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**TRANSCRIPT OF PROCEEDINGS  
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**OFFICE OF THE INDEPENDENT NATIONAL  
SECURITY LEGISLATION MONITOR**

**CANBERRA, AUSTRALIAN CAPITAL TERRITORY**

**DR J RENWICK S.C, Presiding  
MR M MOONEY, Principal Advisor  
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Mr D ROWE, AGS Solicitor Assisting**

**PUBLIC HEARING**

**10.01 AM THURSDAY, 2 AUGUST 2018**

DR RENWICK: Well, ladies and gentlemen, I welcome everyone here in Canberra and those live streaming online to this public hearing under section 21 of the *Independent National Security Legislation Monitor Act*. At the request of the Prime Minister I am conducting a review into the trial and punishment of children for terrorism offences. Today is an opportunity for me and those assisting me to question and hear from Government agencies and others who made submissions. I thank everyone who has made submissions.

The program today is publicly available. I will now set out my role and some preliminary thoughts about what I might ultimately recommend at the conclusion of the review.

My role, as set out in the *Act*, is independently to review the operation, effectiveness and implications of Australia's counter-terrorism and national security laws, and, having regard to Australia's international obligations, both human rights and security and constitutional arrangements between the Commonwealth, the states and territories, to consider whether such laws contain appropriate safeguards for protecting the rights of individuals, remain proportionate to any threat of terrorism or threat to national security, or both, and remain necessary.

As Monitor, I am entitled to see all relevant material, regardless of security classification. I have already had a closed hearing where classified material was referred to. But today is a fully open hearing and I welcome members of the media here today. My only request is if you are taking flash photography, would you only do so please during the opening statements rather than during questioning. The hearing is being transcribed, and it's being live-streamed.

Finally, my report to the Prime Minister is due no later than 1 December and must be tabled by him in Parliament within 15 sitting days of its receipt.

Going along the table: Mr Mooney, my principal advisor; my counsel assisting, Ms Single of the New South Wales Bar, Mr Tran of the Victorian Bar; and my solicitor assisting, Mr Rowe, from the office of the Australian Government Solicitor.

Let me say something more about the review and some of my preliminary views, because we have been working on this matter for some time, we have received submissions, we've analysed them, and for those who haven't seen them, there's a great deal of useful material on my website.

5 First, some definitions. By “child” I mean someone older than 10 and younger than 18. Ten is the age of criminal responsibility for federal law, and any review of that age is beyond the Prime Minister’s reference to me. “Young person” is 18 to 25 years of age. When I talk about “terrorism laws” I mean federal laws, almost all of which are to be found in the *Criminal Code* and the *Crimes Act*, and “the Parliament” today means the Commonwealth Parliament.

10 As we all know, there are eight states and self-governing territories. All terrorism trials are heard in state and territory courts, including the eight children’s courts. As you will hear, although the Parliament could cover the field concerning the trial and punishment of federal terrorism offenders and thereby prevail over inconsistent state and territory laws, it has not generally chosen to do so.

15 In court proceedings, state and territory procedural and sometimes substantive laws are picked up as what are sometimes called “surrogate federal laws”, but often with uncertain results. Finally, there being no federal prisons, all federal terrorism offenders who are sentenced to a term of imprisonment are sent to state or territory prisons or places of detention, as section 120 of the *Constitution* envisages.

20 Let me say something about threats. Under the *Act* I must consider whether laws are proportionate to threats, so I’ll deal with this first. Of course, I will be hearing the expert view from ASIO and other agencies on this topic in a minute, but let me set out my general understanding. The current threat of a terrorist act occurring in Australia remains at the “probable” level, at which it has been set for the last four years or so.

30 In my reports last year I concluded that the credible threat of one or more terrorist attacks will remain a significant factor in the Australian national security and counter-terrorism landscape for the reasonably foreseeable future. While more complex or extensive attacks can’t be ruled out and must be prepared for, attacks by lone actors using simple but deadly weapons, with little if any warning, are more likely.

40 Despite the best efforts of the authorities, there can’t be any guarantee that all attacks will be detected and prevented. There is also the risk of opportunistic, unconnected follow up attacks in the immediate aftermath of a completed attack at a time when police and intelligence agencies are fully occupied in obtaining evidence and returning the attacked locality to normality. I understand, subject to correction, that that remains the position.

As I expect we will hear next, broadly speaking, terrorist threats in Australia come predominantly from those engaging in radical Islamist action. I contrast that of course with the major world religion of Islam which practises peace. As Mr Justice Haddon-Cave, the presiding terrorism judge of England and Wales said recently when sentencing the Parson's Green bomber, in terms I would adopt:

*The Koran is a book of peace; Islam is a religion of peace. The Koran and Islam forbid anything extreme, including extremism in religion. Islam forbids breaking the law of the land where one is living or is a guest. Islam forbids terrorism. The Koran and the Sunna provide that the crime of perpetuating terror to cause corruption in the land is one of the most severe crimes in Islam, so it is in the law of the United Kingdom.*

And, I would add, so it is in the law of Australia.

There are also terrorist threats emanating from radical right wing groups. We have not yet seen children charged with terrorism or related offences from such groups, so I say no more about them now.

Since 2014 for people under 18 there have been significant increases, sometimes from zero, in levels of intelligence interest, adverse security assessments, passport cancellations, police investigations and arrests by the joint counter-terrorism teams which exist now in each jurisdiction, and charges and convictions.

I can give some actual numbers of charges and convictions at least. The total number of persons charged with or convicted of terrorism offences in Australia now approaches 100. As of today, 54 people have been convicted, 39 remain before the courts. Five of those convicted are children, that is they were under 18 when the offences occurred. Two children currently remain before the courts and a number of other children have been charged with non-terrorism offences, although they were caught up in some way in terrorist activity.

The sentences range considerably in severity, but have been up to 13 and a half years as a head sentence, with a sentence of 10 years and one month, or 75 per cent of that head sentence for the non-parole period. We will hear more about section 19AG of the *Crimes Act* today, which compels the sentencing court to impose a non-parole period of this length and which applies to both adults and children alike.

Terrorism offences are in fact the most serious federal criminal offences children currently face. Although the absolute numbers remain small, the

increases are concerning. Since 2014, therefore, 10 per cent of the total number convicted were under 18 at the time of offending, a further 25 per cent were between 18 and 25. So a third of the total group of offenders were under 25.

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I have just returned from a visit to the United Kingdom, and they also have been experiencing an increase in the number of convictions of persons for terrorism-related offences who were children when the offences occurred, and it may be we have a great deal to learn from the UK experience.

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Since 2015, 21 children have been charged with a terrorism-related offence in Great Britain, 14 have been convicted following such a charge. A recent UK Home Office publication stated that:

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*Arrests of those aged under 18 made up 6 per cent of all arrests, that's 27 arrests in the latest year, the highest number and proportion since data collection began in 2001.*

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Among those convicted, one UK offender, the then 14 year old boy who inspired the would-be Australian Anzac Day bomber in Melbourne, was given a life sentence with a minimum non-parole period of five years. Another was given a life sentence with a minimum non-parole period of 11 years. Other sentences have included 24 months detention and training and a 12 months intensive referral order.

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Australian courts over the years have steadily increased the sentences being imposed for terrorism offences, many of which have maximum penalties of life or 25 years imprisonment. There have been sentences of more than 10 years for people who were children at the time they committed the terrorism offences.

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In the important case of *MHK*, the Victorian Court of Appeal recently made clear how seriously it regards this type of criminal offending, which it described as “the scourge of terrorism”. The Court said this:

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*In the present case the respondent was only 17 years of age at the time of the offending. Ordinarily and in general, the youth of an offender is an important mitigating circumstance. It is relevant to an assessment of the moral culpability of the offender as the law recognises that the immaturity and the impressionability of youth may be, and commonly is, an important contributing factor to the involvement of a young offender in the crime for which that offender is to be sentenced. In addition, the law regards the rehabilitation of young offenders of substantial if not primary*

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which would in any serious case mean much shorter sentences than would otherwise be imposed, and third, there is inconsistency in the circumstances in which juvenile sentencing principles will apply to a child sentenced for crimes as serious as those relating to terrorism.

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Those inconsistencies require explanation, analysis and at least some reform. We have now undertaken the analysis of nine different legal systems, including eight different children's courts. I can understand why reform might have been put in the "too hard basket" over recent decades, however, the Prime Minister has requested me to undertake this review, and I intend to fully answer all the questions the review throws up.

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I have been fortunate to receive a number of submissions from Governments, Commonwealth, state and territory, human rights bodies, professional associations and the public, and those assisting me have done an excellent summary of the submissions, which is available at the back of the room.

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The submissions of course reflect a range of views, but can I offer the following? First, in relation to 19AG and 15AA, there is a good deal of productive discussion in the submissions about whether they comply with Australia's international obligations and, more generally, whether they're appropriate, in any event, to apply to children. Most non-Government submissions recommend that 19AG in particular not apply to children.

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Somewhat unusually for an INSLM review I have had the benefit of assistance from many state and territory authorities. I have had a formal submission from New South Wales Justice, I have other submissions just arrived or on the way from state or territory governments.

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Not all states and territories have chosen to provide a formal submission, but ministers, Courts and agencies have been extremely generous in the time and effort devoted to consultation with me and those assisting me, and I am grateful in particular for the assistance in relation to the detail of state and territory laws.

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Finally, while I've been assisted with the detail of the law in particular jurisdictions, the submissions to this review generally offer more limited guidance on inconsistencies between them. It appears to be common ground that arbitrary discrepancies between jurisdictions are generally undesirable, although some of that comes with federalism.

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Understandably, given the small number of juvenile terror offending to date, and the complexity of comparing different juvenile justice systems in the abstract, the submissions have generally not engaged with the fine

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detail of potential inconsistencies. The Human Rights Commission has recommended that there be a comprehensive survey of state and territory laws and rules to identify inconsistencies.

5 I do intend to identify such inconsistencies as far as I can, indeed, submissions from the Commonwealth DPP have been particularly helpful and I should here acknowledge my gratitude to her and her staff.

10 Then can I turn to some preliminary views, which I will state shortly, and look forward to discussing during the day. My preliminary view is that the inflexible three-quarters rule set out by 19AG should not apply to children. My reasons include the following. A number of submissions persuasively argue that 19AG breaches the Convention on the Rights of the Child because it precludes any judicial discretion in setting the non-parole period.

15 They point out it is no answer to say the court has a discretion on setting the head sentence. Commonwealth sentencing law requires the court first to set the head sentence, and it's impermissible to do this by reference to parole, whether set by 19AG or at the court's own discretion.

20 That conclusion is not surprising. In other areas, for example people smuggling and the current Bill in relation to possession of weapons, there is a carve-out for children in relation to mandatory head sentences. It appears the reason for that carve-out for children is to avoid breaching Australia's obligations under the Convention.

25 I am not suggesting that any non-compliance was deliberate at the time 19AG was enacted, only that now it's being used against children and, as such, it needs reform.

30 I also consider, on the evidence, I have received so far that it is counter-productive to have an inflexible rule like 19AG in every case, particularly when it comes to children. Look at Britain; children have been given life sentences for terrorism offences, but relatively short minimum non-parole periods, in which case it still remains for the offender to demonstrate they should be released on parole.

35 In Australia, they would need to demonstrate their suitability to the Commonwealth Attorney-General, who personally considers all parole applications by terrorism offenders.

40 Turning to 15AA; I will also need persuading that 15AA is not in breach of the Convention. Although there may be more room for differences of opinion here, because the decision whether or not to grant bail is

ultimately at the discretion of the Court. The primary area of debate appears to be the provision may preclude the best interests of the child from being a – I emphasise a – primary consideration.

5 The English position may also be instructive. There, there is a presumption in favour of bail for everything, except murder and attempted murder. But those charged with terrorism offences almost never receive bail. There may be some merit in a carve-out for children from the exceptional circumstances requirement in 15AA. This could be replaced  
10 with language similar to that used in the control order legislation, where the best interests of the child are a primary consideration, but the paramount consideration is the protection of the community.

15 That approach was used in the control orders legislation by the Government at the suggestion of the PJCIS. If used in relation to 15AA, it might ensure compliance with the Convention, but still allow the bail authority fully to protect the community. In practice, it may be that bail is not given any more often for children in terrorism cases than it has been to date.

20 Finally, I hope to better understand the COAG decision last year concerning the harmonising of state and territory bail laws. It's possible this has overtaken anything I might recommend.

25 May I finally move then to say something about 20C; the most difficult part of the review. As I have mentioned, the legal framework is complex, there are eight different legal systems, plus the Commonwealth system. Although the concept of the Commonwealth making clear when its laws are to prevail is simple, in practice it isn't that simple.

30 Even the DPP is not absolutely sure what aspects of state and territory law might be picked up on some occasions. The submissions by the DPP expertly describe the complexities and have been of immense help, and the submissions show there are a range of inconsistencies. Let me  
35 mention a couple.

40 First, there is no consistent definition of a child or young person. Second, there seems to be potential for significantly divergent sentencing outcomes. So, for example, in Queensland there seems to be an absolute cap of seven years in certain circumstances where, as I explain in more detail in the written version of these notes, in the *MHK* case it may well be that the sentence of 11 years the Victorian Court of Appeal imposed would have been capped at seven years had the case been heard in  
45 Queensland.

5 There are jurisdictional differences as to whether and when a matter may be uplifted to a higher Court. Usually though, state and territory children's courts have much lower jurisdictional limits about the length of the custodial sentences they can impose. Then there is the complexity about whether people are tried according to law or according to juvenile justice principles.

10 In my view, it's one thing to have minor discrepancies in Federal sentencing based upon different state and territory laws and procedures; major discrepancies call for explanation and substantial justification. As a matter of principle, such major discrepancies are likely to be wrong. The High Court in a matter of *Pham* in 2015 said this:

15 *[a] Federal offence is in effect an offence against the whole Australian community and so the offence is the same for every offender throughout the Commonwealth. In the absence of a clear statutory indication of a different purpose or other justification, the approach to the sentencing of offenders convicted of such a crime needs to be largely the same throughout the Commonwealth. Further, as Gleeson CJ said in Wong, the administration of criminal justice functions as a system which is intended to be fair and systematic fairness necessitates reasonable consistency.*

25 At a policy level, the community would have a legitimate sense of grievance if it thought that essentially the same conduct constituting a Federal terrorism offence could result in a very different sentencing outcome simply based on where the proceedings took place.

30 Equally, a co-offender, or a person convicted of the same offence, based on similar conduct, who received a markedly different sentence would have a legitimate sense of grievance and possibly also a good ground of appeal. I will therefore be recommending there be much greater consistency throughout Australia, regardless of where the matter is prosecuted. The precise detail of that is a matter for further debate and thought, including today.

40 All of this is consistent with the Prime Minister's letter to me referring this review, which says the following:

45 *Given the procedures regarding the prosecution of children for terrorism offences are different in each state and territory, the Commonwealth should consider whether to implement arrangements to ensure a consistent approach to the prosecution of children for Commonwealth terrorism offences.*

5 There are two more topics to deal with. The first is the question of certainty. A fundamental issue is even working out precisely which mixture of Federal and surrogate Federal law applies. As the DPP supplementary submission frankly states, in many instances it's simply unclear what state and territory laws are in fact picked up and applied, because the Commonwealth Parliament hasn't indicated explicitly its intention to cover or not cover the field or otherwise to prevail over state or territory laws.

10 For example, the supplementary submission, which is on the website, indicates uncertainty as to which orders, short of imprisonment, which could be made by the children's court in its state or territory jurisdiction, whether they are equally available as surrogate Federal laws. I share these doubts. Yet these are matters of real consequence for both prosecution and defence, particularly in advising the accused.

20 Federal criminal law is a specialised field in any event. The subset of Federal juvenile criminal law is even more specialised. It's just not satisfactory that competent lawyers are unable to say with any certainty when advising their respective clients what result might occur as a matter of the powers of the Court. This doesn't reflect on the DPP and other submitters, who are deservedly recognised as experts in the field. Rather, it reflects poorly on our system of laws as a body of law that ought to be accessible to advisors and the public.

30 These matters are real and they're current. In a recent case in New South Wales for a Federal juvenile terrorist offender, a Supreme Court judge twice asked the sentence hearing be re-listed for further argument, in part because the applicable law and consequences were so unclear. I will be recommending reforms to clarify the law, as it is fundamental the law should be reasonably easy to ascertain.

35 May I then turn finally to the role of children's courts. So, as I mentioned, there are eight of these, and let me be clear at the outset, children's courts are at the front line in juvenile justice, they do important work in often difficult conditions and, with respect, I only have praise for that work.

40 On the other hand, the experience in England may be instructive, even bearing in mind Australian federalism, and it suggests that a Supreme Court or District Court judge and jury should hear all or almost all terrorism cases.

45 Let me explain. In England and Wales, all terrorism trials are case-managed centrally, initially by the presiding terrorism judge sitting at

the Old Bailey in London. The trials are then heard either by the judge or a cohort of 20 of the most senior judges, chosen by the judiciary themselves.

5 The way some of those judges explained the reasons for that to me are four-fold. First, there's a public interest in a prompt case-managed approach to terrorism cases by the most experienced judges so as to avoid, if at all possible, error leading to mistrial or re-trial; so the public have extra confidence in the conduct of the trial and the appropriateness of the  
10 sentences passed.

Secondly, terrorism cases stand apart from normal crime because of their exceptional seriousness to society as a whole. After all, an element of most terrorism offences is that the offender sought to intimidate a  
15 government or the public or a section of the public, and to this extent the concept of a Federal offence being against the Australian community is particularly apt.

Third, very often terrorist cases involve national security material or  
20 personnel, thereby requiring exceptional orders to close the Court for a period of the trial and make orders ensuring that national security material or information isn't inadvertently released, but, understandably, the media have an interest in ensuring those orders are kept to a minimum.

Fourth, it's quite often the case there's a vast amount of material  
25 discovered by the prosecution which, as one judge put it to me, is beyond the capacity of a single human brain to analyse and therefore requires search by computer, often complicated because the original files are encrypted or in a foreign language, but which requires at an early stage the  
30 active involvement of the case-managing judge to ensure the search terms used by the Crown at the request of the defence are apt.

For all of those reasons I expect to recommend that most if not all  
35 terrorism cases should be tried by experienced judges in Supreme, County or District Courts, with a jury, as section 80 of the *Constitution* requires for all such trials on indictment. Of course it will be a matter for each Court to decide which judges to allocate.

To conclude, because we are talking about courts invested with Federal  
40 jurisdiction, there is no conceptual or constitutional problem with the Parliament amending the *Judiciary Act* to provide, for example, that for certain offences involving children only particular Courts have jurisdiction. Already New South Wales and Victoria have passed their  
45 own laws or have a practice note, which means that most terrorism cases cannot be heard by their respective children's courts.

5 Where to draw the line nationally won't be easy, but the mechanism might be three-fold as follows. First, all terrorism offences with maximum penalties of more than a certain amount, quite what that amount may be open to debate, must be heard with judge and jury in Supreme, District or County Courts, and as I mentioned, New South Wales and Victoria have taken some steps already in this regard.

10 Second, for all remaining matters, the children's court retains jurisdiction, but whether it exercises it should be determined by applying further tests. For example, is the matter proceeding summarily with the consent of both the prosecution and the accused? Which sometimes happens. If so, it might remain. Is there an adult co-accused? If so, it should be sent to the higher court.

15 Thirdly, otherwise to ask, as it was in England, whether, taking the Crown case at its highest at the beginning of the case, it is likely if there is a conviction if it which will result in a sentence of detention or imprisonment of more than a certain period, say, one or two years? If so, then only a state or territory court capable of awarding a higher penalty should have jurisdiction under the *Judiciary Act* to hear and determine that Federal juvenile terrorism case.

20 That would also mean the child would have the benefit of the constitutional guarantee of trial by jury, in section 80 of the *Constitution*. Pausing there, in England, defence counsel said they would always recommend that their clients had the benefit of a jury trial, and except in the Queensland Children's Court, trial by jury is not available. All other children's courts only hear matters summarily: judge, no jury.

25 These and other matters will be discussed today and considered as part of the review in coming months. A copy of these remarks is now available, along with the summary, to people present here and including members of the media, at the table at the back, and if we need more copies we can make them available.

30 Thank you for you listening to that long opening, and I now invite opening remarks, and I think the Acting Director-General of Security, you're going to begin.

35 MS HEATHER COOK, ACTING DIRECTOR-GENERAL OF ASIO: Thank you, Dr Renwick. Yes, I would like to make a brief opening statement, if I could. Good morning, everyone, and thank you, Dr Renwick, for the opportunity to participate in this important review of the components of Australia's counter-terrorism laws.

5 I would like to acknowledge the importance of the work of the Office of  
the Independent National Security Legislation Monitor in ensuring the  
relevance, effectiveness and proportionality of legislation relating to  
counter-terrorism matters. Your work is essential to maintaining public  
confidence in existing legislation, informing discussion concerning any  
amendments or new proposals, and as a critical element of the  
accountability and oversight framework under which my organisation, the  
Australian Security Intelligence Organisation, operates.

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15 If I could provide a few remarks on the security environment, and I would  
offer that the comments early in your summary where you contextualised  
and summarised the environment, are indeed accurate and reflect ASIO's  
assessment of the environment and the trends in respect of terrorism as  
outlined.

20 The challenges we face today have been decades in the making. The  
terrorist threat is both persistent and resilient and it is very unlikely that  
there will be any comprehensive resolution in the next several years. The  
principal terrorist threat continues to emanate from two violent Sunni  
Islamist extremist groups, Al Qaeda and the Islamic State of Iraq and the  
Levant, ISIL.

25 Both groups have an international following and global reach. Of the two,  
ISIL has been the most dangerous in recent years. While Al Qaeda has  
been quietly rebuilding itself after years of counter-terrorism pressure,  
ISIL has inspired extremists projecting influence globally, including  
directing attacks in Australia.

30 Since the general terrorism threat level was elevated in September 2014  
there have been six attacks and 14 major CT disruption operations  
targeting people in Australia. We continue to investigate a significant  
number of individuals in relation to their support for terrorist groups, and  
since the outbreak of conflict in Syria and Iraq and the rise of ISIL, around  
35 220 Australians have travelled to join terrorist groups there, with the  
majority being males under 30 years old. Around 110 are assessed to still  
be in the region.

40 Similarly, around 240 passports or passport applications have been  
cancelled or refused respectively, with over half of these for cases onshore  
to prevent travel. Around 80 to 90 individuals have died as a result of  
their involvement in the conflict and about 40 have returned. Most of  
these returned at the early stages of the conflict and some, a small number  
of those individuals remain of ongoing security concern.

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5 Since 2014, ASIO has seen an increase of young people and children in investigations. In particular, in the 2014 to 2015 period we saw considerable increase in the number of young people and children coming to our attention. Noting every case is unique, this increased involvement of young people was in part driven by a number of broad environmental influences, including the declaration and appeal of ISIL's caliphate, as well as its propaganda campaign, with its highly effective use of social media.

10 ASIO has identified in some cases younger individuals radicalising and escalating to violence relatively rapidly. The participation of young people appears to have peaked, and more recently we have seen a slight reduction in the number of young people requiring our attention. But despite a tempering in terms of numbers, it's important to note that the threat is persistent.

15 Extremist propaganda continues to be accessible on line, we know terrorist groups are resilient, and a small minority in our community continues to adhere to Islamist extremist ideology.

20 These factors can couple with vulnerabilities that can sometimes be present in young people and render some young people susceptible to radicalising influences. Accordingly, ASIO anticipates more young people will come to our attention.

25 ASIO is aware of Australian children in the Syria and Iraq conflict zone. Australian children in Syria and Iraq are likely to have been exposed to Islamist extremist ideology through the influence of family, religious classes, school, military-type training, and displays of violence. Experience and impact varies from case to case, dependent upon age, gender, location, time spent in the conflict zone and affiliated Islamist extremist group, exposure to Islamist extremist groups, and inherent violence in the conflict zone.

35 While violent Islamist extremism has been the most significant driver of the threat environment, as you mentioned in your opening remarks, right-wing extremism is also an area that we're focused on. Since 2014 Australia has seen a rise in new right-wing ideology, primarily reflected in large scale protest activity. While most of these protest activities have been peaceful, some have resulted in small scale violence when protestors and counter-protestors have converged.

40 Extreme right-wing groups and online forums present an attractive ideology for violence-prone individuals. Similar to radicalising factors in Islamist extremism, young people may be attracted to the type of

ideology, messages and methods espoused and used by newer extreme right-wing groups. Like all radicalisation, it is plausible that individuals will be exposed and gravitate toward right-wing ideology whilst children.

5 In summary, ASIO assesses that we are at a point where the challenge of global terrorism can be characterised as a multi-generational one. For this reason it's critical that we calibrate our collective efforts for the reality that young people, including children, are being exposed to extremism and this will continue, albeit perhaps in fewer numbers than seen in recent  
10 years. Australia's legislative settings need to be appropriately tuned to manage this challenge.

Thank you for the opportunity to offer some opening remarks.

15 DR RENWICK: I think what we'll do is we'll have each of the opening statements now, if that's convenient, before we go to questions. So, Ms Chidgey, would you like to go next? Or Mr Sheehan, I don't mind.

MR TONY SHEEHAN, DEPARTMENT OF HOME AFFAIRS  
20 COMMONWEALTH COUNTER-TERRORISM COORDINATOR:  
Thank you, Dr Renwick, for the opportunity to appear at this hearing. It may be useful if I briefly outline the decision-making environment in which the Minister for Home Affairs and the Attorney-General operate.

25 The Minister for Home Affairs has responsibility for efforts to counter-terrorism and national security and law enforcement policy more generally, and obviously many other things. The Attorney-General has policy and administrative responsibility for prosecution and sentencing frameworks; this includes responsibility for legislative provisions in the  
30 *Crimes Act* concerning bail, sentencing, imprisonment and release on parole of Federal offenders.

The Department of Home Affairs and the Attorney-General's Department work together to develop policies and legislative proposals that  
35 necessarily impact in these spaces.

In the context of the subject matter of your current inquiry, the Attorney-General would have the lead in advancing any policy and legislative proposals. This would be done in close consultation with the  
40 Minister for Home Affairs and mirrors the collaborative working relationship fostered between the respective departments.

The Department of Home Affairs, established in December 2017, has been shaped by two guiding principles. As our Secretary has recently said,  
45 we're focused on building a team of teams which respects deep subject

matter expertise, while embracing opportunities to collaborate across Government.

5 We also seek to build productive relationships outside Government, working cohesively and comprehensively with industry, academia and the community. The Department is founded on a deep respect for the rule of law. We don't seek security for its own sake, but because it underpins economic prosperity, social cohesion and an open society.

10 The Department of Home Affairs works to prevent terrorism through the Countering Violent Extremism Centre and administers the Commonwealth's Post-sentence Preventative Detention Scheme for high risk terrorist offenders, among other things. Our counter-terrorism efforts also extend beyond our borders as work with international partners to  
15 ensure our region is equipped to respond to terrorism.

As the Commonwealth Counter-Terrorism Coordinator, I coordinate Australia's counter-terrorism arrangements for the Prime Minister and for the Minister for Home Affairs, and I lead whole of Government  
20 coordination through the Australia-New Zealand Counter-Terrorism Committee – or I should say whole of Governments coordination through the Australia-New Zealand Counter-Terrorism Committee, which provides expert strategic and policy advice to heads of Government and other relevant ministers and coordinates an effective nationwide national  
25 capability.

As you've heard already from the acting Director-General of ASIO, the threat environment continues to be complex and constantly evolving. Terrorists and violent extremists are becoming increasingly ruthless,  
30 adaptive and creative. Despite suffering defeats on the battlefield, ISIL continues to radicalise individuals and remains a very real threat.

Individuals are being radicalised online and are teaching themselves to carry out violent attacks with minimal support other than online  
35 encouragement. Younger Australians can be susceptible to these terrorist ideologies.

The Australian Government has established early intervention arrangements across Australia to assist people at risk of radicalisation to  
40 disengage from violent ideology and reconnect with their families and broader community. This emphasis on building a cohesive resilient community aligns with other legislative and law enforcement responses to terrorism.

Duncan Lewis, Director-General of Security, has said publicly we are not in a position to arrest our way to success. We recognise that the secret to resolving this problem lies in the issue of community cohesion and countering violent extremism.

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Home Affairs has three keys objectives within this early prevention and intervention work; (1) to build the resilience of communities to counter violent extremism, (2) to support the diversion of individuals at risk of becoming extremists, and (3) rehabilitate and reintegrate violent extremists.

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State and territory corrections and juvenile justice agencies are responsible for the management and rehabilitation of offenders currently in custody and on parole. However, Home Affairs supports these agencies by ensuring a comprehensive national approach to addressing violent extremism in the correctional system. This includes training for corrections staff to recognise signs of radicalisation and supporting rehabilitation programs for terrorist offenders. And of course, my colleague from Home Affairs, Sam Grunhard, is with us here today from that part of the department.

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I appreciate you, Dr Renwick, are concerned with inconsistencies between state and territory treatment of child offenders. In principle, the department supports efforts to establish a consistent approach towards the treatment of terrorist offenders, irrespective of their age.

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However, the department also recognises that a core feature of Australia's Federal system of Government is that states and territories are responsible for matters of criminal law. Concerns about differences in state and territory approaches should not be taken out of context. Coordination measures are already in place to ensure that the Commonwealth, states and territories are of one mind on important issues.

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As the counter-terrorism coordinator I have witnessed how the ANZCTC's Legal Issues Working Group is a forum to unpick the complex interactions between Federal and State legislation and build strong relationships across jurisdictions. Any changes to existing arrangements will need to be developed in close consultation with state and territories who have significant expertise in the treatment of children in the justice system.

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We understand that you've reviewed how other countries approach the prosecution and sentencing of children for terrorism offences. The department has regular dialogue with international partners to discuss best practice and share lessons learned. We gain valuable learnings through

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this dialogue, recognising that policy responses must be suitably adapted to our domestic context.

5 The Monitor's reviews provide an important opportunity to critically review existing national security legislation, ensuring we continue to protect our community in a complex and fluid threat environment. This process bolsters public confidence in Australia's counter-terrorism legislation and is a valuable exercise. The Department of Home Affairs is committed to working constructively with the monitor, and again, we appreciate the opportunity to be here today, thank you.

15 MS SARAH CHIDGEY, ATTORNEY-GENERAL'S DEPARTMENT DEPUTY SECRETARY: Thank you for the invitation to participate in the hearing. The Attorney-General's Department considers the monitor's role and reviews such as this to be important in ensuring Australia's national security laws effectively protect public safety and safeguard rights and freedoms.

20 Legislation and policy must continue to be flexible and responsive to the evolving threat and in order to allow our criminal justice system to appropriately manage terrorism cases, including those involving children.

25 The current review provides an opportunity to discuss important Commonwealth provisions and how they've worked in practice. Importantly, these provisions need to be viewed in the broader Commonwealth legislative and policy context. They also need to be considered within Australia's Federal system, under which states and territories remain largely and appropriately responsible for criminal justice matters, and in particular, for management of Federal offenders.

30 Mr Sheehan has already outlined the close working relationship between the Attorney-General's Department and the Department of Home Affairs in developing legislative and policy proposals in this area. I also thought it would be useful to make a couple of remarks in relation to the particular sections of the *Crimes Act* that are being considered.

35 As set out in our submission, the Commonwealth considers that section 15AA addresses both the rights of an alleged offender and the protection of the community. Terrorism cases in recent years have demonstrated the risk posed by radicalised young offenders, it's therefore appropriate that section 15AA makes no automatic distinction based on the alleged offender's age. However, a bail authority can still take the age of an offender into account when exercising the discretion that exists under that provision.

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19AG, similarly, allows a sentencing judge to take into account the age of an offender when setting an appropriate penalty. The fixed non-parole period reflects the fact that it would likely take greater time to address the risks posed by the offenders in terrorism cases, who have typically been heavily radicalised.

In sentencing Federal offenders in terrorism cases, Courts have made clear that the age or youth of the offender is a relevant consideration, but that this diminishes in certain circumstances, including where a child has committed a crime of violence or considerable gravity.

Section 20C(1) enables children or young people who are charged with or convicted of Federal offences to be dealt with as if the offences were offences against a law of the state or territory, and a key effect of that subsection is that the options available to a sentencing judge may differ based on the state or territory in which the child is being dealt with.

More generally, the discretionary nature of sentencing means Courts will never achieve absolute equivalence in the sentences handed down. In this area, proposals to achieve greater consistency for prosecution and sentencing of Commonwealth terrorist offenders would require close consultation with and support of states and territories.

Thank you again for the opportunity to appear today.

DR RENWICK: Deputy Commissioner.

MS LEANNE CLOSE, AUSTRALIAN FEDERAL POLICE DEPUTY COMMISSIONER: Thank you for the opportunity to appear today. The AFP values independent oversight and recommendations provided by the INSLM through your reviews. Protecting the community from a terrorist attack continues to be the AFP's highest priority.

INSLM's reviews are an important mechanism for reviewing and ensuring the ongoing effectiveness of Australia's approach to counter-terrorism in a rapidly changing environment. As we've heard here this morning, since 2014 Australia has seen a significant increase in terrorism offending. We've also seen more young people being involved in terrorist-related activities than in previous years.

Amplifying this has been the rapid uptake of social media and encrypted messaging technologies throughout the community, making it easier for young people to connect with individuals they might not otherwise have access to, and also to communicate without close parental supervision.

5 As you outlined earlier, Dr Renwick, the 2015 Anzac Day plot was planned through hundreds of encrypted messages, between a 14 year old child in the United Kingdom and a 17 year old in Australia. Social media has proven to be a very powerful tool for extremists to spread propaganda, with sophisticated social media strategies targeted specifically at our youth.

10 We are also aware that some Australian foreign fighters have families in these dangerous conflict zones and may seek to bring their children back to Australia. The presence of children in any counter-terrorism operation creates additional challenges and sensitivities for the AFP in how we manage those.

15 The AFP tailors its approach, taking into account the age and personal circumstances of each individual on a case by case basis. This applies regardless of whether the child is a suspect in the investigation or someone who is otherwise impacted by the investigation, for example a sibling. As far as possible the AFP supports early intervention activities to divert children and young people going down the path of radicalisation.

20 In November 2014 the AFP established the National Disruption Group, which brought together Commonwealth partner agencies to utilise our capabilities to disrupt offences in support of terrorism investigations. Under the NDG umbrella, the AFP also established the Diversion Operations Team. This team focuses on strategies to develop alternatives to prosecution such as reintegration and rehabilitation.

25 This focus on prevention aims to ensure vulnerable individuals, including children and young people, are not exploited by extremist and criminal groups and are provided with assistance to select an alternative non-criminal pathway.

30 While the AFP does not run any diversion or intervention programs per se, diversion operations were instrumental in operationalising the Australian Government's Department of Home Affairs Living Safe Together intervention program, and in supporting the states and territories who have responsibility for running their respective programs. Diversion Operations assists jurisdictions in identifying, evaluating and assessing at risk individuals for participation in these state-led intervention programs.

35 As I said, the AFP remains committed to supporting and engaging in prevention or disruption activities that assist in protecting the Australian community from terrorist attacks. Thank you, and I welcome any questions you may have.

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5 DR RENWICK: Thank you, Deputy Commissioner. Can I start with you, Ms Cook? So you've given us some very useful information about the current threats and the like, could you expand a little perhaps on how – the differences ASIO discerns in how children as opposed to adults become radicalised and how that affects your view of things.

10 MS COOK: Thank you. In our assessment or our view, there is really a unique pathway that is experienced in respect of radicalisation. It's very difficult, whether a child or adult, to really draw a lot of parallels. So one's trajectory through radicalisation, through to the movement towards violence is generally quite a unique experience and has unique factors and drivers.

15 That said, there are characteristics of the current and recent environment which have made the radicalisation process much quicker, has accelerated the ability of individuals to acquire and engage with extremist material, and there has been a concerted effort, certainly on the part of ISIL, in its use of propaganda and the way that it has communicated its message of intent, which has resonated very strongly.

20 There are characteristics of that which have resonated very strongly with a number of individuals here, including children. In many ways, the use of social media and online platforms and propaganda has been targeted and made attractive to young people, and that's been quite deliberate on the part of ISIL.

25 So encouraging and appealing to young people, and reaching out and encouraging and engaging with young people has been part of the strategy of ISIL and the strategy that it's employed.

30 Others will be in a better position to comment on matters of I guess the specific vulnerabilities of young people from a psychological or developmental point of view, but certainly in our experience the transformative time of life for an adolescent or a young person, the types of changes that they're experiencing, the importance of peer groups and belonging and social pressures, combined with other sorts of pressures they may be feeling as a young person, can be a contributing factor to why belonging to something or the message of the extremist ideology that has been communicated by ISIL, why that has resonated with young people.

40 Belonging to something at a point in time where perhaps a young person doesn't feel they belong where they are, if they're feeling alienated or isolated in their own right, looking for meaning and testing bounds of authority and where they may wish to sort of respect authority and challenge authority, there's a variety of characteristics I suppose of that

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transformative period of adolescence that makes the ideology and the messaging resonate quite strongly.

5 I think looking at the evidence of young people becoming engaged and moving towards violence and the increase in that number since the rise of ISIL, I think has demonstrated that that strategy has been quite effective for ISIL.

10 DR RENWICK: Can I ask both you and the Deputy Commissioner a question about the Joint Counter-Terrorism Team. So as I understand that in each jurisdiction there's a Joint Counter-Terrorism Team, typically they're made up of the local police force, the state or territory police force, the AFP, ASIO, and I think I'm right in saying the corrective services authorities from the state or territory now have observer status, is that  
15 right?

MS CLOSE: That is correct, yes.

20 DR RENWICK: So we know of course that when it comes to formally questioning children there are special rights of children set out in the *Crimes Act* and the like, I understand that. But at an earlier stage, that is to say the decision whether to investigate by JCTT under your respective powers, are there any other particular safeguards that you're able to point to in the case? For example, must decisions about whether to commence  
25 an investigation be made at a higher level if you're dealing with children, is there some differentiation between very young children and if I can call it later teenagers?

30 MS COOK: I'll answer in respect of ASIO.

DR RENWICK: Yes.

35 MS COOK: The answer is yes, we do have quite specific internal policies in respect of dealing with children when the need arises. It does involve things, as you suggest, where the authority to interview or seek to interview a young person or a minor requires a higher level of authority to be approved.

40 There are also safeguards in respect of the conduct of an interview of a young person, if the decision is taken to move forward with that, where assurances around the presence of a parent or a guardian, or legal representation, as the case may be, is facilitated and arranged. We certainly don't have any policy against engaging with a child or needing to interview a child, it doesn't happen very often or with a high degree of  
45 regularity but it's certainly not unique to the current environment.

5 We have long-standing policies and practices that have worked very effectively and I would have to say we haven't had any difficulty in respect of how that's been managed. But higher authority and certainly making sure there's the presence of a guardian or a parent.

10 MS CLOSE: We have very similar processes and systems within the Federal Police. In the Joint Counter-Terrorism Teams themselves there's a very strict management oversight and joint management groups that look at specific cases and strategies. We also call on specialist services. So we have psychological support services providing guidance and advice, depending on the circumstances of every case, and obviously especially in relation to children or young people, in terms of strategies, how we should be managing and approaching situations where we are  
15 considering whether to undertake that investigation.

20 DR RENWICK: The oversight would be, I suppose, the Courts in a particular case, the IGIS for ASIO and the ombudsman for the AFP. Yes, all right, thank you.

Deputy Commissioner, can I just ask you about alternatives to prosecution? To quote from the joint submission at page 7 it says this:

25 *The AFP Counter-terrorism Diversion Team focuses on developing alternatives to prosecution such as reintegration and rehabilitation, while balancing national security requirements.*

30 Now, you've mentioned in your opening some of the different arrangements there. I appreciate the precise numbers might be not something you can share publicly, but can you indicate whether that is frequently done and whether the proportions of diversion as opposed to prosecution are changing?

35 MS CLOSE: It's difficult to say because the numbers of children that we have either investigated or are peripheral to our investigations is still quite low. So we are always considering the individual circumstances of every case and at the earliest opportunity if we can identify that people may be at risk, and there's a number of mechanisms and information that come to us, to our security partners, to state police, to identify some of those  
40 factors.

45 It's at those points that we were trying to identify are there strategies where we should either approach the person, their family or others to see if there is an appropriate diversion strategy that can be implemented quite quickly. It really depends on a case by case basis as to at what point we

become aware of someone potentially heading down a radicalisation pathway.

5 DR RENWICK: Yes, I see. Thank you. Mr Sheehan, I had a couple of questions about Home Affairs. You will be aware I imagine that the UK Home Office publishes I think every quarter, maybe more, frequently, a publicly available report setting out the number of terrorism offences, arrests, some graphs about sentences and the like. Is there any difficulty in principle with a recommendation from me that we, Australia, might consider a similar approach, obviously subject to matters of security and like?

15 MR SHEEHAN: Those matters that are publicly available are regularly made public through Ministers' speeches, senior official speeches. There isn't I think a single place on the Home Affairs website that provides that information, but it is made quite regularly available through public speeches now.

20 DR RENWICK: Yes. So what I take from that, Mr Sheehan, is that a recommendation that that might be formalised, regularised in that way is unlikely to provoke a particular problem?

25 MR SHEEHAN: Dr Renwick, I think it would be best I not accept the recommendation. But I would say that a lot of that material is made publicly available and any recommendation of that nature would be given consideration.

30 DR RENWICK: Thank you. Ms Chidgey, was there anything more you wanted to say about 19AG and 15AA, in particular in relation to 19AG? I think you would have heard in my opening that the submission put against you, if I can put it in that way, is that because it's impermissible for the sentencing judge, at least in theory, to look at the non-parole period when setting the head sentence, and because 19AG admits no exceptions for adults or children alike, there's a breach of the Convention of the Rights of the Child.

Now, is there anything further that you wanted to mention, I know you've dealt with this in your submissions, as to why that might not be a breach?

40 MS CHIDGEY: Thank you. As you mentioned, our written submissions do detail the relevant safeguards we think exist, which insist ensuring that child offenders are treated in accordance with Australia's international obligations, including those under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

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In particular, we would place some weight on the fact that the sentencing court retains discretion about whether to impose a sentence of imprisonment and, if so, what term that head sentence should be, which does allow the child's individual circumstances to be taken into account.  
5 But we obviously accept clearly the mandatory nature of the minimum non-parole period places some limitations.

MR TRAN: Ms Chidgey, you mentioned in your opening statement that it's the Department's view that section 15AA complies with the  
10 Convention on the Rights of the Child in part because the child's age has to be taken into account. Is it the Department's view that the age of the child should be a primary consideration for the bail authority?

MS CHIDGEY: I think our view is that if it could be done in a way that it still ensured – I think Dr Renwick had said that the protection of the  
15 community remains a paramount consideration, that could be acceptable, but we would obviously be concerned to make sure there's no diminishing of the protection of the community by including such a requirement.

MR TRAN: I suppose my question was directed at the law as it currently stands. Is it a Commonwealth view that section 15AA as currently  
20 enacted allows or requires or permits a bail authority to take into account a child's age as a primary consideration?

MS CHIDGEY: Yes, it would allow them to do that.

MR TRAN: As a primary consideration, so not just a consideration that could be taken into account, but actually something that could be given  
30 primary weight.

MS CHIDGEY: They could make that choice to give it primary weight.

MR TRAN: Is that something that would be a choice for the judge or something that they would be required to take into account under the  
35 current law?

MS CHIDGEY: The law doesn't require them to take it into account as a primary consideration, specifically.

MR TRAN: I think in the written submissions on behalf of the Commonwealth agencies the view was taken, I think – the view is, in  
40 practice, bail authorities have been making bail decisions that comply with the Convention, is that right?

MS CHIDGEY: That's right.

MR STEPHEN BOUWHIUS, ATTORNEY GENERAL'S DEPARTMENT ASSISTANT SECRETARY: Maybe if I could perhaps add, there have been a number of cases where the age of a young offender has been taken into account in granting bail, which would show the provision working in practice. The only potential difficulty with making it a priority over others, if it then outweighed community safety – because obviously that would be the largest consideration in considering a bail for a terrorist offender – is the danger that they might pose to society.

MR TRAN: The Commonwealth of course is aware that Article 3 of the Convention requires the interests of the child to be a primary consideration. That's the case?

MS CHIDGEY: Yes, we're aware.

MR TRAN: So would the Commonwealth expect bail authorities to make decisions consistently with international obligations?

MS CHIDGEY: Yes, we would.

MR TRAN: So the current position would therefore be that it is an expectation of the Commonwealth that bail authorities would already, consistently with Article 3, be giving the interests of the child primary consideration? That would be the current law.

MS CHIDGEY: Yes, we'd expect that they would be applying it consistently with international obligations.

MR TRAN: So if Dr Renwick were to recommend the law be amended to make that expressly clear, that the interests of the child should be given primary consideration, not paramount, but primary consideration, the view of the Commonwealth would likely be that that merely codifies the current position in fact.

MS CHIDGEY: Yes, as long as we've said as that didn't diminish the protection of the community.

MR TRAN: Thank you.

DR RENWICK: Can I just ask in relation to parole, so as I mentioned in the opening, as I understand it, the Attorney-General personally, at least currently, makes decisions about all terrorism parole matters. So another matter for me to keep in mind when making recommendations about 19AG is that of course there's no guarantee of parole any more – that used

to be the position – and as we know I think from media reports more recently in relation to a particular juvenile terrorist offender, the Attorney refused to grant release, and presumably that person will then have to go to the end of their sentence.

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MS CHIDGEY: There's a requirement to reconsider each 12 months.

DR RENWICK: Yes.

10 MS CHIDGEY: Yes, so that would come up for consideration again before the end of the sentence.

15 DR RENWICK: Yes, indeed. More generally, I mean, given the importance of parole and the role of the attorney, Mr Bouwhuis, you run a fairly small and lean machine when it comes to parole. I think you know one of the things I'm proposing or considering recommending is although at present you rely very much on the state and territory parole bodies, it would be useful for the Attorney and those acting in his name, people such as yourself, to have a legal power, on notice, to access state and territory prisoners for the purpose of making recommendations about parole.

20 Would you have any view on whether that would be a useful capacity? Might not always be used of course.

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MR BOUWHUIS: I mean, I should say we get great cooperation from the states and territories and we rely on them a lot for the information that goes into the parole considerations. So it hasn't been an issue for us to date, we haven't specifically run into any difficulties with getting access. So that hasn't been a problem to date, but I don't think we have any objection to that as a power per se.

30 MS SINGLE: This is a question for Ms Chidgey. You made the comment that section 19AG allows for a greater time to address the risks posed, given the three-quarter period. Given that the length of a sentence for a child or young offender who commits a terrorist act is likely to be on the greater side, it's likely that that child or young offender will at some stage move into the adult correctional centre.

40 The New South Wales Department of Justice has provided Dr Renwick with a submission which is unclassified – it's available on the website, where they note that in the HRMCC (High Risk Management Correctional Centre) in New South Wales, where the majority of terrorist inmates charged with terrorist offences are being held, and they note, and I'll quote from their submissions:

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5 ensure that the best approaches are being taken. Those rehabilitation programs are in place. The New South Wales Government in particular has committed significant new resources in its juvenile justice system and we've been working very closely with them to ensure that there are rehabilitation programs in place targeted to that particular cohort.

10 It would certainly be fair to say though that there are no easy answers and it's certainly not a precise science, and those offenders are being dealt with very much on an individual case by case basis to ensure the best chances for rehabilitation in each case.

15 DR RENWICK: Does the condition of the grant require the different states and territories to report back to you about the different approaches they're taking?

MR GRUNHARD: Yes, it does, and more broadly, even if it weren't required, we have a very close working relationship through the prisoner management and reintegration working group, which sits underneath the ANZCTC.

20 DR RENWICK: With the JCTT's, with the involvement now of Corrections.

25 MR GRUNHARD: With Corrections, that's right. So we have a very close working relationship with the states and we're encouraging all jurisdictions to share their information, including to prepare those jurisdictions that don't presently have any young offenders, charged or sentenced, to help prepare them in the regrettable circumstance that they do find themselves suddenly having a cohort of young offenders in their jurisdiction.

30 DR RENWICK: Well, can I ask a question perhaps both to Mr Sheehan and Ms Chidgey about mechanisms for reform of some of these Federal issues. I take it from what you've said about the need for consultation with the states and territories, that whatever I might recommend in relation to 20C and changing the jurisdiction of state courts and territory courts, that would likely go through what, COAG, the ANZCTC, or what mechanism would you envisage a recommendation along those lines?

40 MR SHEEHAN: Obviously it would depend, Dr Renwick, on the recommendation and the Government's response to it. But the Legal Issues Working Group that sits under the ANZCTC, of which I'm the permanent co-chair, has long been a place to work through those sorts of issues. And indeed, when we had the Counter-terrorism COAG last year, we created a task force, which was mainly Legal Issues Working Group

members to assist us work through a lot of those sorts of issues. So that would be a reasonable starting point, but of course, it will depend on what the recommendations are and what the Government's initial response to them is.

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DR RENWICK: I mean, is there any major disagreement from either of you about the notion that for a Federal offence some discrepancies in how the state or territory court deal with it, and by that I mean the sentence imposed, might be acceptable in a Federation but very marked differences would be hard to justify wouldn't they?

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MS CHIDGEY: We'd accept that principle, so as you've said, we believe that some variation is part of a Federal system and in fact sometimes useful in different management options for offenders, but very significant differences, and in particular say, to maximum sentences available would potentially be inappropriate.

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DR RENWICK: Ms Chidgey, you've seen the DPP supplementary submission where the experts in prosecuting have said they're frankly unsure whether particular remedies or powers are available in particular jurisdictions. In principle there would be no objection to that being cleared up and made so that people know what the law is.

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MS CHIDGEY: That's right. It would seem very sound that there should be clarity about the options that are available.

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DR RENWICK: Well, in view of the time, I've only got one more question and I think it's to you, Mr Sheehan. I'm still a little unclear in relation to the COAG decision last year which, as I understand it, recommended that there be a national approach by states and territories to parole and bail in some circumstances. I can only look at Federal laws, whether they're Federal surrogate laws or Federal laws. I can't myself look at a state law.

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Is it your expectation that there are going to be state and territory laws which apply to children as well which apply the exceptional standards requirement for bail? You might want to take that on notice, because if that were so, that might affect my recommendation. In other words, it might be an otiose recommendation.

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MR SHEEHAN: Perhaps the best thing is if I give you a short update on that.

DR RENWICK: Yes, thank you.

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MR SHEEHAN: Then from there you can consider what's available to you on an ongoing basis to the inquiry from what I say. The first thing to say is the Commonwealth Government is committed to implement the COAG agreement to introduce the presumption against bail and parole for persons who have demonstrated support for or have links to terrorism.

The presumption would be implemented in accordance with national principles that were developed in 2017 by the Australian-New Zealand Counter-terrorism Committee. These national principles, to which all Australian jurisdictions agreed, are the presumption against bail and parole should apply to categories of persons who have demonstrated support for or links to terrorist activities. High legal threshold should be required to overcome the presumption against bail and parole. The implementation of the presumption against bail and parole should draw on and support the effectiveness of the Joint Counter-Terrorism Team, or JCTT model. Implementing a presumption against bail and parole should appropriately protect sensitive information.

So all jurisdictions agreed under principle that the presumption against bail and parole should apply to a person that's been convicted of a terrorist offence or is subject to a control order. Additionally, the presumption against parole should also apply to a person who has made statements or carried out activities supporting or advocating support for terrorist acts.

DR RENWICK: Just pausing there, is that someone convicted of that or where there's some evidence before the bail authority for example?

MR SHEEHAN: So in the case – well, if we're talking about parole, then it would relate to statements or carried out activity supporting or advocating support for terrorist acts. In New South Wales there is additional state legislation, the *Terrorism (High Risk Offenders) Act*, I think I've got the name right, THRO, which I think addresses a circumstance where it may not relate specifically to a conviction.

You will see some states have also already introduced legislation consistent with those arrangements, and that's publicly available obviously to you. So if I may suggest that perhaps the inquiry has a look at what's there and that will give you a sense as to what extent that is relevant. None of that would change in principle the way in which provisions apply to children, and I'll just double check that with Ms Chidgey.

MS CHIDGEY: Yes, that's right. In relation to exceptional circumstances, the principles that have been agreed don't require that

particular mechanism necessarily to institute that presumption, but that is one way of doing it.

5 For the Commonwealth in relation to bail for example, the main change we would envisage would be needing to make Commonwealth legislation accord with the principles that have been agreed, would be to expand the operation of our provision beyond those against whom it's alleged that they've committed a terrorist offence to those who also might be being considered for bail for other offences but have supported or made  
10 statements in support of terrorism.

DR RENWICK: Unless there's anything further, in view of the time, may I thank all of you for attending this first session. I should say that I very much value having such senior officers here and also for the very detailed  
15 submissions you've provided. I'm afraid there will be more questions from me in coming months, but we might pause the broadcast at the moment. We will resume at quarter to 12 with Dr Kate Barrelle. Thank you very much.

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**ADJOURNED**

**[11.25 am]**

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**RESUMED**

**[11.51 am]**

DR RENWICK: The next session, we're delighted to have with us an eminent expert, Dr Kate Barrelle. Although Ms Single will ask you I think most of the questions, Dr Barrelle, could you perhaps start off by  
30 just providing your name and your qualifications and your positions and a little bit about your CV, and then I think you would like to make an opening statement.

DR KATE BARRELLE, CO-FOUNDER OF STREAT: Thank you very much. First of all I'd like to acknowledge the traditional owners of the land on which we gather and their elders past, present and emerging and  
35 any other elders in the room today as well.

Thank you very much for inviting me here. Most of my comments will be drawn from a recent paper I published, published with self-funded research and with my co-author, Shandon Harris-Hogan on the basis in  
40 particular of my expertise as an clinical and forensic psychologist with over 20 years' experience.

5 My most relevant qualification to this environment here is a PhD in which I conducted interviews with former members of extremist and terrorist violent extremist groups, particularly in relation to their disengagement, how and why they left violent extremism and what happened after that, and then reverse engineered that to have a look at what were the elements that went into a person being able to disengage and move away from violent extremism and what we can learn about that for prevention and intervention as well.

10 I also, as a clinical and forensic psychologist, have qualifications at a Masters level in that area. I have some irrelevant qualifications in commerce as well, which aren't very helpful here today. Probably the other relevant aspect, apart from practising and working with young people for a long period of time is I am the co-founder and the chief impact officer of an organisation called STREAT, in Melbourne.

15 I'll just briefly talk about that, because it is relevant to intervention and support programs. We work with young people, 16 to 24 years of age, they're from all sorts of backgrounds, about 40 per cent of our young people have had contact with the criminal justice system before they come to us. Some of them have homelessness issues; many of them have drug and alcohol issues or mental health issues. Most of them have three or four or five of these types of issues. So they're very high needs, complex young people.

20 We run a series of programs, vocational training programs, in hospitality as it turns out, where we wrap an individual program around them of support with a worker. They're in a larger group program that provides them with new peers who are all from very different backgrounds but all at a point where they're ready to do something different in their life. We facilitate a group program with that and then they do on the job work training as well for about six months.

25 We find that an incredible valuable process and they make some incredible gains with that. So I'll draw a little bit on that experience as well today.

30 DR RENWICK: Dr Barrelle, I'm not sure if you mentioned that you gave expert evidence at the Lindt Café coronial – you were called by counsel assisting I think in that matter?

35 DR BARRELLE: I did, and I didn't mention that, I'm sorry, that's correct, yes.

40 DR RENWICK: Yes, please go on.

DR BARRELLE: Thank you. So I think maybe just for about 10 or 15 minutes I might talk through the paper that appears to be relevant today, particularly for people who haven't had a chance to read it. It is  
5 paywall-blocked, which is a very frustrating feature of academic journals. I think there's a copy of it at the back, I'm extremely happy to share it and any other papers with people who are interested as well.

10 DR RENWICK: Thank you.

DR BARRELLE: This particular research that I did with Mr Harris-Hogan, it's titled "Young Blood: Understanding the Emergence of a New Cohort of Australian Jihadists". Whereas most of the work that he and I have done together with various models of radicalisation and of  
15 disengagement, we focus in the broader work on all forms of violent extremism, so right-wing, left-wing, ethno nationalist and jihadist, this particular paper looked just at examples of jihadist violence in Australia for the last 17 years. So it's a slightly narrower slice than what we usually look at.

20 The particular time period for this research was 2000 to the end of 2016 and it was open source, so Court documents, police statements, we tried to take the most credible information that was available at the time. I should point out that some new information and Court transcripts have become  
25 available since the publishing of this paper. So there may be some case studies and examples discussed today that would have been dealt with slightly differently in this paper based on the information we had at the time.

30 Overall what we found in the 17 year period studied was that the Australian jihadist network has had three broad waves, and I'll talk quickly about the first two and then zero in on the third, which is most relevant, I think, to your inquiry here.

35 The first wave, from 2000 to 2004, there were seven people arrested on terrorism or terrorism-related charges or who perpetrated terrorist acts of violence in Australia. They were predominantly linked to Jemaah Islamiyah, JI. All of the people arrested were male and, relevant to our conversation today; the average age of those men was 31.4.

40 We move to the second wave, from 2005 to June 2014, there were 37 people arrested on terrorism-related charges. They were, again, all male. Most of the people there were involved in Operation Pendennis and Operation Neath, so that was about 27 people, and then there were 10  
45 other individuals as well. The average of those men, and they were all

male in that period, had dropped from 31.4 in the first wave, to 27.5, so a slight lowering but not a major difference. No teenagers in either of those waves.

5 The third wave, which we marked from July 2014, which is when IS or ISIL declared the new caliphate, so that marked the beginning of that third wave, through until December 2016, there were a total of 72 individuals arrested.

10 DR RENWICK: Just pausing there. We understand but not everyone might understand the call to jihad by Al-Baghdadi and the reference to Australia. Could you just say something about that?

15 DR BARRELLE: Yes, absolutely. So one of the very big differences was that – and this taps into some of the discussion around Internet and social media as well – ISIL have been extremely good at drawing on young people and teenagers, they've had teenagers in very important positions of authority, and there was a statement of call to arms by Al-Baghdadi which called specifically on individuals to do what they could in their homelands and to grab ordinary weapons like knives or vehicles and so on. It was  
20 very, very soon after that the first event happened in Australia.

DR RENWICK: Australia was specifically mentioned.

25 DR BARRELLE: Australia was specifically mentioned, that's right, yes. In that period there were – many terrible events took place, three perpetrators were killed across several of those incidents, 34 people were arrested, 18 plots that we were able to count in the open media, 14 of which were interrupted by police, and I think that was mentioned in some  
30 of the comments this morning.

There were some other arrest warrants issues as well, for 38 people, but brought it to the total of 72 individuals. We had the first fatal acts of jihadist violence on Australian soil in that period, so the Lindt Café siege  
35 in December 2015, notably, we had the October 2015 shooting of the police accountant, Curtis Cheng, and, moving backwards, we had in September 2014 Abdul Numan Haider, who was shot dead whilst attacking two members of the Victorian Joint Counter-Terrorism Team in Victoria as well.

40 Interestingly in that period, we had the first females arrested, in very small number, three, but that had not occurred before then, and in particular one of the most striking differences of this phase was that there were 24 teenagers arrested in there, to our count.

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5 This represented an 850 per cent increase over the first two waves all together, so it was a significant uplift in activity and, very rough stats, but it went from roughly one arrest per year in the first and second wave through to about one arrest per month, if were you were to average it out across.

10 Previously there were a small number of big spectacular plots involving coordinated and large numbers of people, with the intention of killing large numbers. In the third wave we saw fewer people involved in each activity, it was inspired, rather than directed or coordinated, and generally smaller plots with smaller casualties in terms of numbers.

15 The most striking feature of the third wave is of course that the age of those who were involved became younger. So we now had teenagers as a reasonably distinct subgroup kicking out there. Prior to mid-2014, if we roll the first two waves together, the youngest person we had arrested was in their 20s, the average age was late 20s, most were in their 20s and 30s.

20 Since 2014, which correlated with the announcement of the caliphate and subsequent directives as well, 33 per cent of the individuals arrested on terrorism-related charges were teenagers.

25 I am aware that – the way we did our paper was looking at teenagers in particular and that you make a distinction here between children and young people up to 25. So those up to 25 haven't been counted in this particular analysis; with the figures I'm giving you it would increase, because there are a number of others.

30 DR RENWICK: So you include people up to 19?

35 DR BARRELLE: That's right, yes. One of the other things that I think is worth saying, I've outlined some of the differences, but some of the things that stayed the same across the three waves were that people who became radicalised, by and large, did so through links with family or social groups.

40 There's a big conversation to be had about what the role of Internet and social media is, however, across the board we had 86 per cent – and I'll double check that in a minute – but I think it was 86 per cent of all the individuals who were arrested, we were able to find a real world connection to someone else in the network.

45 That doesn't mean social media and Internet didn't play a role, and it certainly is far more prevalent for the teenagers and in the third wave, but it would be very difficult to argue that social media and Internet causes

radicalisation alone. In fact it's very difficult to find examples of individuals who have no real world contact, but they do exist, but they're less than 10 per cent of the case. So it's certainly not the norm that that's exclusively the way somebody radicalises.

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Here we go, out of the 116 people in our full study only nine of them across that carried out acts of violence alone. So this goes to a fairly subtle distinction between – and it's a language, a terminology thing – the term “lone actor” is used in slightly different ways by slightly different people. So maybe it's helpful to think about whether a person radicalises alone or in a group, and then equally, to think about whether a person acts alone or in a group.

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They're not necessarily overlapping, though most people radicalise in a group. If you radicalise in a group you can go on and act alone, and we've seen some examples of that. If you radicalise alone then it would be a very odd thing for you to go and act in a group, so that's generally a blank cell. But certainly you could radicalise alone and then act alone as well.

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When the experts go down into this field, they use terminology that is a solo actor is someone who radicalises in a group and then acts alone, and then a true lone actor is someone who radicalises alone and acts alone. I won't spend too much time of it, but because it's usually raised, the role of mental health in this applies most specifically to people who radicalise alone and act alone.

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One of the experts in that area, Paul Gill, talked about mental health and there's three particular diagnoses that turn out to be more prevalent in that group than normal, the normal population, than group actors, but it still only affects about one-third of lone actors in that group. So in his words, mental health is a cause of a cause amongst a slice of a slice of people.

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So I'm happy to take questions on that later, but I will talk about the majority which is people who generally don't have diagnosed mental health issues and who are acting in a group, or radicalising in a group and perhaps acting alone occasionally.

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One of the other things that stayed consistent across all three waves and is absolutely present in the third wave is the critical role of identity and belonging. Again, in one of the opening statements this morning we heard some very sensible commentary about the critical role of identity and belonging in extremist groups.

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What I found from all the broader research that I've done is that most people who join extremist groups and violent extremist groups do so for

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personal and social reasons. Many of them adopt the ideology, almost like a membership fee, afterwards. It's about being with the people and having your personal and social needs met, and often the group then becomes greedy and it becomes the dominant identity group who pull away from other groups and you may not have been able to get your needs met from those other groups to start with.

So being a part of this group here is predominantly meeting your needs. It may not be good for your mental health, but it's better than having no friends and no belonging and nowhere, so coming at it from a psychological perspective, it meets needs. That takes us to a useful thing to think about for disengagement, which is how can we meet a person's needs in other ways so they don't have to hurt themselves or somebody else as well.

A couple of quick points that I will make on leaving violent extremist groups. What many people who don't study in this area don't realise is that most people who join extremist groups actually leave, the majority of people who join leave, and most people who leave, leave voluntarily without any form of assistance. Disillusionment is the main reason they lose commitment, and it's usually social disillusionment. They get disillusioned either with the leadership or with the group members around them.

There are other reasons, but they're the two predominant ones.

DR RENWICK: Are you talking there though about the experience in Australia? What we know I think from ISIL in the Middle East is leaving is not an option.

DR BARRELLE: That's right, yes.

DR RENWICK: So that's quite different.

DR BARRELLE: It is. However, from the limited number of studies that I've read from people who have left ISIL and been interviewed, they talk about the disillusionment as well.

DR RENWICK: Yes.

DR BARRELLE: So it is much, much harder to leave, that's right, and the consequences are way higher.

DR RENWICK: The first thing you are required to do, I think, is to hand over your passport.

DR BARRELLE: That's right, yes.

DR RENWICK: Yes.

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DR BARRELLE: Physically it's very difficult to leave. But that doesn't stop them from wanting to leave.

DR RENWICK: No.

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DR BARRELLE: Or being psychologically disengaged from it, that's right. Even in environments where it's not as difficult to physically leave, it can often take people one to two years to be able to do so in a safe way and in a way they feel they've got the support to step out. So even if there are no threats or physical barriers to you leaving, it can be an extremely difficult thing for a person to do so.

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My point there is that it requires a lot of support to help if we want to facilitate or accelerate a disengagement process and help somebody leave, it makes good sense to support the natural process and to assist them there.

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It's also interesting to know, back in the Australian context, that we talk about pull factors and push factors. So pull factors being things that you would like to do once you leave, you pull towards them. Push factors are the things you're not enjoying any more. Slight subtle distinction. Pull factors such as jobs and relationships, not wanting to have such a difficult life any more, tend to come on line after a person is disillusioned, so once the magic is broken a little bit, then those other things become much more relevant.

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Probably the headline statement around disengagement from violent extremism is that the key to disengagement is about meaningful engagement somewhere else. When we and when I sort of deconstructed so many stories of disengagement, what I found was that there were five main areas that a person needed to address in their life in order to move on from violent extremism. This will be relevant from interventions later on.

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Very briefly, those five areas are social relations, essentially the way you interact with the world, the in group, the out group, who's evil, who's good, who's acceptable, who you can interact with needs to shift in order for you to move on. And there was a parallel process for that coming into the group as well.

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Coping is another area that's critical if we're going to assist a person leaving, and it's everything from clinical support if it's required, counselling, health issues, education, training, sustainable livelihood, a person's ability to cope. Of course, most of the way human beings get their coping needs met is socially, we do it through the people around us. If you've been a part of a group and you leave that group, you often meet other people, but if you're not prepared to talk with other people it's difficult to have those needs met.

Identity is the third area, and that's the million dollar question in adolescence and young adulthood anyway, it's a very important process to go through. In terms of somebody coming outside of a group, who am I if I'm not a part of that group any more, and if I haven't had a strong sense of self going into it, then I've got a fairly large process to go through when I come out of it, and I may or may not be given support for that.

There is the fourth category, you call action, action orientation, and that's all really around how do I deal with injustice in non-violent ways. Then the fifth one is about ideology and beliefs, and we put ideology and beliefs last because in all of the people that I've done interviews with and studies who have successfully left violent extremist groups, not all of them have changed their minds.

This is a fairly reliable finding internationally and across all different types of extremist groups, is that roughly 30 per cent of people who disengage, walk away from an extremist group, don't use violence again and do not change their minds. I had one man sit and tell me about four or five times that he had not changed his beliefs, he was absolutely adamant about that.

But it's a fairly robust finding. My point there is that while it's not always comfortable to hear, we know that a person can change their behaviour without changing their beliefs. That goes to an important distinction in intervention programs which is the distinction between disengagement and de-radicalisation.

DR RENWICK: Yes.

DR BARRELLE: Very, very briefly, disengagement is the behavioural change of not using violence, de-radicalisation being a much bigger package that includes not just my behaviour but my views, my beliefs, my attitudes, my identity as well. When people refer to disengagement programs or de-radicalisation programs, they're actually quite different beasts, if they're using the terms correctly, and a de-radicalisation program is an extremely difficult thing to do. As a psychologist who's

worked in the forensic sector for over 20 years, and I'm reasonably good at what I do, but I've never been able to make someone change their mind if they haven't and to be a part of that process.

5 DR RENWICK: It may be the work of a lifetime.

DR BARRELLE: Yes, that's right, yes. What we know from lots of case studies is that it's not necessary to change your mind to change your behaviour, and I understand that that leaves an uncomfortable sense of risk and perhaps not being able to mitigate risk down to zero for people who  
10 are holding that risk. But it's an important distinction, I think.

Back to the paper, one other quick thing to say about lone actors is well, in the paper with the numbers here, in the third wave alone 80 per cent of those who were arrested were acting as a part of a group, which left 20 per cent, and if you go into that 20 per cent, only a smaller proportion of them were arrested because they were planning to or they perpetrated acts of violence. So an even smaller number, it was actually only 7 per cent of the entire sample, acted alone without any apparent real world human  
15 connection, so we weren't able to find any connection there.

Just a quick note on methodology, this was a paper where we looked mostly at numbers and cases, we didn't go down into deep detail, because most of the detail wasn't available to us. So when I say people radicalised in a group or with other connections, what it meant was we were able to find reporting of a connection out there. And if we weren't able to find that, then we put it into the bucket of saying we didn't find any evident real world connection. So possibly that's an underestimate in itself as well, because that might reveal itself in time.  
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30 Interestingly though, the distribution of lone actors since 2000, the vast majority of them have occurred in the last wave. So not only are there more teenagers, and we're talking seven out of eight, so they're tiny numbers, and roughly out of 116 people, if we fudge the math, it roughly corresponds to less than 10 per cent of them as well. So it's still the minority, but it's a significant increase on zero per cent from before.  
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I'm not sure whether you'd like me to, perhaps I'll seek your guidance on this, whether you would find it helpful or interesting for a couple of comments on young brains, on the neurology of development and so on and how that might then lend itself to radicalisation.  
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DR RENWICK: Yes, please.

DR BARRELLE: So most people know intuitively that adolescence is a neurological period of development, it takes some time. That actually extends – brain maturation takes until mid-20s for females and late 20s for male on average, and obviously there are individual differences there.

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In legal and social understandings, we sort of draw a line at 18 and sometimes we talk about young people at 21 or 25, and there's various kind of definitions for that. Sometimes we take the low age down to 12, more commonly it's 15 or 16 for young people. Most youth programs in the community work with starting with 14, 15 year olds up to mid-20s is not uncommon at all.

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What we do know about that period is that identity development is absolutely crucial and it's not just a buzz word. People are defining themselves, they often define themselves in contrast to authority figures, but in particular to people that – role models that they have already. So this is where the emotion of rebelling against your parents and authority come from. That's a very normal thing to do, even if you have a very healthy and positive relationship with your parents. So it becomes much more complicated if they have complicated family relationships as well.

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It's also absolutely normal for young people to be totally preoccupied with a whole range of things, and these things don't always sit together easily. So it's about love and affection and needing to be accepted, particularly when you're feeling vulnerable and awkward. Wanting to be free, wanting power, wanting understanding, wanting certainty. It's a period of time where positive groups and toxic groups facilitate, enhance, support and take advantage of this.

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So many of the same dynamics that go on in extremist groups for young people occur in a positive way in sporting groups, in a negative way with gangs and other violent groups, crime groups for example, cults, very, very similar social dynamics that go on there, and interestingly, some similar themes that come out when a person tries to leave one of those toxic groups as well.

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But the other thing that is again helpful just to remind us about with young people and the neurological development is there's two things that go on with the brain with emotions in particular. One is the prefrontal cortex is not well developed, and that speaks to emotional control and emotional regulation. We joke about and we know – everyone knows teenagers who go through that emotional up and down, not just to do with hormones, but to do with controlling their very intense emotions.

5 There is some research that's come out to show that young people are predisposed towards intense negative reactions, so if they have a negative experience, then it's very, very intensely experienced for them. If we start to pair this with the absence of protective factors, if they don't have strong supportive relationships around them, then that can make a person particularly vulnerable. This is the case for all teenagers, not just those getting tangled up in toxic groups, but that makes it particularly vulnerable for them.

10 The other thing that goes on is around risk decision-making. So there's two elements to that, when you take a young brain and you place some risk decisions in front of it, the younger brain can usually see roughly the same amount of risk or danger as a mature brain can. Where the difference is in the payoff. So a young brain will see way more payoff in  
15 a situation than a mature brain will, and there's MRI studies to support this.

20 So what it means is that, additionally, if you put young brains in the presence of other young brains, which is peers, again we know intuitively that they make riskier decisions. Risk goes up when you make risk decisions with your friends more so than when you are alone as a teenager.

25 This I think has implications for and goes some way towards explaining the intersection with social media, because if I am a digital native, which I'm not, but if I was and I'm on my phone 24/7, I don't make a distinction between my online and my offline friends. They're with me 24/7.

30 So if I'm making a decision, even on my own, but if I'm portraying that through social media or getting feedback from social media for it, then my decisions will be riskier. That's the case for young people. We know that the use of Internet and social media is pervasive, there's I think less than 2 per cent of people between 13 and 33 who don't have some social media platform or regular access to the Internet.

35 DR RENWICK: Thank you very much, Doctor.

40 MS SINGLE: Dr Barrelle, just to in terms of your methodology, I don't think you've actually addressed this yet, you identified 116 jihadists until the end of 2016.

DR BARRELLE: That's right, yes.

45 MS SINGLE: If I can just confirm that this was the framework by which you identified those 116, the requirement for your study was that an

individual had conducted an illicit activity motivated by jihadist ideology, which resulted in an Australian warrant being issued for their arrest, that it included jihadists who had been killed perpetrating an act of terrorism in Australia, and that foreign fighters were only included if an Australian  
5 warrant had been issued and you had come to know about that Australian warrant.

DR BARRELLE: That's right. We were very focused on the domestic  
10 situation, yes.

MS SINGLE: So it could be that there is actually more than 116 jihadists, but that was the criteria by which you operated for your paper.

DR BARRELLE: That's right, yes.  
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MS SINGLE: Just dealing very briefly with the idea of lone actors, because I appreciate that they're a very small cohort of the review and as a result research is limited. Have you seen any distinction with lone actors as per the age of such individuals?  
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DR BARRELLE: There is no research that I'm aware of that specifically looks at that. Ours didn't specifically, but a distinct observation is that in the third wave the vast majority of the lone actors occurred, so eight out of nine I said, and that seven out of eight of those were teenagers – sorry, seven out of the eight were in 2014 and I think it was five out of the seven were teenagers.  
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MS SINGLE: Do you see a correlation there with the influence of the Internet? So that there isn't a physical human influencer, but is it the case that there's likely to be an online human influencer in those cases?  
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DR BARRELLE: It's kind of a million dollar question and it's – I'm not trying to be evasive, but it's very difficult to answer because over 90 per cent of teenagers have access to the Internet. So very hard to make – certainly can't make any causal statements around that. Even hard to make correlation statements with such tiny numbers going on to use it.  
35

However, to the extent that you're able to dive into each of the cases, I think it's absolutely fair to say that it plays a role and it can play a very important role, in some cases it almost substitutes for real world relationships and that kind of goes down that area of if the person has mental health issues and they can't do relationships quite so well, that they might substitute in there.  
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5 It's easy to forget that the Internet, and social media in particular, it actually provides community as well, and so it's not an alternative to real life relationships for young people, it's very much a parallel adjunct for them. So I'm very uncomfortable talking about it as any kind of causal or correlational thing, but it's absolutely in the mix, absolutely in the mix.

10 MS SINGLE: You note the importance of social relationships in terms of the radicalisation of an individual. What type of social relationships are you saying, familial or peer relationships or an outside influence who has come into target perhaps?

15 DR BARRELLE: Yes. No, that's a very good question. So what we found there, and I'm just finding actual figures for you, so again just a little bit on methodology. The 24 individuals, teenagers, we only had sufficient information publicly available to draw a conclusion regarding their immediate social network for 21 of them. So we excluded three, simply because we didn't have enough information. Of those 21, 19 per cent had a family connection to another individual in the network and then 67 per cent had a peer connection.

20 So it was very clearly those two, and that tracks with international research, which roughly sits at 20 per cent and 70 per cent for the same influence there.

25 I just want to make a very quick comment, to double back and tie it in with – just to go back to social media. Our comment around not being able to find many cases where there was no family connection and – sorry, no real world connection and yet a strong Internet or social media connection, tracks against the research in that area, which states very, very strongly, and this is fairly robust research, certainly not my own, but we leant on it in the paper, to say that our finding of a predominant real world connection for most cases reflected the international research around social media and the role of it, insofar as it doesn't cause it, is what the main literature says.

35 MS SINGLE: In terms of the use of Internet and social media, we've seen the rise by ISIL of their own social media arm, and for example they do their own video production company.

40 DR BARRELLE: Yes.

45 MS SINGLE: Are you seeing, if it is at all possible to say whether or not you're seeing peer cohorts essentially sharing social media, whether it be sharing of videos or propaganda?

DR BARRELLE: Absolutely. This is what people do, this is what young people do anyway, but they're absolutely doing it with this. And ISIL are being – have no hesitation in recruiting, training, deploying young people and then broadcasting that as overtly as they can. They put young people  
5 in as security emirs, they feature them in propaganda, and then other young people take that and share it with each other as well, yes.

DR RENWICK: A term used in some of the literature is that jihadi content is disseminated by means of a swarm cast, an interconnected  
10 network that constantly reconfigures itself, much like a swarm of bees. It's defined by speed, agility and resilience, and has allowed ISIS and their sympathisers to outmanoeuvre all efforts to date to significantly reduce their online presence.

DR BARRELLE: Yes, they're extraordinarily successful and skilled at using that, that's right. It's beating the language; it's the language of young people who have been raised as digital natives.

DR RENWICK: Of course, some of that's in English; it's not all in  
20 Arabic.

DR BARRELLE: That's right, yes.

MS SINGLE: Looking at the social connection between jihadists and other individuals within the network, we heard in this morning's session a reference to there being a multi-generational risk relating to terrorist offenders. I'd now like to try and explore if I can the chances of rehabilitation, whether that be disengagement primarily and de-radicalisation.  
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30 How do you see the role of the family and peer relationships in terms of disengaging an individual, first of all on more general, I mean, how important is the role of family and peer relationships in disengaging? And if I can ask you the second part of it, what problems do you think arise  
35 when it is a multi-generational risk of terrorist offending, such that a child or young offender cannot turn to their family network for support in disengagement?

DR BARRELLE: No, there's no doubt it becomes very complex in the  
40 second scenario, and it's hard enough in the first scenario. So the role of family and peers really goes to that first of those five areas that I spoke about, social relations. If you were moving away from the group, what you need to do – and it's one thing for us to ban somebody from spending time with another person, and we know that if we say that to a teenager,

under ordinary circumstances the first thing we'll do is get push back from them.

5 So the much more challenging and important task is how to provide opportunities or encourage people to develop more friendships, more relationships with positive people who are going to help them and have their best interests at heart.

10 Families, hopefully, can play that role, and in many, many cases, we've seen many examples, where that has been the case. People might get involved via a family member into a group, but they'll disengage and pull away and gain support from different family members. So I guess the first point is that families aren't homogenous and it's rare to have nobody in the extended network who's willing to provide support or step up.

15 Similarly with peers, the longer a friendship has gone on, and in some of the research around this there's the childhood friendships that then draw people in later on are ones that they've had for 10, 15 years. So it's hard to magic up new friendships for young people, but friends are easier to find than family, so difficult to do a wholesale relocation, because that's very hard on a young person, but that's feasible as an extreme option.

20 Going to the more difficult scenario where you might have several generations in the family involved in this, then obviously it becomes more and more difficult. A parallel if you like just into our program STREAT, we have some young people, and I'll use a parallel that's not to do with crime, but we have some young people who have nobody in their family who's ever worked before. So it's very difficult to find a role model who can demonstrate those behaviours.

25 In some cases we'll draw on extended family for that, in other cases it simply doesn't exist and we need to provide it in a professional sense. So we'll draw on youth workers or social workers, or go and find other programs where there are either older role models or peers who are pointed in a prosocial direction, but in an area that's interesting to the young person as well.

30 But I do totally acknowledge how difficult it is to do that, but I don't think we can say it's impossible, I don't think we can give up on it. I think we have to find relationships for young people, because the heart of radicalisation and the heart of disengagement is about social relations.

35 MS SINGLE: I know in the case of *MHK*, and we'll hear more about that this afternoon, the importance of the role of community leaders in the rehabilitation of that young man. What do you see as the role of

community leaders in trying to break the human influence up that these young people are encountering?

5 DR BARRELLE: Look, it's potentially very, very powerful is their role. It comes back to the quality of the relationship. It comes back to how early that relationship can be in place. So we talk about early intervention when someone has contact with police. In my professional psychological view, that's not early intervention. Early intervention is back when somebody's 10 or 12 and things start to go a little bit off track. But it's  
10 never too late to have an intervention, and an intervention that comes before being arrested or prison is obviously a good one there.

In terms of relationships with say community leaders, one point to bear in mind is that the further down the radicalisation pathway a person is, and particularly a young person, the less likely they are to accept the guidance or authority of a traditional authority figure, who the community leader might well be.  
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So the key to that relationship is finding someone who's credible in the eyes of the young person. That goes to all of the very thoughtful consideration that needs to go into tailoring an intervention for an individual rather than an off the shelf kind of thing. But the role of community leaders can be very important, and it might be a slow burn thing, it might be something that takes a little while to build up and develop over time, so persistence and trust is required as well.  
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MS SINGLE: For the case where early intervention has not worked or a child has not been identified as needing early intervention so that they have then found themselves within the correctional or juvenile justice facilities, what implications do you see for the management of those young people might flow from your view of the importance of social relationships for the de-radicalisation programs?  
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DR BARRELLE: Yes. I was reading somewhere about the recidivism rate within a very small group of young people and the reoffending, and of course that's going to put them into custodial situations sooner or later and, of course, that then makes it extremely difficult to provide alternate social relationships.  
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40 Ultimately most humans, but particularly teenagers, take their views, often their beliefs, certainly their behavioural guidance, from the people around them. And we know this for all sorts of things, well beyond violence, but to do with sport, to do with health, to do with what you eat, and certainly for antisocial things as well. So the critical question is to what extent in a

very constrained environment we can provide alternate positive social relationships for young people.

5 It might be around – again, this is assuming that there aren't the structural problems and issues that there are in a custodial setting, I fully appreciate how complex that is, but the theoretical ideal would be to take a young person who we're trying to assist to disengage, and place them with some other young people who don't have any radicalisation background whatsoever.

10 So it's a fresh group of friends, who might have had other issues in their past, but a little like the young people that we see at STREAT, they're a group of young people with a very diverse background, but the thing in common is that they're pointed in a new direction. So it's sort of like a dilution model. And that goes against housing all the radicalised young people together, because you're much more likely to become more so if you're surrounded by people similar to you like that.

20 There are some other possibilities, particularly within the juvenile justice system, for example, schooling options and so on. So where you can facilitate either therapeutic or educational or vocational relationships with mentors, teachers, that kind of thing that can be incredibly valuable, I've seen that work very well.

25 MS SINGLE: You also mention the importance of meaningful engagement somewhere else, in terms of helping disengagement. To the extent you can, are you able to say how this could be done within a correctional centre or juvenile justice?

30 DR BARRELLE: Look, it is always harder when you've got those restraints there, but that could be something like study, it could be sport, it could be some self-directed learning, it could even be friendships with other people. But it comes back to the principle of the stick over the carrot, and a person will control their behaviour if they have to when somebody's watching, but they're much more likely to change their behaviour genuinely if it's related to something they're motivated to do.

40 So the challenge is to find what's motivating to that young person, the options are far less in a custodial setting, but I do believe they exist, it just comes down to really quite sophisticated case management and dedication from workers to find that thing and talk to the person, form a relationship and understand what it is from their perspective.

45 MS SINGLE: What is your view on Australia's efforts to engage youth in the countering violent extremism programs which are currently in place?

5 DR BARRELLE: There are some excellent community-based programs that I'm aware of in the states. They vary enormously. I think a lot of the community-based programs come under the umbrella of building community resilience and social cohesion, and sometimes that's funded or tagged under an umbrella which causes other issues in itself.

10 But there are some excellent programs out there for that. If we think about the public health model of prevention, so it's that pyramid model where at the bottom you have primary prevention, which are programs that are available to lots of people and good for everybody. But essentially set up a set of conditions under which the thing we don't want to happen is less likely to happen.

15 Then the next level up is tailored specific programs for identified individuals who are showing signs of whatever the thing is, in this case radicalisation, and at the real pointy end where there's much fewer individuals is where you're doing responses to after the event.

20 So I think the biggest power is in the prevention, but the trouble there is that it's so hard to know what it is that's going to prevent an individual from going down the particular pathway. I think there's really good room for us to develop and mature the programs that we have in Australia around the individual interventions, and there's the formal interventions that were mentioned this morning, the Living Safe Together Program, which I think are funded by the Commonwealth and run through the states, and they, again, vary from state to state. But my understanding of them is that they're individually tailored for each case, and that's very important.

30 There's a set of tools that go with that as well, which provides consistency across the states and within cases that's very good. My understanding, however, is that there are no youth-specific programs or youth-specific tools, and this is I think not so much an oversight, it's simply when the tools were developed and when the programs were developed, there wasn't the 33 per cent of teenagers involved.

40 So the programs were developed, evidence-based, with some young people in the mix, but without a focus on adolescents and young people and without proper attention to the developmental issues that they need. So I think that perhaps the time is right for us to review, validate and perhaps develop some youth-specific tools and programs because I think we're adapting the adult ones at the moment and that's – we don't know that that's the proper thing to do.

45

MS SINGLE: You refer to the absence of violent extremism risk-assessment tools specifically designed for youth in your article, and you've referred to tools again just now. Can you just explain in a bit more detail what a risk assessment tool is and why it is so important for the  
5 disengagement process and for intervention for us to have those types of tools?

DR BARRELLE: Yes, absolutely. So when I refer to tools, risk-assessment is one part of it, but any intervention requires an  
10 assessment upfront, and it's a holistic assessment about pretty much everything that is relevant to that young person, including the risk factors for in this case of violent extremism. It's really important that any set of tools is as evidence-based as possible.

I should say in this area it's not contentious, but it's early, it's early in the field. There's a number of tools that exist internationally around this, we are now just up to the process of starting to compare, contrast and validate those tools against each other. So it's very early in the development of this. To my knowledge there's not a set of those tools specific for  
20 teenagers or adolescents world-wide. It may be worked on and I just may not be aware of it, but yes, to my knowledge it doesn't exist.

But the risk-assessment part upfront is obviously helpful for law enforcement, but it's only a tiny part of the assessment that's necessary to develop a plan for young people. So the whole point of an assessment is to then be able to develop an informed case management plan and intervention for the young person, and then the tools would go on and also help you map progress and assess change in behaviour against that person's baseline, because there is no scale that you can then draw against.  
30

So it has to be referenced back to the individual, and that's quite an involved process, and that's why I think we need very much to pause and have a look at what the developmental needs of young people are, because they're quite different to adults.  
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DR RENWICK: Mr Tran.

MR TRAN: You might have heard, Dr Barrelle – I'll be asking on a slightly different topic.  
40

DR BARRELLE: Sure.

MR TRAN: You might have heard this morning the Attorney-General's Department suggesting that section 19AG, which requires a sentencing Court to impose a non-parole period of three-quarters of the head  
45

5 sentence, they suggested that that might have some empirical justification on the basis that it takes a long time for a person to de-radicalise or disengage. I was wondering if you had any comment or were aware of any evidence to support this three-quarter rule given your expertise and experience of disengagement and de-radicalisation.

10 DR BARRELLE: I don't have anything in relation to three-quarter rule. What I do know is that it can take time for a person to disengage and/or de-radicalise, with or without assistance, years certainly. Probably the most important thing in that process is the environment, the context in which it happens, and that comes back to the social relations. It's the ability, in a real world kind of way, to be able to form, develop, exercise, practice and bed down being able to interact and relate with different people, which then of course forms part of your views of the world and your views of them as well.

15 So I don't have any evidence around the three-quarter rule, but extrapolating, I would – as we've already discussed, it's very, very difficult to do that process in a constrained environment like a prison. I understand that sometimes young people need to be imprisoned, sometimes that's the risk and that's necessary, but as a therapeutic environment, designed to help young people rehabilitate and disengage, it's not a therapeutic environment.

20 DR RENWICK: Just one more question from us. You've talked a little about women and girls, as opposed to boys and young men. My understanding with ISIL for example in the Middle East is that boys start military training from about nine, girls don't do that sort of military training. But on the other hand, it's become increasingly apparent that they are given specific roles in ISIL, which further ISIL's mandate.

25 Looking here in Australia, does your research tell us anything about the different roles foreseen for boys and girls, young men and young women?

30 DR BARRELLE: The short answer is no, it doesn't, because the numbers are far too small, no. I could extrapolate, but I think I'd be a bit extreme.

35 DR RENWICK: Thank you very much. Dr Barrelle, we're deeply grateful for your expertise and for coming up here to join us. We thank you very much and we'll now pause until 1.30. Thank you very much.

40 DR BARRELLE: Thank you.

45 **ADJOURNED**

**[12.44 pm]**

5

DR RENWICK: Ladies and gentlemen and those watching online, welcome back. We're delighted to have for this third session representatives of the Australian Human Rights Commission, including the Human Rights Commissioner himself, Mr Edward Santow and Mr John Howell, the Director of Human Rights and Scrutiny.

Under my *Act*, one of the matters I am explicitly required to consider is the extent to which laws contain appropriate safeguards for protecting the rights of individuals, and under section 10 of the *Act*, one of the persons I am expressly invited to consult with is the Human Rights Commissioner, so I am grateful for you both for being here.

Did either of you want to make an opening statement?

MR EDWARD SANTOW, THE AUSTRALIAN HUMAN RIGHTS COMMISSION, HUMAN RIGHTS COMMISSIONER: Yes, thank you for the opportunity to speak with you and provide this opening statement. The Australian Human Rights Commission recognises that states must be able to combat terrorism effectively. That means for example ensuring that law enforcement agencies can in themselves effectively prosecute terrorism offences and that Courts can impose appropriate penalties to protect the community from risk, including the risk of terrorism.

We also recognise that a child is a special category of accused or offender. The human rights issues that arise in the prosecution and sentencing of a child should be considered by close reference to the UN Convention on the Rights of the Child, CRC. In particular, the child's best interests always must be a primary consideration.

It's no surprise therefore that a counter-terrorism law might be compatible with Australia's human rights law obligations when it applies to an adult, but not in respect of a child. Under international law, Federal, State and Territory rules on bail, prosecution and sentencing of children must comply with the Convention. In a Federal system such as Australia's, that does not require that those laws all be identical but, rather, only that they each comply with the Convention.

We've recommended a comprehensive survey of state and territory laws be undertaken to identify where laws don't comply with the CRC. It

might be that a coordinated approaching involving the Commonwealth, states and territories is ultimately required to ensure full compatibility with the Convention.

5 Turning to the mandatory minimum non-parole period in section 19AG and the presumption against bail in section 15AA, we note that such provisions do not generally apply to children and young people. The Commission urges a more orthodox approach in the specific context, namely, that the ordinary rules regarding non-parole periods and bail  
10 should apply to children and young people charged with these offences.

The CRC requires the deprivation of liberty, including arrest, detention and imprisonment, be used only as a “measure of last resort” and for the “shortest appropriate period of time” so as fully to respect and ensure the  
15 child’s development.

The UN Committee on the Rights of the Child has said that protecting the best interests of the child means the traditional objectives of criminal justice such as retribution must “give way to rehabilitation and restorative  
20 justice objectives in dealing with child offenders”. Any measure depriving the liberty of a child must be scrutinised against the standard.

The mandatory minimum non-parole period makes it impossible for a court to consider even unusual and highly compelling evidence that militates in favour of a lower sentence. This is doubly significant in  
25 respect of children and young people because depriving a child of their liberty has additional negative impacts that are peculiar to children. It negatively impacts the child’s development, their education and capacity to integrate back into society.

30 Section 19AG sets the relevant non-parole period at 75 per cent of the length of the head sentence. That exacerbates the impact because, especially in the case of Commonwealth terrorism offences, head sentences can be very high. The rigidity of a minimum non-parole  
35 period makes it very difficult to determine how the child’s best interests could be a primary consideration.

So we consider that by virtue of their age, children always fall within the scope of exceptional circumstances for the purposes of section 15AA.  
40 There should be no presumption against bail for them. To the contrary, the principles regarding deprivation of liberty of children supported by presumption in favour of granting bail, that presumption is displaceable of course, where a Court is satisfied that bail would not be appropriate in all the circumstances, including whether best interests of the child are

outweighed by other factors. That determination can be made under relevant state and territory bail laws in the ordinary course.

We would be pleased to answer any questions.

5

DR RENWICK: I just had a question of terminology before handing over to Mr Tran. The consistent language in the international – in the Convention and in subsequent declaration is the best interests of the child being a primary consideration. When the Australian Law Reform Commission looked at this they adopted what they said was a synonym, namely, “the best interests of the child be a guiding consideration”, and the reason they articulated for that is they said a primary consideration might give the impression that it’s to be the overwhelmingly important consideration rather than a primary consideration.

15

But I see for example on the Beijing Rules it’s moved from “a consideration” I think to “the consideration”. How should I understand the correct form of words needed in an Australian statute to comply with the Convention?

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MR SANTOW: Yes, I mean, I think there is clearly some confusion perhaps and sometimes some debate over this, but the position in international law I think is relatively clear. The words used in the Convention are probably the best words to use “a primary consideration”. What that means it that there may be other considerations that also appropriately have the same status. In other words, there may be more than one primary consideration.

25

There can never be a consideration that overrides that, that is greater, that is more important or more compelling than a primary consideration, if that makes sense.

30

DR RENWICK: I see. So you might have seen in my opening remarks, Mr Santow, that I referred to I think the approach taken in control orders with children, where I think at the suggestion of the PJCIS, the best interests of the child were a primary consideration, the protection of the community, or similar language, was the overwhelming – what was the word?

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MR SANTOW: I think the word you used may have been “paramount”.

40

DR RENWICK: The paramount consideration. So do I take it from what you’ve just said that that is non-compliant or a non-compliant approach?

MR SANTOW: I think the better view is to refer to the interests of the child being a primary consideration, identifying whether there are any other primary considerations, I think as a matter of practice, there may be other primary considerations in a particular situation that run contrary to the best interests of the child and that may in a particular instance have to be – that may outweigh the best interests of the child.

So as a matter of practice, it may take you to a very similar point. But as a question of law, I think it is the better view to refer to an analysis of what, if any, other primary considerations there are.

DR RENWICK: Thank you, Mr Santow.

MR TRAN: Now, Dr Renwick in his question to you, Mr Santow, referred to the Beijing Rules. I was wondering, would you be able to explain for our benefit what the status of the Beijing Rules is?

MR SANTOW: They're a statement or sort of principles that are adopted by the General Assembly, so they have the status of any other resolution of the UN General Assembly. What is particularly important to remember in respect of the Beijing Rules is that they seek to apply in the specific detention context a range of international human rights law principles that find voice in treaties to which Australia is a party, such as the International Covenant on Civil and Political Rights and of course the Convention on the Rights of the Child.

MR TRAN: So in approaching our assessment of the compliance with these laws with Australia's international obligations, the approach that we should take is to look at what the Convention says as perhaps illuminated by these various statements and rules adopted by the UN General Assembly, is that the way that we should go about it?

MR SANTOW: Yes.

MR TRAN: Thank you for setting out the Commission's views about section 19AG and section 15AA in your opening remarks and in writing. It might be useful if I ask you to respond to the view that has been presented by the Commonwealth about the compliance of these provisions with the Convention, for you to offer your response.

In relation to section 15AA, the view was put that section 15AA complies with the Convention on the Rights of the Child because a decision whether to grant bail is always ultimately discretionary, and part of the discretion has regard to the fact that it is a child that's before bail

authority. In your view, is that enough to make section 15AA compliant with the Convention?

5 MR SANTOW: No. I refer you to the comment by the United Nations Human Rights Committee, which is the body with responsibility for overseeing compliance with the International Covenant on Civil and Political Rights. In 2008 it expressed particular concern in respect of section 15AA, precisely because it appears to reverse the burden of proof, contrary to the right to be presumed innocent.

10 So in other words, while a provision like 15AA preserves some elements of discretion on the part of the Court, and may also admitted for situations of course where people are granted bail, the concern here is that it tilts the playing field in a way that makes it more difficult to obtain bail than  
15 international human rights law requires.

MR TRAN: Does your answer mean that any stipulation or any restriction on bail that requires exceptional circumstances to be shown will be inconsistent with Australia's international obligations?

20 MR SANTOW: I'd need to consider fully all of the implications of that. I'm really making a narrower point, and that is that the specific restriction on when bail may be granted in respect of children doesn't – is not compatible with international human rights law.

25 MR TRAN: Would your answer be different if it had a restriction that said you still have to show exceptional circumstances, but in making your overall determination about whether to grant bail, the bail authority is to treat the best interests of the child as a primary consideration?

30 MR SANTOW: I think that would improve the provision. Whether it brings it within compatibility with the relevant international human rights law is still perhaps in doubt. I think our submission proposes that either you treat simply by the fact of being a child as satisfaction of the  
35 exceptional circumstances requirement. That would be one way of achieving it.

Or if you simply didn't apply the exceptional circumstances requirement in respect of children and instead enabled that to be a primary  
40 consideration, the best interests of the child be a primary consideration, that may solve it. I'm not immediately convinced that would be – the proposal that you just made would fully satisfy international human rights law.

45 MR TRAN: I understand.

5 DR RENWICK: Mr Santow – sorry to interrupt – does it suggest as a 37B problem with that concept, being the words, if it’s still exceptional but you have to take into account the rights as a primary consideration? Does that undercut the idea that detention including with bail is a measure of last resort? Was that part of it or not?

MR SANTOW: I’ll defer to my colleague, John Howell.

10 DR RENWICK: Yes.

MR JOHN HOWELL, AUSTRALIAN HUMAN RIGHTS COMMISSION DIRECTOR OF HUMAN RIGHTS AND SCRUTINY:  
15 If I might at least give a preliminary answer. Yes, that’s the case, article 37B of the Convention on the Rights of the Child does stipulate that detention must be a measure of last resort, and that applies in all circumstances where a child might be detained, including after arrest, when bail is being considered, during sentence and at any time after that.

20 So it would seem, to my mind at least, that section 15AA as currently drafted really makes detention a question of first resort rather than last resort, because the presumption is detention, unless a particular hurdle or standard is met. Whereas the approach that would be more consistent with the Convention would be that there would be a presumption that a  
25 child not be detained and therefore be granted bail. Obviously that could be overridden in particular circumstances, if there were other primary considerations that made that the preferable or the only sort of consistent outcome.

30 MR TRAN: Is there any room in considering section 15AA for a different approach, depending upon the age of the child? So someone who’s maybe 17 compared to someone who’s 12. Or is it the case that the Convention would require Australia to treat them both in a similar fashion. And by similar I mean making sure that you don’t start with the presumption that  
35 they are to be refused bail and you make sure that they’re entitled to primary consideration of their best interests.

40 MR SANTOW: Well, considering the best interests of the child actually has some adaptability included within it, and so the best interests of a very young child may look different from a child of 17 years. So it would certainly not be necessary to in the legislation make that distinction that you’re referring to, and in fact there may be a series of unintended consequences of doing so.

MR TRAN: So I think from your answer, Mr Santow, we may draw from that the proposition that the Convention stipulates some standards that have to be followed, and those indelible, best interests of the child, last resort. But how that actually plays out for each individual child, you need to give the decision-maker a degree of discretion in order to reach the right result consistent with those standards in that case.

MR SANTOW: That's correct. Precisely what the Convention is intending to do is to enable individualised decision making that takes into account not the best interests of a hypothetical child, but the best interests of the child before the decision-maker.

MR TRAN: I might move on to section 19AG, which as you're aware sets out the three-quarter rule that prohibits a sentencing court from doing anything other than imposing three-quarters non-parole period of the head sentence.

As I understood it, the Commonwealth position was that section 19AG complies with the Convention on the Rights of the Child for a few reasons. First, because children who are convicted of terrorism offences need a degree of time in prison in order to undergo the de-radicalisation or disengagement process. Two, the sentencing judge will still have a degree of discretion, not as to the non-parole period, but relevantly, as to what sentencing disposition to impose upon that particular offender.

Do you have a response to those positions?

MR SANTOW: Taking those propositions one by one, just for the sake of argument we would accept proposition 1, namely, that there's a certain minimum amount of time that terrorist offenders who are children need to be de-radicalised, that assessment is best made by the court that is considering all of that individual's circumstances.

It is very difficult for Parliament, without reference to any individual child or young person, to identify what is the specific minimum time that will apply to all child offenders in that category. In other words, if we accept that objective as a legitimate one, it can still be achieved by preserving or granting a greater degree of discretion to the Court in determining length of sentence than the current section 19AG.

In respect of the second proposition, which is essentially that there is some residual discretion, that may be true, but that does not, I think, fully answer the charge that this is incompatible, this provision is incompatible with international human rights law.

5 The point is the two critical provisions of the Convention on the Rights of  
the Child that are enlivened here, article 37 and article 40, we've talked  
already about detention being, for children, a matter of last resort. There  
are other really important principles such as that detention should be for  
the shortest appropriate period of time. I think what the current drafting of  
section 19AG militates against is compliance with that specific  
requirement, and so we would particularly draw your attention to that.

10 MR TRAN: From the Commission's perspective, I'm sure you're aware  
that Federal offenders have their parole determined by the Commonwealth  
Attorney-General, which wasn't always necessarily the case. Can you see  
any necessary reason why section 19AG would need to remain for  
children in circumstances where the ultimate decision about parole and  
risk presented by an offender is vested in the Attorney-General?

15 DR RENWICK: So the question is there's no presumption of parole any  
more. You used to get a parole automatically, now you don't.

20 MR SANTOW: Right.

DR RENWICK: Indeed, the Attorney was reported recently as having  
declined – personally declined to grant parole to a young offender, even  
though he had served the non-parole period.

25 MR SANTOW: Thank you for drawing that to our attention. Perhaps we  
should take that question on notice and consult with our colleague, the  
National Children's Commissioner, as well, because she might well have  
a view I'm sure.

30 MR TRAN: I think another point that's raised in the written submissions  
in support of section 19AG and its consistency with Australia's  
international obligations is the proposition that Parliament has made the  
determination that certain offences warrant the three-quarter rule and that  
there's not necessarily any international obligation that would require that  
35 determination to be made by a court looking at specific offender or  
juvenile offender.

40 Do you have a response about where decision making authority needs to  
lie from an international perspective?

MR SANTOW: The problem is not who has made that edict, it is that that  
requirement carries with it a level of arbitrariness that makes  
individualised decision making either more difficult, or in one sense  
impossible, and it is that requirement of the individualised decision  
45 making that at international human rights law is crucially important here.

DR RENWICK: Just a couple of other more general questions, Mr Santow. So in Australia now, Queensland this year changed the definition of “children” so that now it’s uniform across Australia that it’s 5 18 and up. But there are still differences in Australia as to which – the sort of detention facility you are capable of being sentenced to, as we may well know the level of the prisons.

10 So in New South Wales for example the sentencing judge may in and of itself order that you serve generally up till 21, although sometimes up till 23, in a juvenile detention facility. That doesn’t preclude the prison authorities transferring you for cause to an adult facility, but that’s certainly where you start, whereas in other states, 18 and one day you’re in an adult facility. Do we have anything to learn from human rights law 15 about that differential treatment of young adults as opposed to children?

MR SANTOW: This is perhaps another example where international human rights law requires individualised decision making wherever possible. In the situation you’re talking about here, we would say that the 20 individuals we’re talking about here are both the individual offender who’s perhaps just gone over that age threshold to be 18, so what are that person’s best interests.

25 But also, what are the best interests of the children in the juvenile – children and young people in the juvenile facility and if the 18 year old’s continued presence might impinge disproportionately on their basic human rights. So I guess what we’re saying is consideration needs to be given to both of those categories of person on an individualised basis. A blanket rule makes that either difficult or impossible.

30 DR RENWICK: Something else you may have – you haven’t really had a chance to read in detail my opening remarks, but one of the things I have found striking at this inquiry is how you could have very different sentencing results depending upon which state or territory you happened 35 to be tried in and whether you are tried in a children’s court - a court of general jurisdiction, and whether you are tried by reference to juvenile justice principles or as an adult, for example, is a co-offender with an adult.

40 You may have read that my starting point is that while some discrepancy for a Federal offender might be acceptable in a Federal system, very marked discrepancies are unsatisfactory. So my starting point is essentially for serious terrorism offences where a substantial period of incarceration is going to be awarded, it seems to me that in principle they 45 should be determined by a judge and jury of a Supreme, District or

County Court and it is not appropriate for those to be dealt with by a children's court, not least because of we see them in a jurisdiction to impose the sentence required by law.

5 There will obviously be some matters at the very bottom end of severity where children's courts with their particular expertise in that jurisdiction of dealing with non-custodial options may be very well suited, and no doubt there's a grey area in between.

10 Now, from my legal policy point of view there's no hard and fast answer as to where you set those relevant limits. New South Wales and Victoria for example have made both legal and procedural changes which mean that for example people facing a sentence of life imprisonment or 25 years cannot be dealt with in the children's court, but in other states you could  
15 be. In Queensland you can be dealt with by a jury.

I suppose I'm asking you, and you may wish to take this on notice, does  
20 human rights law, that large body of law, have things to tell me about when a matter should be dealt with in a children's court, when a matter should be dealt with in a court with a jury where, after all, it's one of our very few constitutional rights – and pausing there, the English defence counsel I spoke to were all adamant that if they had the choice they would want a jury trial.

25 So you can see there's some complex issues there and if there's any guidance you can offer as to by reference to what human rights principle one should set that standard or limit or whatever you might characterise it as, I'd be grateful. I appreciate that's not an easy question.

30 MR SANTOW: No, and I can make two quick observations.

DR RENWICK: Please.

35 MR SANTOW: Perhaps we can reflect on it further and see if we have anything to add.

DR RENWICK: Certainly.

40 MR SANTOW: The first to return to something I said right at the start, consistency is important in this area. That's not the same thing as saying that all of the laws in a Federation like Australia have to be identical. But any significant divergence prima facie should raise a red flag, particularly when that divergence has an impact on the experience of the individual's basic human rights, and any deprivation of liberty does.  
45

5 Second proposition is that in addressing that consistency issue, international human rights law would encourage us to be very careful not to level down as it were. In other words, uniformity should never be achieved at the cost of reducing human rights protections for children in any particular state or territory, or for that matter, nationally. So those principles I think are very important.

10 Returning to our submission, we were quite careful about how we approached this issue. We said that firstly, it really needs to be a very careful survey of Australia's Federal, state and territory laws to identify very precisely where some of those divergences are that you are talking about. When I say some of, all of, divergences are that you're adverting to, so that you can then take a practical approach in determining how best to address those divergences.

15 That may be individual jurisdictions, state and territory jurisdictions legislating to bring themselves up to speed as it were. And there may be times where there's an agreement for the Federal Parliament to legislate to address the problem. But I think that's the sequence that probably needs to be followed.

20 MR HOWELL: I might add something just on the question of when it might be appropriate for particular offences to be dealt with by a children's court I suppose to a court of general jurisdiction.

25 DR RENWICK: Yes, certainly.

30 MR HOWELL: This is a very general comment. There are a number of features of children's courts which are particularly adapted, make them particularly adapted to hearing matters involving children. Obviously the range of sentencing options available is one that you've adverted to and is a very major factor and advantage of children's courts in many circumstances.

35 There would be nothing to stop, and in some jurisdictions I believe this does happen, courts of superior jurisdiction having those same sentencing options available to them when they are hearing a matter that involves a child defendant.

40 There are a number of other features I believe some children and youth courts have which, again, are tailored towards children's particular circumstances, including a judiciary which is particularly skilled at dealing with child participants to litigation and their particular needs in terms of making themselves heard and obtaining proper representation and  
45 having their interests well represented.

5 Again, there is a possibility that courts of higher jurisdiction, it may require some legislative or other procedural amendments, could make the same adaptations or have the same training available to judicial officers and others involved in the registry and so on in the court, to provide them with some of those features which make them better placed to protect the rights of children when they're determining serious offences involving children.

10 So to the extent those adjustments can be made, international human rights law may be slightly agnostic about which particular court would be most appropriate to hear an offence, but the critical feature and factor would be is the court well placed to protect the rights of the child by ensuring that they can be heard, ensuring their other rights are protected and that an appropriate range of sentencing and diversionary options are available to whichever court is ultimately hearing a matter.

20 DR RENWICK: That's a very helpful observation. Certainly in England the comment was made that some judges are very quick to adapt their practical procedures when children are on trial, for example, they might not wear wigs or robes and the child might not be in the dock, the child might have a support person next to them, even if charged with a very serious offence, and so on.

25 Now, I suspect those are matters best dealt with by judicial training rather than prescription by law. Because it won't be what's appropriate in one case, won't be appropriate in another. So I take your point there. I also take your point that it's a good thing generally for judges to be exposed to judicial education about children.

30 One of the things I am thinking of recommending is that in New South Wales, for example, all judges may visit a jail or place of detention on reasonable notice, many of them do so, certainly in their initial judicial training. But there are some experienced criminal judges who make a point of going every year on the basis that if I'm sentencing people to go to this institution, I should know what it's like, and I think that's to be applauded.

40 Indeed, I'd be interested in your views on this, but I'm considering recommending that that be a right of all judges, to visit any place where a Federal offender might be incarcerated, that will be a rule supported by section 120 of the *Constitution*. It wouldn't cost much, but I think it would encourage judges, if we couple that perhaps with some judicial training through the Judicial Conference of Australia, to be familiar with

what's happening. After all, civil judges sometimes sentence people to jail for contempt and the like.

5 So if you have any thoughts in relation to that, I'd be grateful.

MR SANTOW: We strongly endorse that proposal. There are, as you acknowledge, some judges who as a matter of course do visit places of detention and I think find that instructive in the carriage of their duties. I think the particular issues that arise for children in places of detention probably add additional weight to your proposals. So we warmly endorse it.

DR RENWICK: One might add I suppose to that, that an issue in cases, not just criminal cases, but high risk terrorist offender matters, is the extent to which people are rehabilitated. There are some people who take the view that there's no such thing as even disengagement from violence, and yet the learning on that suggests otherwise, and it may be that having judges go to visit places to see what progress is being made in disengagement and rehabilitation would be just helpful generally in that sphere.

MR SANTOW: I think so. I think it gives a practical understanding of the sorts of measures that are often discussed as different parties are adducing evidence. Of course it's no substitute for looking at the cold, hard data on what is effective and what's not effective, but I think it's probative pieces of evidence, as it were.

MR TRAN: Just in turning to section 20C, does international human rights law provide any insights into how to reconcile federalist concerns with the right to equality? So on the one hand section 20C, which allows us to pick up state and territory procedural laws for criminal offences, in order to preserve and reflect federalist concerns, but on the other hand what we're seeing in our review so far is that potentially very divergent results might follow depending upon where the trial takes place. I was wondering, does international human rights law help us to draw the line at a particular point?

MR SANTOW: It definitely provides some assistance, perhaps not an absolute black and white rule that is of easy application in all circumstances. What the UN Human Rights Committee has said is that in a federal system the right to a fair trial does not require uniformity in respect of all procedural rules across all of the jurisdictions that make up the relevant federation.

5 However, where a significant procedural right is enjoyed by people solely on the basis of the particular state or province, or territory, in Australia's case, that they live in, that difference may impermissibly limit the human rights of the affected person. That could be in breach, for example, of the right to a fair trial. It could also be in breach of the principle against discrimination.

10 It will depend – and this is why I say it's not an absolute black and white rule that can be applied very simply in all circumstances, it will depend on the nature and extent of the difference in the application of that procedural rule and so really needs to be considered on a case by case basis.

15 But certainly in the context of section 20C, I think there are some examples, particularly given in the Government joint submission, of where there are some very significant divergences as between the experience in different jurisdictions in Australia, I think they need to be very closely assessed.

20 DR RENWICK: If there's nothing further, it remains for me to thank both of you for coming to Canberra, for making your very detailed submission. If you did have any further thoughts arising out of today, perhaps we might have them in 14 days, if that's convenient, not suggesting you do need to bring any further on. Again, we always value, Mr Santow, the work of the Human Rights Commission and you personally, so thank you very much.

MR SANTOW: Thank you very much, Dr Renwick.

30 DR RENWICK: Jessie Smith, if you would like to come forward please. So we now welcome our last witness for the day, who is Jessie Smith, who I think is appearing on behalf of the ICJ in Victoria, is that right?

35 MS JESSIE SMITH, INTERNATIONAL COMMISSION OF JURISTS VICTORIA: Yes, that's correct.

DR RENWICK: Yes. Do you have an opening statement, Ms Smith?

40 MS SMITH: I do. Look, I'd like to start by echoing the acknowledgement of country made by Dr Barrelle earlier today, and I'd like to thank you, Dr Renwick, counsel and solicitor assisting the INSLM for inviting me to attend and give this submission today, and I do so as a representative of civil society, both the International Commission of Jurists Victoria and my firm, Stary Norton Halphen.

5 The International Commission of Jurists in Victoria is committed to primacy, coherence and implementation of international law and principles that advance human rights. I'm also appearing with the support of Liberty Victoria. Liberty Victoria is one of Australia's leading civil liberties organisations, working to defend and extend human rights and freedoms in Victoria.

10 In my professional capacity I'm a solicitor with joint conduct of the largest terrorism law practice in Australia, under supervision of Mr Robert Stary, principal. I was also solicitor for *MHK*, a 17 year old who pleaded guilty to acts in preparation of a terrorism offence in 2016. His case is discussed at length in our submissions and also by the Law Council of Australia in their submissions and elsewhere. I also have a personal research interest in this field and will shortly commence a PhD examining the judicial assessment of terrorist risk.

15 If I may, most of my submissions will focus on the section 19AG. Most of the submissions that were filed before the INSLM have called for the repeal of this section, and in our submissions we flag at first the history of section 19AG, the importance of parole, and especially the importance of parole as a protective mechanism to protect the community against recidivism, and that's done by facilitating the reintegration and rehabilitation of offenders.

20 Our submissions flag the introduction of the bill, which suggests that senators had a very short timeframe in which to consider the inclusion of section 19AG to that raft of amendments and that there was not great scrutiny at that time as to the human rights implications, especially towards the ICCPR and Convention on the Rights of the Child at that time.

25 What section 19AG is designed to do is not at all protective. It does not determine if someone will be released on parole, it just sets a mandatory minimum marker, and I think that's an important distinction to make. Some of the earlier comments that this was somehow necessary due to the nature of the offending, that accused had to be held for a longer period, really this is dealing with the time that eligible offenders will be released, it does not direct the release of those who pose too much of a risk.

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DR RENWICK: So I suppose as a matter of statutory construction, we need to draw a distinction between 19AG at the time it was first enacted, when they would have done that, and the position now.

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MS SMITH: Yes.

DR RENWICK: So you're talking, understandably, about the position now.

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MS SMITH: At the time as well, section 19AG was – even though it was an automatic process, and perhaps I need to consider this further – if an offender caused a substantial concern or a risk concern, query whether application could have been made by the parole board or those concerns raised.

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Yes, since 2012 the Minister has exercised a personal discretion towards offenders, which changes the quality of this regime, but since its conception it's been primarily focused on giving a, I suppose, blanket and mandated guideline for a particular kind of offender regardless of risk that they might specifically pose to the community. That, when considering the broader regime of parole, we see is particularly problematic.

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The submissions also briefly flagged some of the human rights concerns of this particular brand of mandatory sentencing, which it considers to be, although lawful, potentially arbitrary according to the Convention on the Rights of the Child. And the thrust of the submissions really concerned the structural barriers to the rehabilitation of child offenders, of which 19AG forms the central part.

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To that end and to discuss that further, I've prepared a small aid for this discussion, which I've handed to Dr Renwick and counsel assisting.

DR RENWICK: Yes.

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MS SMITH: When a young person comes to the attention of authorities there are various stages which they will move through in the criminal justice system. Pre-charge, we understand there are some diversionary programs, however, as solicitors who practice in this area we're unaware of what they are, we've not been notified of what those programs are and we've never made a referral to them.

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That is despite a constant stream of young people coming through our office with passports cancelled or because they've raised concerns with their parents. We have made several requests for that information at various conferences, but it's unclear what programs might be suitable for young people who are presenting with that behaviour profile.

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From that point, little remains to assist to rehabilitate or disengage, de-radicalise offenders. You have the control order regime, which

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although it mandates through the controls that rehabilitation is to take place, there is no funded programs or indeed guidance as to what that should look like, and it's left to practitioners to fashion pro bono in their own time.

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Once an accused is charged there will be potentially a bail application. If they're released on bail there are no programs like there exist for every other category of offender in Victoria, violent crime, sexual offences. There still remains nothing. If they're refused bail, they will be placed on remand, and that can span 18 months to four years, because of the intensely complex nature of these legal regimes, we have had several cases run of that duration, and there are no programs.

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If at any stage along that trajectory an offender is acquitted or the charge is discontinued, they will leave the justice system having received absolutely no supports for their presenting risk profile.

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Then we come to the sentence hearing, where the judge is required to apply section 19AG in fashioning sentence. At that stage the judge at common law is required to – well, the offender really is required to renounce violence in satisfaction of the sentencing principle of community detention. This is a sentencing principle that commenced with *Lodhi* case and has been employed since, and has developed into an expectation that the accused will give evidence and be cross-examined.

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This has never occurred in Australia until the case of *MKH*, because of the total absence of appropriate rehabilitation programs for this kind of offender. There is no evidentiary basis for the court to draw on and there's no mechanism to assist an accused to know, understand and position themselves to renounce violence, not just as an oral surrender in court but as an actual meaningful step away from violent extremism.

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DR RENWICK: So just pausing there, there's two ideas, there's the idea about whether the accused or the offender, no doubt on legal advice, chooses to get into the witness box on sentencing.

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MS SMITH: Yes.

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DR RENWICK: That's idea number one. Then the second one is, if and when they do that, your point is I think that there isn't publications which would assist in a court determining whether that denunciation is genuine.

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MS SMITH: Both would require programs to create the conditions for either an oral renunciation of the court's assessment of that risk. In my view, an accused offender cannot renounce violence unless they've

worked closely on what that means, because renunciation is to step away and to disengage or to de-radicalise from violent extremism.

5 Unless the courts are going to entertain perfunctory ideological renunciation that has no meaning and is not otherwise born of significant engagement with support services, then that can have no meaning and it's no surprise that no offender has ever been in a position to do that until *MHK*.

10 There were I suppose attempts to admit a renunciation through a psychologist that happened in *Besim's* case, and I believe that's happened in New South Wales as well. But that has not been accepted.

15 DR RENWICK: So when you say it hasn't been accepted, you mean the conclusions haven't been accepted, not that they haven't been admitted into evidence.

20 MS SMITH: The Court has not relied upon it or put – I'd have to go back and read the judgment to see whether it was capable of being admitted and then given little weight, or it was simply inadmissible.

DR RENWICK: I see. So what are you suggesting then at the presentence stage?

25 MS SMITH: What needs to occur, ideally pre-charge, but at least from the point of charge, is either in custody or in the community on bail, programs to assist offenders while they're in this forensic setting. Now, these were submissions that were made to the Harper Lay Review and are contained in their report on terrorism and violent extremism in Victoria,  
30 and that's recommendation 10 and 11 of their second report.

35 But that needs to be accompanied with statutory protections of that therapeutic space, and one of the barriers that we have confronted as practitioners in counter-terrorism is that all of this engagement, all of the subject matter that you would be discussing with the young person, the psychologist, the imams, the social workers, all of that goes to ideology and all of that is admissible at trial. It all goes in under the advancing  
40 cause limb of a terrorist definition under the Code.

40 There has been no desire to put clients' trial at risk by facilitating their disengagement along the way, and that is such a lost opportunity, in our respectful submission.

45 DR RENWICK: But after they've been convicted, is the problem that there isn't enough time, is that the concern?

5 MS SMITH: Well, after they've been convicted, the time between conviction and sentence is usually of short compass, and to do a meaningful disengagement from violence, as we've heard, it does take significant time, it's certainly not something that can be done in a perfunctory way, and there's not much interest, from a defence practitioner's experience, to sort of fashion together something so quickly, if it's not going to be meaningful and meet what the common law requires.

10 DR RENWICK: I can see if there's a decision to plead guilty, the Court perhaps being sympathetic – and Ms Single may know more than me – giving a reasonable adjournment to permit some proper examination. I suppose though if it's a plea of not guilty, there's the classic dilemma.

15 MS SMITH: There is the classic dilemma, but at the same time, you're charged with potentially a pre-inchoate early preparatory activity, often several years before. Four years later, in that time are they to sit in isolation or are they to work towards disengaging from violence? They can still contest the charge, it's not inconsistent with that, but it allows really for the justice system to secure – it needs to consider in terms of verdict and achieve a safer community as a result.

20 Because if they walk, like we saw with Yacqub Kahyre in the Operation Neath proceedings, he spent four years on remand in a maximum security prison and went on several years later to commit the Brighton siege attack which killed one person. Yes, his case is complex and there is an extraordinary I guess confluence of factors in his case, but surely as an aspect of that, is four years in maximum security prisons, 23 hour lockdown.

25 DR RENWICK: So just so I understand this, is this all relevant to your submission on 19AG?

30 MS SMITH: It does – and I'll put this to how it's relevant. 19AG has been another impediment for us making real in-roads in the therapeutic space because the Court must impose a mandatory non-parole period. So what is the value in disengaging? Where is the motivation, where is the encouragement or the facilitation of that process if we know exactly what sentence they're going to receive? And there is a marked similarity between sentences that adults have received over the years; it's often 20 with 15, thereabouts.

40 This is the dilemma that Lasry J found himself in at the sentencing stage of *MHK*, where even though he recognised that there had been – well, in

5 the history of counter-terrorism, quite extraordinary rehabilitation, evidently still distance to travel. But his Honour had to impose something that looked like a – ultimately because terrorism offences are so serious, you're always going to have a high head sentence, and you will just have a mandatory parole period which gives absolutely no consideration to those efforts.

10 DR RENWICK: So apart from amending 19AG to say that it doesn't apply to children, are you making any other recommendation to reforming the law, bearing in mind I don't look at non-statutory programs?

15 MS SMITH: No. I think our submissions on 19AG have to be informed by the dilemma of rehabilitating terrorist accused in the forensic setting. That's what makes the repeal of 19AG – I guess that's what gives it force, that urging for repeal.

20 There are calls in the submissions of the Law Council of Australia that the recommendations of the Harper Lay Review be encouraged, and I take your point that perhaps that's beyond the direct scope of this hearing. However, it's evident from the kinds of questions that have been posed to Government authorities in this setting that 19AG can't be considered without considering really this emerging body of evidence about the radicalisation and de-radicalisation of young people. So that's where it does become relevant. That's why we have, as a law firm, urged this kind of package of rehabilitation as it were, where we can.

25 DR RENWICK: Where is that in your submissions?

30 MS SMITH: You will find it at paragraph 41 down. Then you'll also find reference to it from paragraph 65 moving forward, which takes a more expansive approach to this question, and refers to the Victorian Government's Expert Panel on Terrorism and Violent Extremism.

35 DR RENWICK: Right.

40 MS SMITH: I say this without at all discounting the very good work that both PRISM and KISP are doing once an offender has been sentenced. But those programs are of no utility to a sentencing court, to a bail court, to a control order jurisdiction.

45 DR RENWICK: So what we should do is we should follow through the recommendations set out at paragraph 67 and see to what extent they might be applicable at the Commonwealth level, because the Harper Lay Review related to Victorian law, would it not?

MS SMITH: Yes, that's correct. The funding for these programs, as I understand, are jointly administered between Federal and State budgets.

5 DR RENWICK: And it's not that I'm not interested in them, but as I say, I can't make recommendations – I don't monitor the operation of non-statutory programs per se. But I understand your submissions about 19AG, and of course, you're in good company, including with the Judicial Conference of Australia. It says that that should be abolished. If you have a look at my – have you got my opening there?

10 MS SMITH: Yes.

DR RENWICK: Just have a look under the heading “Preliminary INSLM View Concerning 19AG”, I might just finally ask you whether there's anything you wanted to add to those legal propositions.

MS SMITH: Sorry, which page is this?

MR MOONEY: It's towards the back end.

20 DR RENWICK: Sorry, I've got in large print. Its heading is “Preliminary View on 19AG”, just have a read of that.

MS SMITH: Yes. Yes, that certainly captures our view of the reasons I guess, in the narrow sense why – well, not narrow, but for the purpose of this review certainly, the primary objections. We thought it really necessary to broaden the ambit of our submissions because the Syrian conflict has, in our view, from our firm's view, really changed the profile of offender, and it's been several years where our firm has had to shoulder this particular burden pro bono, and that's why we wanted to make that as forcefully as we could.

DR RENWICK: No, I'm very grateful. So if you want to expand on footnote 70 and send us a further note in the next couple of weeks, I'd be very grateful.

MS SMITH: Yes.

DR RENWICK: But if there's nothing further, it remains for me to thank you very, very much for making your way here, we've found it of great assistance what you've put forward and we wish you well in your future research.

MS SMITH: Thank you.

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5 DR RENWICK: So, ladies and gentlemen, that brings today to an end. I thank all of you that have attended for doing so, and I hope many online as well. I thank my principal advisor, Mr Mooney, my counsel assisting, my solicitor assisting, and particularly I thank Ms Arthurson, who has organised the day to run without flaw.

So thank you and good afternoon.

10 **ADJOURNED INDEFINITELY**

**[2.47 pm]**