It has now been taken over by what?

Mr Stephan—By auDA, the Australian Domain Administration Ltd. I have listed it there. They are a private entity as well. They are self-regulated.

Mr MELHAM—So what they really need is privacy considerations to override them, because you are saying they draw their power from the government and that we should have an extension.

CHAIR—But they do not draw their power from the government.

Mr Stephan—They draw their power from ICANN.

CHAIR—They draw it from this company which was established by the United States Congress.

Mr MELHAM—Okay.

CHAIR—Is that what it is called—ICANN?

Mr Stephan—It is something like that, yes. I understand that Minister Alston's power is limited so that, unless auDA make monumental screw-ups, they operate and he will do nothing. He can do nothing.

Mr MELHAM—What do you say the remedy should be?

Mr Stephan—I believe the immediate remedy should be that, as of right, any company or business should be able to have its company name or domain name exactly as it is listed on the ASIC register; it can have that as a domain name as of right. Nobody else can touch it. If your name happens to be the XYZABC Pty Ltd—if that is what you want to call yourself—you can have XYZABC as your domain name.

CHAIR—How do you deal with the international situation then?

Mr Stephan—Because it is in a .com.au domain space, the international situation is not an issue. In fact, Australia tried to fix it. Robert Elz, of Melbourne IT, when he set this up, tried to fix it. He said, 'To get a domain name, you have to have a company name and you have to have either an ACN'—at the time—'or a registered business name,' and that was the only way you could get a domain name. He tried to stop the situation in America—that anybody could apply for any name—from happening in Australia. He introduced a process that you had to have an ACN-RBN to get a domain name. But the reverse does not work. Just because you have to have an ACN, an ABN or an RBN to get a domain name, the rules do not normally say to you, 'You, as of right, have the name that is associated with that number.' It is not a reversal. You guys are

running around the world trying to fix up all this terrorism, identity theft, misidentities and all of that and, by default, you are allowing it to happen.

CHAIR—What happens in a case similar to the Absolut one, though, where they were registered here but, internationally, someone was registered somewhere else through their domain agent and they were trading internationally? Who has the right to the name then?

Mr Stephan—As I understand it, absolut.com is a completely different domain name from absolut.com.au and there should be no problem with those two names.

CHAIR—That is not the way it has been interpreted. These people were called Absolut Beachwear.

Mr Stephan—Did they get into trouble for domain name or trademark infringement?

CHAIR—No, they looked at the trademark infringement in Australia and there was no case, but they have lost their domain name. Absolut Vodka argued that they were in the beach wear business because they had ads with their waiters wearing aprons, which was clothing.

Mr Stephan—This is the same thing that happens. You get the argument from the Internet literati about two companies being in different businesses. Say, for argument's sake, the company who won logistics.com.au happens to be in transportation. I am not specifically into transportation, although I consult in that area; I do not own trucks, trains and planes. In trademark law, you deal with classes and classifications. If you are in different classes and the trademark law allows it, should domain names be the same? But is it a restraint of trade? I may not be in the truck and train business today, but somebody may give me a good deal tomorrow to go and buy a courier company so I go and buy a courier company. Then I am in conflict of interest; I am in a passing-off problem with the company that owns logistics.com.au. On the other side, by saying that you cannot move out, is it a restraint of trade? Does it mean you cannot buy a trucking company because they have that domain name? It is a mess.

CHAIR—It is a mess.

Mr Stephan—I thought it was something that somebody should get up, talk about and try to get somebody interested in. I have found that Minister Alston and Minister Hockey do not seem to be interested.

Mr MELHAM—They feel their hands are tied. I am on the opposite side of the fence, but I can understand where they are coming from—in fairness.

Mr Stephan—Yes, and I can sympathise with them. As much as I might have a difference of opinion over these things, I do understand the difficult position that they are in. Just because they are in a difficult position does not mean to say it should not be fixed.

CHAIR—Did you approach them?

Mr Stephan—Yes, I have tried to meet with them and Minister Alston just will not meet with me. I have talked to his aides or his staff and I have asked, ‘Why is this fair?’ They have said, ‘It is fair,’ and I have said, ‘You explain to me how it is fair.’ They said, ‘auDA says it’s fair.’

CHAIR—You have talked to his staff and they think the system is fair?

Mr Stephan—Yes. They reckon the system is fair, but nobody can explain to me why it is fair. Nobody has explained anything. Melbourne IT did not explain to me why reliability, logistics and dependability were not the same, but I can bring in a truck load of expert opinion to say that they are the same. Jan Webster at Melbourne IT, when I asked her several times to explain to me why reliability and dependability are approved and are considered not to be generic words but logistics is considered to be a generic word, gave no explanation.

CHAIR—The problem is you cannot appeal it anywhere?

Mr Stephan—I had an appeal process in Melbourne IT which I tried to enact on 31 January. It tried to enact it earlier but, when I approached the arbitration group to do it, the only information I got was from the Melbourne IT lawyers. I received nothing from the arbitration group. I perceive that as being a biased position.

CHAIR—Hang on. When I said an ‘appeal process’, I did not mean an arbitration process. Is there a provision to use an independent arbiter?

Mr Stephan—There is.

CHAIR—You cannot go to the AAT or anything like that, because it is not a government instrumentality.

Mr Stephan—That is right. Even in the same vein, there is a TIO to look after the telecommunications industry. When the government set this up, they did not even put in place—which they could have done—an ombudsman that you could go and talk to. What essentially happened was that the legislation effectively digitally disenfranchised every business name and company name in the country. You get people talking about digital technology divides. Guess what? Our guys built one by design. We have a digital technology divide. Is it an elaborate form of insider trading, to say it like I explained with the Western Spares thing? Is it an elaborate form of insider trading to say, ‘I can wipe out all these little companies in the bush by just registering or incorporating a couple of very strategic names,’ and, ‘If I do it right, I can make up all these domain names and wipe them out’?

CHAIR—Does that apply even if they do not trade on the net?

Mr Stephan—Yes. It is first in first served.

CHAIR—You are saying that registration of your business name gives you no protection because registration of a domain name overrides that.

Mr Stephan—It is a completely separate system; there is no relationship between the two.

CHAIR—No, that is what I said. If I am called Western Spares and I am trading, doing my bit but I have no domain name, I do not use the Internet and I just trade in Australia and you have registered it—why does that affect them if they are just trading and they are registered?

Mr Stephan—Like Western Spares, they have no interest in the Internet at this stage. Some other company comes along and strategically takes their domain name. So in a few years time, if Western Spares wanted an Internet presence, they are denied that because this company out here strategically took it.

CHAIR—I know that but in the interim, if they remain traders without using the Internet, they can continue to trade with their own name.

Mr Stephan—They can trade, but somebody can take their domain name and there is nothing they can do about it. They may not even know it has happened until they go to do it.

CHAIR—But they would only get into trouble if they tried to have a domain name and trade themselves?

Mr Stephan—Exactly. The simple solution is to say that your name, exactly as it appears on the ASIC register, should be as of right your domain name. Nobody should be able to get that. It is held for you forever. When I talk to a lot of small businesses, they assume, because they have that name, that when they want it, it will be there.

CHAIR—But you cannot even do it with your own name.

Mr Stephan—Yes.

CHAIR—To put it the other way around, you are saying that IT—or is it auDA?

Mr Stephan—auDA.

CHAIR—auDA. Why has it become auDA by the way?

Mr Stephan—That was the name they conjured up.

CHAIR—But why are they taking over Melbourne IT?

Mr Stephan—Melbourne IT, as I understood it, was an interim measure. I do not understand the politics here at all, so I cannot go into it in any detail but my understanding of it is—

CHAIR—auDA again stands for Australian Domain Administration—

Mr Stephan—Australian Domain Name Administration Ltd.

CHAIR—Who are the shareholders in that?

Mr Stephan—It is by membership. It is a \$100 membership, and I happen to be a member, too.

CHAIR—Who are the directors?

Mr Stephan—I think there are 12 directors. They are all listed on the web. I have made contact with one director, but the directors are not easy to get in touch with.

CHAIR—Who formed the company?

Mr Stephan—It just grew.

CHAIR—How did it get to take over Melbourne IT?

Mr Stephan—There were a few literati who worked out how to do it, conned the government and away they went.

CHAIR—But how did the government get involved in the first place?

Mr Stephan—I am not an expert on these machinations and that is something that would probably need to be sorted out, but one of the things that the ICANN was trying to do was get governments—

CHAIR—Let us do ICANN: the international—

Mr Stephan—committee of names or something like that—ICANN. I think they were looking for host countries to take some responsibility. We have this band of folk up in Canberra called the National Office for the Information Economy. I am not sure what they do or what their role in life is.

CHAIR—Technically, even if I am here, if I want to register a domain name, I can go and do it in Nepal or Japan. I can do it anywhere I like and it will cost a different amount of money.

Mr Stephan—But in Australia—

CHAIR—But for operating in Australia, I do not have to register it from here. I can do it somewhere else, if I want.

Mr Stephan—I think most countries are now starting to put their own rules in place that you have to be a resident or own a business or something like that. The intention that Robert Els set up in the Australian system was actually very neat—you actually had to have this registered company or business or whatever to get the domain name. But then, in private correspondence I asked him, ‘Why did you do it like this? Why did you not write your rules so that you could have the company name as your domain name? Why did you not do that?’ He said that the reason was that he never thought of it, but, having thought about it, he would agree with it. So I had a letter from Robert Els, who was the custodian at the time of the dot.au domain space, that said, ‘I would give you your company name as your domain name.’ I sent that to Melbourne IT

and their reaction was that because he never wrote it in the licence it would not happen. I actually had a piece of paper from the holder—

CHAIR—The way you could resolve it is to say that nobody may have a domain name of any registered name on the ASIC register unless they own it.

Mr Stephan—That is right. Ring up Minister Alston and ask him to tell auDA to do that tonight.

CHAIR—You have actually written to him in those terms?

Mr Stephan—Much like that, although I forget the exact language I used. I agree exactly with what you said. There should be this one-to-one relationship. If you want to represent your company with another name—and people may want to do that—fine, use the auDA rules and follow that process. But you should not be able to take somebody else's name as your domain name.

CHAIR—By auction.

Mr Stephan—By auction. You are absolutely right: given the logic of the Australian main name system as set up—you have to have ABNs, ACNs, RBNs and all that sort of rubbish—you should not be able to get somebody else's registered name as your domain name.

CHAIR—We have only just got to the stage where you have to register only once. Once upon a time you had to register in every state. We have overcome that.

Mr Stephan—The ACN was supposed to fix that, and it has fixed it to an extent. That program worked. This is where it comes to the analogy with the fence—there is a bit of liberty in it, but it is exactly the same thing. If you want to protect your property, 'good fences make good neighbours'. ACCC has worked hard to get good fences. ASIC has worked hard. As an example, if you go into the identical names check on the ASIC register and you put in 'logistic' or 'logistics' it just comes straight to me. If these guys were supposed to abide by sovereign control of the Commonwealth then why did they not look at all the rules that the state governments and federal government put together over the years on how to name things so any risks of confusion between plurals, singulars, feminine, masculine and all that did not happen? No, they went and wrote a whole new rule book.

CHAIR—I see.

Mr Stephan—If you want to ring up Minister Alston and suggest that to him, that would be good because that is the actual solution to the problem. To follow on that issue, one of the arguments that the domain name people come up with is: 'What happens if we run across the case of two companies having the same name?' That is going to be pretty rare, but there are normal laws of precedence.

CHAIR—You can also have two names that are similar, where it gets more difficult. I take you back to the Absolut case where Absolut Vodka can probably go across the world putting a

lot of people out of business with even a spelling that is not their own spelling. And that is the Swedish government doing that, because they own the company.

Mr Stephan—There are many issues in this. My personal opinion is that something should be done very quickly to bring some sensibility to it. The other thing is that it probably needs a committee in its own right to sit down and unravel this whole problem between trade marks, domain names, business names and company names. Why should some little grocery store 400 kilometres west of Uluru—that would be for the benefit of all Australians, I would imagine—be disenfranchised because they do not know?

CHAIR—Mr Stephan, you have put some light on what is going to be an ongoing problem. It is something we ought to pay a bit of attention to. Thank you for joining us, and thank you for your evidence. You have put a spotlight on something that needs a lot more investigation. I for one am very interested in the matter, and I think the other members of the committee are as well. Thank you.

Mr Stephan—Thank you for the opportunity to actually explain to someone that this is a mess that needs to be fixed up.

Resolved (on motion by **Mr Melham**, seconded by **Mr Secker**):

That, pursuant to the power conferred by paragraph (o) of sessional order 28B, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 4.16 p.m.